

VPI Immingham OCGT Project

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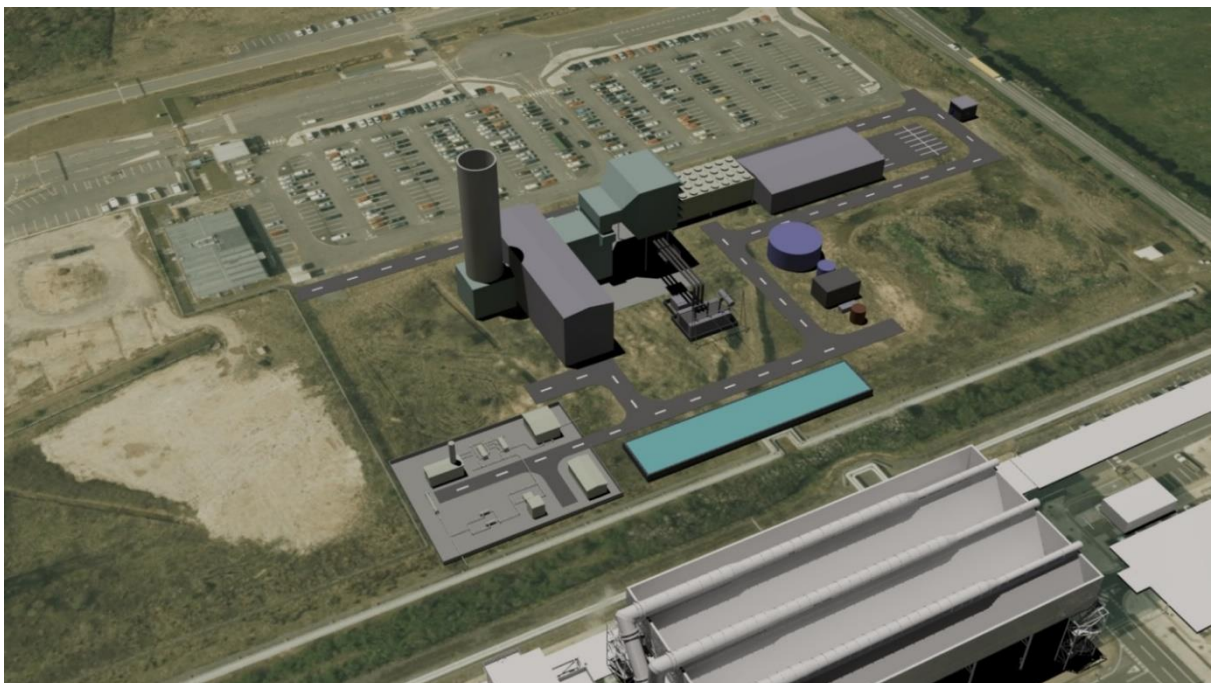
The Immingham Open Cycle Gas Turbine Order

Land to the north of and in the vicinity of the VPI Immingham Power Station, Rosper Road, South Killingholme, Lincolnshire, DN40 3DZ

Planning Statement

The Planning Act 2008

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



Applicant: VPI Immingham B Ltd

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GLOSSARY

Abbreviation	Description
Access	Work No. 2 – access works comprising access to the OCGT Power Station Site and access to Work Nos. 3, 4, 5 and 6;
Access Site	The land required for Work No.2.
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.
AONB	Area of Outstanding Natural Beauty
APFP Regulations	The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009
Applicant	VPI Immingham B Ltd
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.
Application Documents	The documents that make up the Application (as defined above).
BEIS	Department for Business, Energy and Industrial Strategy.
CCR	Carbon Capture Ready – a power station is Carbon Capture Ready where it has been demonstrated that: sufficient space is available on or near the site to accommodate carbon capture equipment in the future; retrofitting carbon capture technology is technically feasible; that a suitable area of deep geological storage exists for the storage of captured CO ₂ ; transporting CO ₂ to the storage location is technically feasible and CCS is likely to be economically feasible.
CCS	Carbon Capture and Storage – an emerging technology that enables carbon dioxide produced by burning fossil fuels to be captured and permanently stored, usually in deep geological formations, removing up to 90% of the carbon dioxide that would otherwise be released to the atmosphere.
CEMP	Construction Environmental Management Plan – a plan to outline how a construction project will avoid, minimise or mitigate effects on the environment and surrounding area.
CHP	Combined Heat and Power – A technology that puts to use the residual heat of the combustion process after generation of electricity that would otherwise be lost to the environment.

Abbreviation	Description
CO2	Carbon Dioxide – an inorganic chemical compound with a wide range of commercial uses.
COMAH	Control of Major Accident Hazards – Regulations to ensure that businesses take all necessary measures to prevent major accidents involving dangerous substances.
CTMP	Construction Traffic Management Plan – a plan outlining measures to organise and control vehicular movement on a construction site so that vehicles and pedestrians using site routes can move around safely.
CWTP	Construction Workers Travel Plan – a plan managing and promoting how construction workers travel to a particular area or organisation. It aims at promoting greener, cleaner travel choices and reducing reliance on the private car.
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.
EA	Environment Agency – a non-departmental public body sponsored by the United Kingdom government’s Department for Environment, Food and Rural Affairs (DEFRA), with responsibilities relating to the protection and enhancement of the environment in England.
EIA	Environmental Impact Assessment – a term used for the assessment of environmental consequences (positive or negative) of a plan, policy, program or project prior to the decision to move forward with the proposed action.
Electrical Connection	Work No. 5 – an electrical connection of up to 400 kilovolts and controls systems.
Electrical Connection Site	The land required for Work No.5.
EMF	Electromagnetic fields – a physical field produced by electrically charged objects.
EPA	Environmental Protection Act
ES	Environmental Statement – a report in which the process and results of an Environmental Impact Assessment are documented.
Existing AGI	The exiting AGI within the Existing VPI CHP Site.
Existing AGI Site	The land comprising the exiting AGI within the Existing VPI CHP 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 Immingham Power Station. This facility is a gas-fired combined heat and power (‘CHP’) plant near Immingham providing steam and electricity to the neighbouring refineries and electricity to the National Grid.
Existing VPI CHP Plant Site	The land comprising the Existing VPI CHP Plant, located immediately to the south of the Main OCGT Power Station Site.

Abbreviation	Description
Flood Zone 1	Land with an Annual Exceedance Probability of less than 0.1% risk from fluvial flooding.
Flood Zone 2	Land with an Annual Exceedance Probability of between 0.1% and 1% risk from fluvial flooding.
Flood Zone 3a	Land having a 1 in 100 or greater annual probability of river flooding or land having a 1 in 200 or greater annual probability of sea flooding.
FRA	Flood Risk Assessment – the formal assessment of flood risk issues relating to the Proposed Development. The findings are presented in an appendix to the Environmental Statement.
Gas Connection	Work No. 4 – the new underground and overground gas pipeline
Gas Connection Site	The land required for Work No.5.
GT	Gas Turbines – a type of internal combustion engine, featuring an upstream rotating compressor coupled to a downstream turbine, and a combustion chamber in between.
GW	Gigawatts – unit of power.
HA	Highways Agency (now known as Highways England) – government owned company responsible for managing the strategic road network in England.
ha	Hectare – unit of measurement.
HGV	Heavy Goods Vehicle – vehicles with a gross weight in excess of 3.5 tonnes.
km	Kilometre – unit of distance.
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.
LSE	Likely significant effect, a term used in the ES to describe when effects on a receptor are predicted to be significant
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
m	Metres – unit of distance.
MW	Megawatts – unit of energy.
NATA	New Approach to Appraisal
NELC	North East Lincolnshire Council
NG	National Grid
NGET	National Grid Electricity Transmission plc
NLC	North Lincolnshire Council
NPPF	The National Planning Policy Framework – Policy Framework which was introduced in March 2012 and updated in July 2018. The NPPF is part of the Government's reform of the planning system intended to make it less complex, to protect the environment and to promote sustainable growth. It does not contain any specific policies on Nationally Significant Infrastructure Projects but its policies may be taken into account in decisions on DCOs if the Secretary of State considers them to be both important and relevant.
NPS	National Policy Statements – statements produced by Government under the Planning Act 2008 providing the policy framework for Nationally Significant Infrastructure Projects. They include the Government's view of the need for and objectives for the development

Abbreviation	Description
	of Nationally Significant Infrastructure Projects in a particular sector such as energy and are the primary matter against which applications for NSIPs are determined.
NSIP	Nationally Significant Infrastructure Project – Defined by the Planning Act 2008 and including projects relating to energy (including generating stations, electric lines and pipelines); transport (including trunk roads and motorways, airports, harbour facilities, railways and rail freight interchanges); water (dams and reservoirs, and the transfer of water resources); waste water treatment plants and hazardous waste facilities. These projects are only defined as nationally significant if they satisfy a statutory threshold in terms of their scale or effect. The Proposed Development is a NSIP.
NSRs	Noise Sensitive Receptors – locations or areas where dwelling units or other fixed, developed sites of frequent human use occur.
OCGT	Open Cycle Gas Turbine – a combustion turbine plant fired by gas or liquid fuel to turn a generator rotor that produces electricity.
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 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 .
PA 2008	Planning Act 2008. An Act which provides the need for and the powers to apply for and grant development consent orders ('DCO') for nationally significant infrastructure projects ('NSIP').
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.
PPG	Planning Practice Guidance – guidance expanding upon and supporting the NPPF.
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.
PRoW	Public Right of Way
SAC	Special Area of Conservation – High quality conservation sites that are protected under the European Habitats Directive, due to their contribution to conserving those habitat types that are considered to be most in need of conservation.
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 a Government department. In this case the SoS for the

Abbreviation	Description
	Department for Business, Energy & Industrial Strategy (formerly the Department for Energy and Climate Change).
SPA	Special Protection Area – strictly protected sites classified in accordance with Article 4 of the EC Birds Directive. Special Protection Areas are Natura 2000 sites which are internationally important sites for the protection of threatened habitats and species.
SUDS	Sustainable Urban Drainage System
SWMP	Site Waste Management Plan (SWMP)
TA	Transport Assessment
TCPA 1990	Town and Country Planning Act 1990 (as amended) – the Act that regulates the majority of development of land in England and Wales, but which is not directly applicable to this proposed development as it is a NSIP, regulated by the Planning Act 2008.
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.
TLOR	Total Lindsey Oil Refinery
TTWA	Travel to Work Area – statistical tool used by UK Government agencies and local authorities to indicate an area where the population would generally commute to a larger town or city for employment purposes.
Utilities and Services Connections	Work No 6 – utilities and services connections to the OCGT Power Station.
Utilities and Services Connections Site	The land required for Work No.6 – the land required for the utilities and services connections to the OCGT Power Station.
Vitol	Vitol Group – the owner of VPI LLP and VPIB.
VPIB	VPI Immingham B Limited – the Applicant
VPI LLP	VPI Immingham LLP – the owner and operator of the Existing VPI CHP Plant.
WebTAG	Web-based Department of Environment, Transport and Regions Document. Transport Analysis Guidance.
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.
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;

Abbreviation	Description
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').
WSI	Written Scheme of Investigation – a method statement or a project design to cover a suite of archaeological works for a site.

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SUMMARY

This Planning Statement (Application Document Ref: 5.3) 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').

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 primarily on land (the 'Site') to the north of the 'Existing VPI CHP Plant' off Rosper Road, South Killingholme, North Lincolnshire, DN40 3DZ.

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 15(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').

The purpose of this Planning Statement is to assist the examining authority and the SoS in its assessment of the Application by demonstrating how the Applicant has taken account of relevant planning policy, notably the National Policy Statements ('NPS') for energy infrastructure, and the extent to which the Proposed Development complies with the policies within those NPSs, as well as relevant local and national planning policies. In doing so, the Planning Statement draws upon and cross-refers where relevant to the other documents that form part of the Application. The Planning Statement provides a summary of the relevant policies and alongside this the Applicant's assessment of how the Proposed Development complies with those policies.

The PA 2008 confirms that where relevant NPSs are in place they are the primary basis for the decisions made by the SoS. In the event of any conflict between an NPS and other documents or policy, the NPS takes precedence. The NPSs for energy infrastructure confirm that there is an urgent need for new electricity generating capacity in the UK, including gas-fired generation, to ensure the security of national electricity supplies and to provide back-up generation as the UK becomes increasingly reliant on renewable energy. The NPSs are clear in stating that the need for new energy infrastructure is not open to debate or interpretation and that the SoS should give substantial weight to the contribution that all developments would make toward satisfying this need.

Due to the decline in fossil fuel power generation, most notably coal, the UK is becoming increasingly reliant on renewable energy. As renewable generating stations (particularly wind farms) are intermittent in nature, it is necessary to ensure that there is infrastructure in place that is able to respond to fluctuations in supply. OCGT generating stations are well suited to this, having the capability to start up rapidly, thus being able to respond to peaks in electricity demand and fluctuations in supply. An OCGT generating station at the Site would therefore make a positive contribution toward the security of national energy supply and provide much needed back-up to the UK's existing generation fleet.

Paragraphs 3.3.2 and 3.3.4 of the Overarching National Policy Statement for Energy (EN-1) are of particular relevance, stating that:

"3.3.2 The Government needs to ensure sufficient generating capacity is available 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...

3.3.4 ...fossil fuel generation can be brought on line quickly when there is high demand and shut down when demand is low, thus complementing generation from nuclear and intermittent generation from renewables."

This underlines the role of gas-fired generation, in particular OCGT generation, in ensuring the security of electricity supply. As already stated, COGT generating stations are especially well suited to this, having the capability to start up rapidly, thus being able to respond to peaks in electricity demand and fluctuations in supply.

The theme is continued in paragraph 3.3.11:

"...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 we have the more generation capacity we will require overall, to provide back-up at times when the availability of intermittent renewable sources is low. If fossil fuel plant remains the most cost-effective means of providing such back-up, particularly at short notice, it is possible that even when the UK's electricity supply is almost entirely decarbonised we may still need fossil fuel stations for short periods when renewable output is too low to meet demand, for example when there is little wind."

The need for new electricity generating capacity such as that proposed is further underlined at paragraph 3.3.7 of EN-1, which states that at least 22 gigawatts of existing electricity generating capacity will need to be replaced in the coming years, especially by 2020 as a result of tightening environmental regulation and the closure of aging power stations, particularly coal.

With regard to this, paragraph 3.6.2 notes that gas will continue to play an important role in the electricity sector, providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply, while paragraph 3.6.3 highlights that gas-fired generation, although not low carbon produces about half as much carbon dioxide as coal per unit of electricity generated. Gas therefore clearly provides a cleaner means by which to provide the required flexibility and resilience within the UK's generation fleet.

The need for new fossil fuel generation is summarised at paragraph 3.6.8 of EN-1:

"... 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..."

The NPSs set out a number of considerations that should be considered by applicants in preparing applications and also the SoS in decision-making. An assessment of the conformity of the Proposed Development with these considerations is provided in section 5 of the Planning Statement. An assessment of its compliance with other matters that may be considered 'relevant and important' by the SoS for the purposes of decision-making, including the National Planning Policy Framework ('NPPF') and local development plan policy is also provided at section 5.

The assessment in section 5 demonstrates that the Applicant has taken full account of the relevant considerations and guidance contained within the NPSs and that there is no conflict with NPS policy or with the NPPF or local development plan policy.

Section 6 of the Planning Statement identifies the key benefits of the Proposed Development as well as its likely significant adverse effects. The key benefits can be summarised as follows:

- EN-1 clearly confirms the urgent 'need' that exists for all types of nationally significant energy infrastructure, including new fossil fuel generating stations. It is clear that the SoS should assess applications on the basis that this 'need' and its scale and urgency has been proven. The Proposed Development, with a gross output capacity of up to 299 MW, would respond to this urgent need in a timely manner.
- The Proposed Development would support the increased deployment of renewable energy in the UK, which is crucial if the country is to move to a low carbon economy. In this respect, EN-1 recognises that fossil fuel generating stations have a vital role to play in adding to the security, diversity and resilience of the UK's 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.
- Gas is more efficient and results in lower carbon dioxide emissions than other fossil fuels such as coal and oil. The proposed technology will meet the energy efficiency levels associated with the use of Best Available Techniques for the type of plant to be installed.
- The Proposed Development would make use of an undeveloped piece of land with construction arisings on it. There are areas that have been developed (laydown areas and connection routes) but the OCGT is on greenfield land that benefits from short connection routes to the national electricity and gas grid infrastructure. This would assist in minimising the impact of the Proposed Development upon the environment during construction and operation.
- The Site comprises primarily of previously developed or disturbed land, including land within the operational envelope of the Existing VPI CHP; 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.
- The Proposed Development would have benefits for the regional and local economy, in terms of employment during the circa two-year construction phase and through the operational phase.
- The Proposed Development would deliver biodiversity enhancement.

As with all development proposals, it is necessary to assess the Proposed Development in terms of its conformity and compliance with relevant policy and weigh the benefits and significant adverse effects against each other (the 'planning balance').

The Proposed Development would deliver a number of very clear and substantial benefits. The only identified significant adverse effects consist of potential physical impacts on buried archaeology (an Iron Age ditch (A17) and a square enclosure (A26)). An archaeological strip,

map and record procedure is proposed in accordance with a Written Scheme of Investigation in relation to these assets.

In conclusion, VPIB considers that the Proposed Development is acceptable in planning terms and that a DCO should be made.

1. INTRODUCTION

1.1 Overview

- 1.1.1 This Planning Statement (Application Document Ref: 5.3) 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').
- 1.1.1 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 primarily on land (the 'Site') to the north of the existing VPI Immingham Power Station, Rosper Road, South Killingholme, North Lincolnshire, DN40 3DZ.
- 1.1.2 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 15(2) of the PA 2008. The DCO, if made by the SoS, would be known as the 'VPI Immingham OCGT Order' (the 'Order').

1.2 VPI

- 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. 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/>
- 1.2.3 VPIB has been formed as a separate entity for the purposes of developing and operating the Proposed Development.

1.3 The Site

- 1.3.1 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.

- 1.3.2 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.
- 1.3.3 The Site comprises the following main parts:
- OCGT Power Station Site;
 - Access Site;
 - Temporary Construction and Laydown Site;
 - Gas Connection Site;
 - Electrical Connection Site; and
 - Utilities and Services Connections Site.
- 1.1.2 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).
- 1.1.3 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 utilities and service connections;
 - 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.
- 1.3.4 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).

1.4 The Existing Gas Pipeline

- 1.4.1 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 pipeline located to the west of South Killingholme.

- 1.4.2 A small part of the Existing Gas Pipeline Site lies within the administrative area of North East Lincolnshire District Council ('NELC'), the neighbouring local authority.
- 1.4.3 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. It is included in the Application on the basis that the Applicant is seeking rights to use and maintain the pipeline and it is therefore included within the DCO 'Order land' (the area over which powers of compulsory acquisition or temporary possession are sought). 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'.
- 1.4.4 The Site and the Existing Gas Pipeline Site are collectively referred to as the 'Project Land'. The area covered by the Project land is illustrated in the Location Plan (Application Document Ref: 4.1).
- 1.4.5 The Existing Gas Pipeline has not been assessed as part of the Environmental Impact Assessment ('EIA') carried out in respect of the Application. This is on the basis that it is a pre-existing pipeline and the Applicant is not seeking consent to carry out any works to it. Further explanation in respect of this matter is provided in ES Volume 1, Chapter 1 'Introduction' and Chapter 3 'Description of the Site' (Application Document Ref: 6.2.3).

1.5 The Proposed Development

- 1.5.1 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 299MW;
 - Work No. 2 – access works (the 'Access'), comprising access to the OCGT Power Station Site 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 associated controls systems; and
 - Work No 6 – utilities and services connections (the 'Utilities and Services Connections').
- 1.5.2 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.

- 1.5.3 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 1, Chapter 4 'The Proposed Development' (Application Document Ref: 6.2.4).
- 1.5.4 The areas 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 Works Plans (Application Document Ref: 4.3).

1.6 The purpose and structure of this document

- 1.6.1 The purpose of this Planning Statement is to assist the examining authority ('ExA') and the SoS in assessing the Application, by demonstrating how the Applicant has taken account of relevant planning policy, including the National Policy Statements for energy infrastructure, and the extent to which the Proposed Development complies with policy. In doing so, the Planning Statement draws upon and cross-refers where relevant to the other documents that form part of the Application. The Planning Statement provides a summary of the relevant policies and alongside this the Applicant's assessment of how the Proposed Development complies with those policies.
- 1.6.2 To further assist the examining authority and the SoS's decision-making, the Planning Statement also sets out the key benefits and likely significant adverse environmental effects of the Proposed Development. In addition, it considers other relevant matters, notably the other consents and licences required for the construction and operation of the Proposed Development; the position with regard to the acquisition of interests and rights in land; and the requirements contained within the draft version of the Order (Application Document Ref: 2.1).
- 1.6.3 The Planning Statement is structured as follows:

SECTION	TITLE	OVERVIEW
Section 2	Planning history and local planning designations	Provides an overview of relevant planning history and the local planning designations and allocations that apply to the Site.
Section 3	Legislative and policy framework	Briefly describes the process for the consideration of applications under the PA 2008 and the matters that the SoS must have regard to, including relevant policy.
Section 4	The need for the Proposed Development	Details the need that exists for the Proposed Development having regard to the relevant National Policy Statements for energy.

SECTION	TITLE	OVERVIEW
Section 5	The assessment of the Proposed Development against policy	Provides an assessment of the Proposed Development against relevant policy.
Section 6	the benefits and impacts of the Proposed Development	Identifies the key benefits of the Proposed Development as well as its likely significant adverse effects/impacts.
Section 7	Other matters	Refers to the non-DCO consents and licences required for the construction and operation of the Proposed Development; the acquisition of interests and rights in land being sought; and the 'requirements' contained within the draft Order, amongst other things.
Section 8	Conclusions	Sets out the conclusions of the Planning Statement in terms of the overall acceptability of the Proposed Development.

2. PLANNING HISTORY AND LOCAL PLANNING DESIGNATIONS

2.1.1 This section provides an overview of the planning history of the Site and also identifies any local planning designations, allocations and policies that apply to it.

2.2 Planning history

General

2.2.1 The existing access roads within the northern section of the Site were developed approximately 10 years ago by Total under the terms of planning permission 2006/0506 granted by NLC in 2006 to service the Total Lindsey Oil Refinery ('TLOR').

2.2.2 The Existing VPI CHP Plant, sections of which fall within the boundary of the Site, was consented under section 36 of the Electricity Act 1989 (as amended) in November 2000. The consent provides for the construction and operation of a combined heat and power combined cycle gas turbine generating station at Conoco Humber Refinery, South Killingholme. It was subsequently amended in 2006 to allow the Existing VPI CHP Plant to be extended, including increasing its capacity by 470 MW (Reference: GDBC/001/00238C).

2.2.3 The remainder of the Site is not subject to any known planning permissions, although parts of it have been utilised for the placement of spoil associated with other development in the vicinity.

2.2.4 The Existing Gas Pipeline was consented under planning permissions granted by NLC (Reference: 2000/1284) and NELC (Reference: DC/893/00/IMM) in 2001 under the Town and Country Planning Act 1990 (as amended). The pipeline was then constructed in the years that followed in accordance with the planning permissions.

2.2.5 The land immediately to the west of the OCGT Power Station Site benefits from planning permission granted by NLC in 2018 (Reference: PA/2018/918) to a sister company of the VPIB for the development of a 49.9 MW gas-fired power station.

2.3 Able Marine Energy Park DCO

2.3.1 The Able Marine Energy Park Development Consent Order 2014 ('the Able DCO', at Appendix 1 to this report), was made by the SoS (Reference: EN010030). The development comprises a facility to provide for the manufacture and transportation of offshore energy infrastructure (the 'Able Development'). The Able Development includes a quay facility to load offshore energy components, such as wind turbines, onto new generation installation vessels. The location for the Able Development is on the south bank of the River Humber, to the north of Immingham and the Site. The size of the Able Development is 469.3 ha in total.

2.3.2 A small section of the Able Development Order limits is coincident with the Site (i.e. the Order limits for the Proposed Development). Specifically, small sections of land within and immediately adjacent to Rosper Road are where the interactions occur – they are shown hatched in green on the plan at Appendix 2 to this report, which also shows the Proposed Development's Order limits (the red boundary) and the Able Development Order limits (the blue boundary). The areas of overlap comprise the following:

- Work Number 2 (Access) of the Proposed Development includes the extent of the existing bellmouth entrance to the Existing VPI CHP Plant Site from Rosper Road;
- Work Number 2 (Access) of the Proposed Development includes the extent of the existing bellmouth entrance to the TLOR from Rosper Road, and which is also proposed to be the main entrance to the OCGT Power Station Site (and adjacent parts of the Site); and
- Work Number 6 (Utilities and Services Connections) of the Proposed Development includes a strip of land within Rosper Road, to allow for a connection to be made to the existing water main within the highway.

2.3.3 These three areas are not covered by specified works within the Able Development, but the Able DCO includes a general work of *“improvement works to Rosper Road and the A160”* (paragraph 3(c) of Schedule 1 to the Able DCO). The Able DCO also includes various powers relating to streets and associated works, which provide for the potential for street works to occur in Rosper Road (article 15 / Schedule 2), part of Rosper Road (further north than the Site) to be temporarily stopped up (article 16 / Schedule 3), and new or improved accesses from Rosper Road to be constructed (again further north than the Site, article 17 / Schedule 4). The Able DCO also allows the undertaker of the Able Development to take temporary possession of the whole width of Rosper Road, along a significant length, including where VPIB proposes to take access to the Site from Rosper Road for the purposes of *“works to Rosper Road”* (article 40 / Schedule 6).

2.3.4 The environmental statement relating to the Able Development includes brief information on the works proposed to Rosper Road, in chapter 4 (paragraphs 4.4.44 – 45):

“The site is currently provided with two accesses on Rosper Road. One access is currently a private road but will be improved and the junction reconfigured to a standard that is suitable for its increased level of use. Access for existing users will be maintained.

One additional access is proposed onto Rosper Road to facilitate access and egress. This new junction is located between Station Road and the existing access into Able Humber Port Facility. Rosper Road will need to be widened at this location to provide a right turn ghost island for traffic approaching the site from the south.”

2.3.5 These existing and new access points are all further north on Rosper Road than VPIB’s proposed areas of work.

2.3.6 The Able DCO also includes works to the southern end of Rosper Road, at its junction with the A160. These are assumed to no longer be relevant, given that the A160 (including this junction) has been subject to significant upgrade works, undertaken by Highways England.

2.3.7 VPIB is aware that Able has sought a non-material change to the Able DCO and this is currently being considered by the Secretary of State. The variations sought do not affect or alter the proposed works within or powers applying to Rosper Road.

2.3.8 VPIB is seeking powers in the Draft DCO to allow it to carry out the relevant parts of Work Nos. 2 and 6 noted above, including powers to compulsorily acquire new rights

(article 21), take temporary possession of land to carry out the authorised development (article 27) and various highways and street works powers similar to those included in the Able DCO (articles 8 to 14).

- 2.3.9 There is therefore the potential for the two Orders and the relevant powers to conflict, and VPIB is therefore proposing terms in the Draft DCO (Application Document Ref. No. 2.1) to avoid this and to ensure that the parties work together to allow both schemes to proceed – these are explained further in the Explanatory Memorandum (Application Document Ref. No. 2.2).
- 2.3.10 In terms of the substance of the interactions between the Proposed Development and Able Development, the sections that interact do not comprise primary parts of either development, and it is not clear to VPIB whether Able is actually likely to utilise the available powers in the Able DCO in relation to the relevant part of Rosper Road (the specific works to Rosper Road all being further north, as noted above).
- 2.3.11 Therefore, VPIB considers that the interactions do not preclude the projects from being carried out simultaneously (if necessary). The physical interactions between the Able Development and the Proposed Development reduce to very limited or none, once they are both operational. VPIB is engaging with the promotor of the Able Marine Energy Park to discuss the interactions and VPIB’s proposed approach to the overlap issues (as included in the draft DCO, Application Document Ref: 2.1).
- 2.3.12 VPIB is satisfied that the two projects would be capable of co-existing should both be constructed and operated, and VPIB is committed to continuing positive discussions with Able.

2.4 Local planning designations

- 2.4.1 Planning and environmental designations that apply to the Site have been identified through a review of the key diagram in the adopted North Lincolnshire Core Strategy (2011), the proposals map (saved policies) associated with the adopted North Lincolnshire Local Plan (2003), and the Housing and Employment Land Allocations Development Plan Document (2016).
- 2.4.2 The Core Strategy key diagram shows the Site as lying within the 'South Humber Bank Strategic Employment Site' ('SES'). Policy CS12 of the Core Strategy deals with the SES and is generally supportive of industrial and port-related activities within the designated area. It states that the area will be reserved for industrial type uses. There are also similar, supportive policies within the Local Plan (2003) and the Housing and Employment Land Allocations Development Plan Document (2016).
- 2.4.3 The Site is also situated within the 'South Humber Bank Landscape Indicative Area' under Policy LC20 of the Core Strategy, which covers much of the wider South Humber Bank Area. The Policy sets out a number of measures for the area, which include softening and screening (e.g. tree belts), habitat conservation and creation, and field boundary management.
- 2.4.4 The Site is not subject to any international or national nature conservation designations, although there are a number within the wider area.
- 2.4.5 The local development plan documents are therefore broadly supportive of power generation and related development at the Site, as is reflected in NLC’s response to

the Applicant's 'Stage 2 Consultation' under section 42 of the PA 2008, which states that the principle of the Proposed Development at the Site is supported.

- 2.4.6 ES Volume I (Application Document Ref: 6.2) provides information on sensitive receptors, heritage assets and environmental designations (e.g. nature conservation site or flood risk zones) at or within the vicinity of the Site.
- 2.4.7 Table 5.4 in section 5 of this report sets out the local planning policies in further detail, including compliance of the Proposed Development with them.

2.5 Summary

- 2.5.1 There is a long history of power generation at the Existing VPI CHP Plant and the principle of electricity generation and large-scale industry in the vicinity of the Site is firmly established. In addition, the local development plan is supportive of the principle of power generation at the Site, as is NLC in its consultation response.
- 2.5.2 It is demonstrated in section 5 of this report how the Proposed Development complies with the relevant policies of the local development plan.

3. LEGISLATIVE AND POLICY FRAMEWORK

3.1.1 This section provides an overview of the legislative context for the Proposed Development and the planning policy framework against which it is to be considered.

3.2 Legislative Context

3.2.1 The main legislative and procedural requirements relating to NSIPs are set out within the following:

- the PA 2008;
- the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the 'APFP Regulations'); and
- the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the '2017 EIA Regulations').

3.2.2 The Proposed Development falls within the definition of a NSIP under sections 14(1)(a) and 15(1) and (2) of the PA 2008, being an onshore electricity generating station in England with a capacity exceeding 50 MW and which does not generate electricity from wind.

3.2.3 Before a NSIP can proceed, an application for a DCO must be submitted to the PINS pursuant to section 37 of the PA 2008. The PINS act on behalf of the relevant SoS, which in this case is BEIS. PINS is responsible for examining the application and making a recommendation to the SoS who then makes the decision as to whether a DCO should be made authorising the construction and operation of the development in question. A DCO can provide for or remove the need to obtain a number of authorisations and consents (e.g. planning permission, highways works etc.), meaning applicants do not need to make multiple consent applications. It can also provide powers of compulsory acquisition, enabling the acquisition of land or rights in land required to deliver the development.

3.2.4 In advance of an application for a DCO being submitted, the PA 2008 and related regulations require the applicant to consult widely. This includes consulting the local community (those living in the vicinity of the land to which the development relates); certain prescribed persons and bodies (including relevant technical consultees and statutory undertakers); relevant local authorities; and affected or potentially affected landownership interests and persons. The applicant must demonstrate how it has had regard to the responses received to the consultation in deciding the final form of development sought within the application for a DCO. This must be documented in a consultation report that is required to form part of the application under section 37 of the PA 2008 (see the Consultation Report – Application Document Ref: 5.1).

3.3 Planning policy framework for NSIPs

National Policy Statements

3.3.1 The PA 2008 grants the SoS power to designate statements as 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 PA 2008 requires the SoS 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 SoS;
 - 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.
- 3.3.2 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 PA 2008 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.
- 3.3.3 In July 2011, the SoS for BEIS (then Energy and Climate Change) designated a number of statements as NPSs for energy infrastructure. These included an overarching NPS setting out general policies and assessment principles for energy infrastructure and a number of technology specific NPSs.
- 3.3.4 The NPSs considered of most relevance to the Proposed Development are as follows:
- the Overarching NPS for Energy ('EN-1');
 - the NPS for Fossil Fuel Electricity Generating Infrastructure ('EN-2');
 - the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines ('EN-4'); and
 - the NPS for Electricity Networks Infrastructure ('EN-5').
- 3.3.5 A summary of the key policies within these NPSs is provided below.
- Overarching NPS for Energy (EN-1)***
- 3.3.6 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.
- 3.3.7 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.

- 3.3.8 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.
- 3.3.9 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..."* 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. As such, EN-1 is clear that the need that exists for new energy infrastructure is not open to debate or interpretation.
- 3.3.10 The urgency of the need for new electricity generating capacity is underlined within EN-1 at paragraph 3.3.7 with up to 22 gigawatts ('GW') of existing capacity (including a large amount of fossil fuel power generation) needing to be replaced, particularly in the period up to 2020, in part due to the Industrial Emissions Direction, but also as a result of some power stations reaching the end of their operational lives. 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).
- 3.3.11 With more specific regard to OCGT generation station, such as the Proposed Development, it is notable that due to the decline in fossil fuel power generation, most notably coal, the UK is becoming increasingly reliant on renewable energy. As renewable generating stations (particularly wind farms) are intermittent in nature, it is necessary to ensure that there is infrastructure in place that is able to respond to fluctuations in supply. OCGT generating stations are well suited to this, having the capability to start up rapidly, thus being able to respond to peaks in electricity demand and fluctuations in supply. An OCGT generating station at the Site would therefore make a positive contribution toward the security of national energy supply and provide much needed back-up to the UK's existing generation fleet.
- 3.3.12 Paragraphs 3.3.2 and 3.3.4 of EN-1 are of particular relevance, stating that:
- "3.3.2 The Government needs to ensure sufficient generating capacity is available 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..."*
- 3.3.4 ...fossil fuel generation can be brought on line quickly when there is high demand and shut down when demand is low, thus complementing generation from nuclear and intermittent generation from renewables."*
- 3.3.13 This underlines the role of gas-fired generation, in particular OCGT generation, in ensuring the security of electricity supply. As already stated, OCGT generating stations are especially well suited to this, having the capability to start up rapidly, thus being able to respond to peaks in electricity demand and fluctuations in supply.

3.3.14 The theme is continued in paragraph 3.3.11, which states that:

“...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 we have the more generation capacity we will require overall, to provide back-up at times when the availability of intermittent renewable sources is low. If fossil fuel plant remains the most cost-effective means of providing such back-up, particularly at short notice, it is possible that even when the UK’s electricity supply is almost entirely decarbonised we may still need fossil fuel stations for short periods when renewable output is too low to meet demand, for example when there is little wind.”

3.3.15 Paragraph 3.6.2 of EN-1 notes that gas will continue to play an important role in the electricity sector, providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply, while paragraph 3.6.3 highlights that gas-fired generation, although not low carbon produces about half as much carbon dioxide as coal per unit of electricity generated. Gas therefore clearly provides a cleaner means by which to provide the required flexibility and resilience within the UK’s generation fleet.

3.3.16 Section 4 of this report provides more detail in respect of the general need for energy generating infrastructure.

3.3.17 Part 4 of EN-1 sets out a number of 'assessment principles' that must be taken into account by applicants, PINS and the SoS (respectively) in 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 SoS 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 PA 2008 (noted above – paragraph 3.7) apply.

3.3.18 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 SoS 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.

3.3.19 Paragraph 4.1.4 continues by stating that within this context the SoS should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels.

3.3.20 Other assessment principles include the matters to be covered within the ES produced for the application; 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.

- 3.3.21 Part 5 of EN-1 lists a number of 'generic impacts' that relate to most types of energy infrastructure, which both applicants and the SoS 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 proposed developments 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 SoS should take into account in decision-making.
- 3.3.22 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.

NPS for Fossil Fuel Electricity Generating Infrastructure (EN-2)

- 3.3.23 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 Development. The document provides additional policy guidance against which to assess such proposals.
- 3.3.24 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."*
- 3.3.25 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, amongst other things, air emissions; landscape and visual; noise and vibration; and water quality and resources.

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

- 3.3.26 Section 2.19 of EN-4 provides guidance on the assessment of applications for new gas and oil pipelines. The Proposed Development includes a new gas pipeline connection to the privately owned Existing Gas Pipeline which connects to the National Transmission System ('NTS') for gas. The new pipeline does not represent a NSIP in its own right, but it is included as 'associated development'.

- 3.3.27 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.

NPS for Electricity Networks Infrastructure (EN-5)

- 3.3.28 EN-5 outlines principles on which the SoS will apply to applications for new electricity transmission lines as well as associated infrastructure, such as substations. It should be noted that the Proposed Development would involve a relatively small-scale electricity cable connection to the existing National Grid ('NG') substation at the Existing VPI CHP Plant Site. Again, these works are included as associated development.
- 3.3.29 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.

3.4 Other matters that may be “important and relevant”

- 3.4.1 As noted above, in making decisions on applications for NSIPs, section 104 of the PA 2008 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.
- 3.4.2 EN-1 is clear (reflecting the terms of the PA 2008), 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.
- 3.4.3 The national and local planning policy framework and guidance, listed at sections 3.5 to 3.7 of this Planning Statement, are relevant to the consideration of compulsory acquisition powers sought within the Application and draft DCO (Application Document Ref: 2.1). As explained in section 1 of this report, the Site falls wholly within the administrative area of NLC but part of the Existing Gas Pipeline falls within the administrative area of NELC. The Application does not include or seek any consent for works to the Existing Gas Pipeline. However, on the basis that the Application does seek powers of compulsory acquisition over the Existing Gas Pipeline, this report includes an assessment of the relevant NELC policies. Further information on compulsory acquisition is included in the Statement of Reasons (Application Document Ref: 3.2).

3.5 National Planning Policy Framework and Planning Practice Guidance

- 3.5.1 The National Planning Policy Framework ('NPPF') was introduced in March 2012 and last updated in February 2019. 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 with further updates anticipated.
- 3.5.2 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 PA 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.

3.5.3 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."

3.5.4 Paragraph 9 emphasises that these roles should not be undertaken in isolation, because they are mutually dependent. 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.

3.5.5 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.

3.5.6 Potentially relevant policies to the scope of the EIA 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.

3.6 The Statutory Development Plan (local planning policy)

North Lincolnshire Council

3.6.1 The Site is located wholly within the administrative boundary of NLC. The majority of the Existing Gas Pipeline is also within NLC's area, with a small section of it being within the administrative area of NELC.

3.6.2 The following NLC planning policy documents are considered most relevant to the Proposed Development:

- North Lincolnshire Core Strategy (Adopted June 2011);
- North Lincolnshire Local Plan (Adopted May 2003) – Saved Policies; and
- North Lincolnshire Housing and Employment Land Allocations Development Plan Document (Adopted March 2016).

3.6.3 The policies considered to be of most relevance are summarised below.

Core Strategy (2011)

3.6.4 As follows:

- CS1 – Spatial Strategy for North Lincolnshire;
- CS2 – Delivering More Sustainable Development;
- CS6 – Historic Environment;
- 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;
- CS25 – Promoting Sustainable Transport; and
- CS26 – Strategic Transport Infrastructure Proposals.

Local Plan (2003)

3.6.5 As follows:

- IN1 – Industrial Development Location and Uses;
- IN3 – Industrial and Commercial Development in the South Humber Bank Area;
- 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; DS11 – 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.

Housing and Employment Land Allocations Development Plan (2016)

3.6.6 The Site is identified as falling within Employment Land Allocation SHBE-1 South Humber Bank.

3.6.7 The document states that the South Humber Bank area requires the following:

“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.”

Humber Area Local Aggregate Assessment (2017)

3.6.8 There are no relevant policies in the Humber Area Local Aggregate Assessment document (2017).

3.7 North East Lincolnshire Council

3.7.1 Within the NELC's area, the recently adopted North East Lincolnshire Local Plan 2013 to 2032 (Adopted March 2018) is the most relevant document. Only a small part of the Existing Gas Pipeline Site lies within the administrative area of NELC.

3.7.2 The following policies from the Local Plan are considered most relevant to the Proposed Development:

- 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.

3.8 Summary

- 3.8.1 Table 5.4 in section 5 of this report considers the compliance of the Proposed Development with the relevant local development plan policies. These include the policies from the North Lincolnshire Council Core Strategy and saved policies from the Local Plan. Table 5.4 also considers the policies within the recently adopted North East Lincolnshire Local Plan; although, these policies are of lesser relevance given that the Site is not located within the NELC administrative area.
- 3.8.2 Only part of the Existing Gas Pipeline is located within NELC's area, and no works are proposed to the Existing Gas Pipeline.
- 3.8.3 Each of the relevant local development plan policies is summarised in Table 5.4. Given that EN-1, EN-2, EN-4 and EN-5 provide the primary basis upon which any decision on the Application should be made, combined with the fact the matters covered by these local planning policies have for the most part already been considered in detail above in relation to the NPSs, a summarised response has been made to each policy, except where a more detailed response is considered necessary.
- 3.8.4 The NPSs form the primary basis for decisions by the SoS on applications for NSIPs. 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 also confirm that the SoS must have regard to any other matters that he/she considers 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 an NPS and another document, the NPS prevails

4. THE NEED FOR THE PROPOSED DEVELOPMENT

4.1.1 This section details the need that exists for the Proposed Development in policy terms, with particular reference to the energy NPSs

4.2 The need for new electricity generating capacity

4.2.1 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 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.

4.2.2 As confirmed in section 3, the NPSs of direct relevance to the Proposed Development include EN-1, EN-2, EN-4 and EN-5. Of the four, EN-1 sets out the 'need' that exists for new energy infrastructure, including generating stations in particular.

4.2.3 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.

4.2.4 Section 2.2 of EN-1 '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.

4.2.5 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.

4.2.6 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.

- 4.2.7 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.
- 4.2.8 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..."* 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.
- 4.2.9 As such, the need that exists for new energy infrastructure is not open to debate or interpretation and is clearly confirmed by EN-1.
- 4.2.10 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 aging 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.

- 4.2.11 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.
- 4.2.12 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).
- 4.2.13 The more specific need relating to the provision of OCGT generations stations is set out in Section 3 of this report.

4.3 The role of fossil fuel generating stations

- 4.3.1 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...."

- 4.3.2 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..."

- 4.3.3 This underlines the role of gas-fired generation, in particular OCGT generation, in ensuring the security of electricity supply. OCGT generating stations are well suited to this, having the capability to start up rapidly, thus being able to respond to peaks in electricity demand and fluctuations in supply. An OCGT generating station at the Site would therefore make a positive contribution toward the security of national energy supply and provide much needed back-up to the UK's existing generation fleet.

- 4.3.4 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.

- 4.3.5 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."

- 4.3.6 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 as 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.
- 4.3.7 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.
- 4.3.8 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."

4.4 Summary

- 4.4.1 EN-1 clearly confirms the 'need' that exists for all types of nationally significant energy infrastructure and makes clear that the SoS should assess applications on the basis that this 'need' and its scale and urgency has been proven. Furthermore, 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.
- 4.4.2 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.
- 4.4.3 For these reasons, the Applicant considers that there is a clear and compelling national need for the development of a new gas-fired electricity generating station and has selected the Site on which to do so for technical, environmental and commercial reasons. The Applicant therefore proposes to seek a DCO for the

construction and operation of a gas-fired power station and associated gas and electrical connections at the Site.

5. THE ASSESSMENT OF THE PROPOSED DEVELOPMENT AGAINST POLICY

- 5.1.1 This section provides an assessment of the Proposed Development against policy, notably the relevant NPSs, given that section 104 of the PA 2008 requires the SoS to determine applications for NSIPs in accordance with the relevant NPSs.
- 5.1.2 The assessment of the Proposed Development against the NPSs has been structured so as to follow the relevant 'assessment principle' and 'generic impact' headings set out in EN-1 and also to take account of the 'assessment and technology specific considerations' contained within EN-2, EN-4 and EN-5 in relation to fossil fuel generating stations, gas pipeline infrastructure and electricity transmission infrastructure, where these are not covered by the assessment principles and generic impacts of EN-1. Each heading references the relevant part or section of the NPSs.
- 5.1.3 Although the focus of this section is principally upon conformity with the NPSs (as these are the primary basis for decisions on NSIPs by the SoS); the Applicant has also had regard to the compliance of the Proposed Development with relevant policies contained within the NPPF and the local development plan for the area, given that such policies may be considered by the SoS to be both 'important and relevant'.

5.2 Conformity with the NPSs

- 5.2.1 An assessment of the conformity of the Proposed Development with EN-1, EN-2, EN-4 and EN-5 is provided below in respect of the relevant assessment principles, generic impacts and assessment and technology specific considerations.

Assessment Principles

- 5.2.2 Part 4 of EN-1 sets out 'General points' that the SoS should take into account in decision-making on NSIPs, in addition to a number of key assessment principles that both applicants and the SoS should have regard to in preparing and determining applications for development consent.
- 5.2.3 The majority of the assessment principles in EN-1 are of relevance to most types of nationally significant energy infrastructure. A number of these are also referred to within EN-2, EN-4 and EN-5 in relation to the types of technology that are covered by them in 'assessment and technology-specific information' and where that is the case, they are also dealt with below and the relevant part of the NPS is referenced.

General Points (EN-1, 4.1)

- 5.2.4 EN-1 'General points' (paragraph 4.1.2) reiterates the urgency of the 'need' for the types of infrastructure covered by the energy NPSs and again confirms that the SoS should start with a presumption in favour granting development consent for energy NSIPs.
- 5.2.5 Paragraph 4.1.3 goes on to state that in considering applications for energy NSIPs, and in particular, when weighing their adverse impacts against their benefits, the SoS should take into account:
- the potential benefits including the contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and

- the 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.
- 5.2.6 Paragraph 4.1.4 goes on to state that in this context, the SoS should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels.
- 5.2.7 With regard to this, this Planning Statement in section 6 provides an assessment of the benefits and adverse impacts of the Proposed Development. It shows that the Proposed Development would have a number of substantial benefits and that these clearly outweigh its limited adverse impacts.
- 5.2.8 Paragraph 4.1.5 confirms that matters that the SoS may consider both 'important and relevant' to decision making on energy NSIPs may include local development plan documents. However, in the event of a conflict between these or any other documents and an NPS, the NPS prevails.
- 5.2.9 In respect of the above, this section of the Planning Statement provides an assessment of the compliance of the Proposed Development with local planning policy. This demonstrates that the Proposed Development does not conflict with local planning policy.
- 5.2.10 Paragraph 4.1.7 confirms that the SoS should only impose 'requirements' in relation to a development consent where these satisfy relevant guidance and are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects.
- 5.2.11 The Applicant has included a number of requirements within the draft DCO (Application Document Ref: 2.1) that, amongst other matters, are intended to control the detailed design of the Proposed Development in addition to its construction and operation in order to ensure that it accords with the EIA carried out and does not result in unacceptable impacts. In preparing the draft requirements the Applicant has had regard to relevant guidance; notably that contained within the NPPF (paragraphs 54-57) and the Planning Practice Guidance ('PPG') ('Use of planning conditions'). The requirements are contained at Schedule 2 of the draft DCO and their intended purpose is explained within the Explanatory Memorandum (Application Document Ref: 2.2).
- 5.2.12 Paragraph 4.1.8 states that SoS may take into account any development consent obligations (under section 106 of the TCPA 1990 as amended by section 174 of the PA 2008) that an applicant agrees with local authorities. To be required, development consent obligations must satisfy broadly similar tests to requirements; they must be relevant to planning, necessary to make the development acceptable in planning terms, directly related to the development, fairly and reasonably related in scale and kind to the development and reasonable in all other respects (NPPF - paragraphs 54-57 and the PPG 'Planning obligations').
- 5.2.13 VPIB's assessment of the Proposed Development, notably through the EIA, has identified some likely significant environmental effects that would be subject to appropriate mitigation. However, that mitigation has either been embedded within the design of the Proposed Development or would be secured through the proposed requirements and therefore, taking into account the above tests, it is considered that

there is no other mitigation that would warrant a development consent obligation in order to make the Proposed Development acceptable in planning terms.

- 5.2.14 Paragraph 4.1.9 confirms that in bringing forward energy infrastructure, the applicant will have made a judgement as to its financial and technical feasibility. It goes on to state that where the SoS considers, based on the information provided in the application, that financial and technical feasibility have been properly assessed, they are unlikely to be relevant to the SoS's decision-making.
- 5.2.15 With regard to the above, VPIB has made a decision to proceed with the Application based on a number of commercial and financial considerations, and it is relevant that a sister company (VPI LLP) owns and operates the Existing VPI CHP Plant, adjacent to the Site. VPIB is a wholly owned subsidiary of Vitol, founded in 1966 in Rotterdam, the Netherlands. The Applicant therefore has an established track record in delivering power generation projects. Paragraph 3.3.6 of EN-1 states that "...it is for industry to propose the specific types of developments that they assess to be viable..." within the framework established by the Government.
- 5.2.16 Additionally, CHP and Carbon Capture Readiness ('CCR') options were considered and confirmed that they are not relevant or required. The intermittent and short-term nature of OCGT power generation (e.g. responding to peaks in electricity demand) preclude the feasible use of an COGT generating station in CHP provision. As such, CHP is not considered in relation to the Proposed Development. Furthermore, while 'The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013' introduced the need for new fossil fuel generating stations to consider carbon capture, this requirement only applies to generating stations above 300 MW capacity and is not therefore relevant to the Proposed Development

Environmental Statement (EN-1, 4.2)

- 5.2.17 EN-1 (paragraph 4.2.1) states that proposed developments that are subject to the European EIA Directive must be accompanied by an ES describing the aspects of the environment likely to be significantly affected by them. It highlights that the European EIA Directive specifically refers to effects on human beings, fauna, flora, soil, water, air, climate, the landscape, material assets and cultural heritage and the interaction between them. It goes on to state that the assessment of effects in the ES should cover direct and indirect effects, both permanent and temporary, cumulative effects, positive and negative effects and measures for avoiding or mitigating significant adverse effects.
- 5.2.18 Paragraphs 4.2.2 - 4.2.11 provide further guidance on the matters that should be covered within the ES for the purposes of SoS decision making.
- 5.2.19 The Application includes an ES (Application Document Refs. 6.1 – 6.4). In advance of preparing the ES, the Applicant obtained an EIA Scoping Opinion from the PINS (July 2018), which is provided in ES Volume III, Appendix 1B (Application Document Ref: 6.4.2). The scope and coverage of the ES accords with the EIA Scoping Opinion and ES Volume I Chapter 2 'Assessment Methodology' (Application Document Ref: 6.2.2) sets out how the EIA has taken into account the EIA Scoping Opinion and the technical scope of the EIA that has been undertaken.
- 5.2.20 The Applicant notes that the European EIA Directive and relevant UK legislation has been updated since EN-1, and that the requirements for what an environmental

statement must contain has been updated – where relevant the Applicant has taken account of changes and the ES considers all matters as required by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. The scope of the ES is explained further in Volume I, Chapter 1 of the ES (Application Document Ref. 6.2).

5.2.21 As required by EN-1, the ES for the Proposed Development includes the following:

- An assessment of the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects for all stages of the Proposed Development, and also the measures envisaged for avoiding and mitigating any significant adverse effects. The approach taken to the assessment of environmental effects is set out at ES Volume I Chapter 2 'Assessment Methodology' (Application Document Ref: 6.2.2). Furthermore, ES Volume I, Chapters 6 – 17 (Application Document Refs: 6.2.6 – 6.2.17) identify the likely significant effects of the Proposed Development, the mitigation measures (where required) and the residual effects.
- An explanation of the components of the Proposed Development where it has not been possible to fix details in advance of the submission of the Application and where flexibility is required, and the approach that has been taken to assessing the effects that may result – VPIB has adopted the principles of the 'Rochdale Envelope' and has assessed through the EIA maximum (and where relevant minimum) 'worst case' dimensions and design parameters where flexibility is required. The approach adopted is in accordance with the advice set out in Advice Note 9 (July 2018). Where flexibility is required within the Proposed Development is explained in ES Volume I, Chapter 4 'The Proposed Development' (Application Document Ref: 6.2.4) and, where relevant, within the relevant chapters of the ES, notably Chapter 10 'Landscape and Visual Amenity' (Application Document Ref: 6.2.10). The maximum dimensions and design parameters would be controlled and secured through Article 3. 'Development consent etc. granted by the Order', Schedule 13 'Design Parameters' and Schedule 2 'Requirements', Requirement 5 'Detailed design' of the draft DCO (Application Document Ref: 2.1).
- Information on the likely significant social and economic effects of the Proposed Development is provided at ES Volume I, Chapter 14 'Socio Economics' (Application Document Ref: 6.2.14). This includes the benefits of the Proposed Development in terms of employment generation both through direct employment and wider benefits for the economy.
- ES Volume I, Chapter 17 'Cumulative and Combined Effects' (Application Document Ref: 6.2.17) considers how the effects of the Proposed Development could combine with each other or could interact with the effects of other planned and consented Proposed Developments. The approach to assessing cumulative and combined effects is explained within that chapter.
- The significant effects of the Proposed Development, including after mitigation (where necessary) has been applied to reduce the significance and magnitude of those effects, are summarised in ES Volume I, Chapter 18 'Summary of Significant Residual Effects' (Application Document Ref: 6.2.18).
- As indicated above, the draft DCO (Application Document Ref: 2.1) at Schedule 2 includes appropriate requirements to control and secure the details of the

Proposed Development that are still to be finalised to ensure that it would be constructed and operated in accordance with the EIA that has been undertaken.

Habitats and Species Regulations (NPS EN-1, 4.3)

- 5.2.22 EN-1 (paragraph 4.3.1) confirms that prior to granting development consent, the SoS must, under the Habitats and Species Regulations, consider whether a proposed development may have a significant effect on a European site, or any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans and projects. EN-1 continues that the applicant should seek the advice of Natural England ('NE') and provide the SoS with such information as may be reasonably required to determine whether an 'Appropriate Assessment' is required.
- 5.2.23 The Application includes a No Significant Effects Report (Application Document Ref: 5.10), which includes completed Screening Matrices. The report confirms that the Proposed Development is unlikely to result in significant effects on internationally or nationally designated nature conservation sites and therefore an Appropriate Assessment is not required. This assessment has not relied on 'additional mitigation' in reaching this conclusion, as recent case law has clarified that that should not be taken into account at the screening stage.

Alternatives (NPS EN-1, 4.4)

- 5.2.24 Paragraph 4.4.1 confirms that as in any planning case, the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to a proposed development is in the first instance a matter of law, which falls outside the scope of the NPS. It goes on, however, to state that from a policy perspective there is no general requirement to consider alternatives or to establish whether a development represents the best option, except that:
- Applicants are obliged to include in their ES, information about the reasonable alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, including a comparison of the environmental effects.
 - In some cases, there are specific legislative requirements, notably under the Habitats Directive, as transposed into UK law by the Habitats and Species Regulations, for the SoS to consider alternatives. These should be identified in the ES by the applicant.
 - In some circumstances, the relevant energy NPSs may impose a policy requirement to consider alternatives; EN-1 does so in sections 5.3, 5.7 and 5.9 in relation to avoiding significant harm to biodiversity and geological conservation interests, flood risk and development within nationally designated landscapes, respectively.
- 5.2.25 Information relating to the alternatives that the Applicant has considered in relation to the Proposed Development are set out at ES Volume I Chapter 4, 'Proposed Development' (Application Document Ref: 6.2.4). This includes the alternatives considered in terms of the justification for the selection of the Site in general.
- 5.2.26 With regard to the policy requirements of EN-1 to consider alternatives in particular circumstances, paragraph 5.3.7 states that as a general principle, development should aim to avoid significant harm to biodiversity and geological conversation

interests, including through mitigation and consideration of reasonable alternatives; where significant harm cannot be avoided, then appropriate compensation measures should be sought.

- 5.2.27 It is considered that the assessment of alternatives in relation to biodiversity and geological conservation interests is of more relevance where development has the potential to impact upon internationally or nationally designated sites. In relation to biodiversity, the No Significant Effects Report (Application Document Ref: 5.10) confirms that the Proposed Development is unlikely to result in significant effects on designated nature conservation sites. No significant adverse effects related to potential geological, hydrogeological and contamination related impacts associated with the Proposed Development are anticipated, as set out in ES Volume I, Chapter 11 'Ground Conditions and Hydrogeology' (Application Document Ref: 6.2.11).
- 5.2.28 Paragraph 5.7.13 of EN-1 states that the consideration of alternative sites is relevant to the application of the 'Sequential Test' in relation to flood risk, with the preference in the first instance to locate development within Flood Zone 1, the zone of least probability of tidal or fluvial flooding.
- 5.2.29 The Site is located predominantly within Flood Zone 3a according to the EA's Flood Map for Planning, whereas other parts are located within Flood Zone 2 (medium risk) and Flood Zone 1 (low risk). The Site is however located in an area that benefits from flood defences and the risk of flooding from fluvial, groundwater, surface water, artificial watercourses and drainage infrastructure sources is assessed as low. The flood defences are not shown on the aforementioned flood map. A Flood Risk Assessment is provided at Appendix 12A of ES Volume III (Application Document Ref: 6.4). This demonstrates that the Proposed Development would remain safe during its lifetime and would not increase flood risk elsewhere and is, therefore, considered to be acceptable in flood risk terms.
- 5.2.30 Paragraph 5.9.10 of EN-1 indicates that the consideration of alternatives can also be relevant where development involves land that is subject to national landscape designations, such as National Parks or Areas of Outstanding Natural Beauty.
- 5.2.31 ES Volume I, Chapter 10 'Landscape and Visual Amenity' (Application Document Ref: 6.2.10) confirms that the Site does not lie within any national or local landscape designations nor is it within the immediate vicinity of any such designations. The assessment has not identified any significant effects on landscape receptors.
- 5.2.32 The Applicant's consideration of alternatives in relation to the Proposed Development, as set out in the ES Volume I, Chapter 4 'Proposed Development' (Application Document Ref: 6.2.4), is therefore considered to be both appropriate and proportionate.

Criteria for 'good design' in energy infrastructure (NPS EN-1, 4.5; EN-2, 2.3.15-2.3.16; EN-4, 2.3 and EN-5, 2.5)

- 5.2.33 EN-1 (paragraph 4.5.1) recognises that the functionality of buildings and infrastructure, including fitness for purpose and sustainability, are equally as important as visual appearance and aesthetic considerations. It goes on to state that applying 'good design' to energy, Proposed Developments should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that

demonstrates 'good aesthetic' as far as possible. It is however acknowledged that "...the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of an area."

- 5.2.34 Paragraph 4.5.2 of EN-1 notes that 'good design' is also a means by which many policy objectives in the NPS can be met, for example, the impact sections (of EN-1) show how good design, in terms of siting and use of appropriate technologies can help mitigate adverse impacts such as noise.
- 5.2.35 Paragraph 4.5.3 confirms that in assessing applications, the SoS will need to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable (including taking account of natural hazards such as flooding) as they can be. In doing so, it goes on to state that the SoS should be satisfied that:
- "the applicant has taken into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible. Whilst the applicant may not have any or very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation. Furthermore, the design and sensitive use of materials in any associated development such as electricity substations will assist in ensuring that such development contributes to the quality of the area."*
- 5.2.36 Paragraph 4.5.4 stresses the importance of applicants being able to demonstrate in their application documents how the design process was conducted and how the proposed design evolved. However, it also makes clear that in considering applications, the SoS should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements, which the design has to satisfy.
- 5.2.37 EN-2 (paragraph 2.3.16) states that in relation to fossil fuel generating stations, applicants should demonstrate good design particularly in respect of landscape and visual amenity and in the design of the proposed development to mitigate impacts such as noise and vibration, transport impacts and air emissions.
- 5.2.38 EN-4 (paragraph 2.3.1) states that in relation to gas infrastructure, applicants should demonstrate good design as per section 4.5 of EN-1.
- 5.2.39 EN-5 (paragraph 2.5.2) states that proposals for electricity network infrastructure should demonstrate good design in their approach to mitigating the potential adverse impacts that can be associated with overhead lines.
- 5.2.40 Chapter 4 of ES Volume I 'Proposed Development' (Application Document Ref: 6.2.4) provide an explanation in terms of how the design of the Proposed Development has evolved through pre-application consultation in the lead up to the submission of the Application. Furthermore, the individual chapters of the ES explain how the Proposed Development has been designed, including the mitigation embedded in its design, to minimise and mitigate impacts. Furthermore, VPIB has prepared a Design and Access Statement ('DAS') (Application Document Ref: 5.4), which sets out how it has had regard to 'good design' in respect of the Proposed Development. It describes how VPIB has taken account of and appraised the Site's context and the design

process that has been followed, including the broad approach that has been taken to the design of the Proposed Development and how this has changed and evolved in the period leading up to the submission of the Application and where opportunities have been taken to improve design and minimise impacts. The DAS also explains where flexibility is required within the Proposed Development and how its detailed design will be secured and controlled.

- 5.2.41 The immediate context within which the Site sits is already very much industrialised in terms of its character and appearance. It is dominated by the large and functional power generation buildings and structures of the Existing VPI CHP Plant and adjacent refineries.
- 5.2.42 The Existing Gas Pipeline, which is underground and already consented and built, passes through the wider area around the south and west of the Site, which is generally rural and for the most part comprises agricultural land interspersed with small settlements. However, it is still dominated by the Existing VPI CHP Plant and adjacent refineries, which are visible across the flat landscape for several kilometres. The wider area is also subject to significant humanising influences, including significant port and petrochemicals related industrial development. The Site does not therefore sit within a setting or landscape that is highly sensitive to change.
- 5.2.43 The final design of the Proposed Development is functional, reflecting its purpose to generate electricity and the context within which it would sit. In terms of siting and layout, opportunities have been taken to minimise the visual impact of the OCGT Power Station by locating it immediately adjacent to the Existing VPI CHP Plant.
- 5.2.44 Further to the above, the Proposed Development incorporates a number of measures within its design to ensure that it would be resilient in terms of the effects of climate change as well as contributing to mitigating those effects. This includes appropriate flood risk mitigation and surface water attenuation – please refer to ES Volume I, Chapter 12 ‘Surface Water Flood Risk & Drainage’ for more detail (Application Document Ref: 6.2.12).
- 5.2.45 It is therefore considered that the Proposed Development represents ‘good design’ for the purposes of energy infrastructure and policy set out EN-1, EN-2, EN-4 and EN-5. It should also be noted that details of the external appearance of the Proposed Development need to be approved by the relevant planning authority under Requirement 5 of the draft DCO.

Climate change adaptation (NPS EN-1, 4.8; EN-2, 2.3.13 - 2.3.14; EN-4, 2.2 and EN-5, 2.4)

- 5.2.46 EN-1 (paragraph 4.8.5) states that new energy infrastructure will typically be a long-term investment and will need to remain operational over many decades, in the face of a changing climate. Consequently, applicants must consider the impacts of climate change, such as potential for increased flooding, when planning the location, design, build, operation and, where appropriate, decommissioning of new energy infrastructure. The ES should set out how the proposed development will take account of the impact of climate change. This is also a requirement of the 2017 EIA Regulations.
- 5.2.47 EN-2 (paragraph 2.3.13) notes that as fossil fuel generating stations are likely to be proposed for coastal or estuarine sites and climate change is likely, for example, to

increase risks from flooding or rising sea levels; applicants should in particular set out how the proposal would be resilient to coastal changes and increased risk from tidal and storm surge; the effects of higher temperatures, including higher temperatures of cooling water, and increased risk of drought leading to a lack of available cooling water. These matters should be assessed in the ES (EN-2, paragraph 2.3.14).

- 5.2.48 EN-4 (paragraph 2.2.2) states that gas pipelines and other infrastructure should be resilient to increased risk of flooding; effects of rising sea levels and increased risk of storm surge; higher temperatures; increased risk of earth movement or subsidence from increased risk of flooding and drought; and any other increased risks identified in the applicant's assessment.
- 5.2.49 EN-5 (paragraph 2.4.1) refers to the need to consider the effects of flooding, particularly upon substation infrastructure, winds and storms on overhead lines, higher temperatures leading to increased transmission losses and earth movement or subsidence caused by flooding or drought on underground cables.
- 5.2.50 ES Volume I, Chapter 12 'Surface Water flood risk and drainage' (Application Document Ref: 6.2.12) and ES Volume III, Appendix 12A 'Flood Risk Assessment' (Application Document Ref: 6.4.20) consider the potential effects of flooding in relation to the Proposed Development. These conclude that the Proposed Development would not increase the risk of flooding from drainage infrastructure, artificial, groundwater or surface water sources.
- 5.2.51 The draft DCO (Application Document Ref: 2.1) includes Requirements 10 'Surface and foul water drainage' and 11 'Flood risk mitigation' that require the approval of details in accordance with the ES in relation to drainage and flood risk mitigation for the construction and operational phases of the Proposed Development and, where necessary, for these to be in accordance with the Construction Environmental Management Plan that will be secured by Requirement 14 of the draft DCO.
- 5.2.52 ES Volume I, Chapter 15 'Sustainability and Climate Change' (Application Document Ref: 6.2.15) provides information on and assesses the potential effects of the Proposed Development upon sustainability and climate change. The chapter also considers a number of areas including reducing the use of natural resources, minimising the use of green field land, flood protection, water quality, minimising water use, air quality, waste management and reduction, transport, biodiversity and job creation, amongst other matters. It confirms that the design, construction and operation of the Proposed Development would seek to mitigate the causes of climate change by contributing to reducing greenhouse gas emissions associated with electricity generation and waste disposal and adapting to the predicted impacts of climate change.
- 5.2.53 It is therefore considered that the Proposed Development includes measures to mitigate the effects of climate change, while its design would ensure that it is resilient to the future potential effects of climate change. The Proposed Development therefore complies with the NPSs.

Grid connection (NPS EN-1, 4.9 and EN-2, 2.2.10 - 2.2.11)

- 5.2.54 EN-1 (paragraph 4.9.1) states that the connection of a generating station to the electricity network is an important consideration for applicants. It is for the applicant to ensure there will be the necessary infrastructure and capacity within the

transmission and distribution network to accommodate the electricity generated. While it is not necessary for an applicant to have received or accepted a formal grid connection offer at the time of submitting an application for a DCO and this is at the applicant's risk, the SoS will want to be satisfied that there is no obvious reason why a grid connection would not be possible.

- 5.2.55 EN-2 (paragraphs 2.2.10 - 2.2.11) highlights that the technical feasibility of the export of electricity from a generating station is dependent on the capacity of the grid network together with the voltage and distance of the connection. Furthermore, applicants will usually have assured themselves that a viable connection exists before submitting an application for a DCO and where they have not done so they take a commercial risk. Even if the precise route of a connection has not been identified, in accordance with section 4.9 of EN-1 any application must include information on how the generating station is to be connected and whether there are any particular environmental issues likely to arise from that connection.
- 5.2.56 The Proposed Development would connect to the National Grid Electricity Transmission plc ('NGET') national grid through the existing NGET sub-station located on the Existing VPI CHP Plant Site. There are no foreseeable issues with capacity of the network to accommodate the Proposed Development. The Electricity Grid Connection Statement (Application Document Ref: 5.7) sets out further information.

Pollution control and other environmental regulatory regimes (NPS EN-1, 4.10)

- 5.2.57 Section 4.10 of EN-1 (paragraph 4.10.1) advises that issues relating to discharges or emissions which affect air quality, water quality, land quality or noise and vibration may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes.
- 5.2.58 Paragraph 4.10.3 states that in considering an application for development consent, the SoS should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions and discharges themselves. The SoS should work on the basis that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator.
- 5.2.59 Paragraph 4.10.5 notes that many proposed developments covered by EN-1 will be subject to the Environmental Permitting ('EP') regime. Paragraph 4.10.6 advises applicants to make early contact with relevant regulators, such as the Environment Agency ('EA'), to discuss their requirements for EPs and other consents. This will ensure that applications take account of all relevant environmental considerations and that the relevant regulators are able to provide timely advice and assurance to the SoS. Where possible, applicants are encouraged to submit applications for EPs and other necessary consents at the same time as applying to the SoS for development consent.
- 5.2.60 The 'Other Consents and Licences' document (Application Document Ref: 5.4) lists (at Table 2.1) those consents and licences under other regulatory regimes that are required for the Proposed Development that are being/will be advanced separately of the Application. These include the EP for the operation of the Proposed Development VPIB has agreed with the EA, that a bespoke Part A Permit will be

required (under the Environmental Permitting (England and Wales) Regulations 2016 (as amended)) and is currently compiling an application, with the intent to submit to the EA along similar timescales as the Application.

- 5.2.61 The Other Consents and Licences (Application Document Ref: 5.4) document sets out the position with regard to obtaining the other consents required for the Proposed Development under other regulatory regimes. The document will be updated during the examination of the Application.
- 5.2.62 It is relevant to note that the draft DCO (Application Document Ref: 2.1) includes a number of requirements that would have the purpose of controlling the effects of the Proposed Development in terms of discharges and emissions during its construction and operation in order to prevent pollution and safeguard amenity. These include Requirements 10 'Surface and foul water drainage', 12 'Contaminated land and groundwater', 14 'Construction and environmental management plan', 19 'Control of noise and vibration - construction' and 20 'Control of noise - operation'.

Safety (NPS EN-1, 4.11 and EN-4, 2.5)

- 5.2.63 EN-1 paragraph 4.11.1 states that the Health and Safety Executive ('HSE') is responsible for enforcing a range of health and safety legislation, some of which is relevant to the construction, operation and decommissioning of energy infrastructure. Applicants should consult with the HSE on matters relating to safety.
- 5.2.64 Paragraph 4.11.2 confirms that some energy infrastructure will be subject to the 'Control of Major Accident Hazards' ('COMAH') Regulations 1999, (new regulations issued in 2015). These are aimed at preventing major accidents involving dangerous substances and limiting the consequences to people and the environment of any that do occur. The COMAH Regulations do not apply to any of the infrastructure or operations included as part of the Proposed Development.
- 5.2.65 The Gas Connection would be constructed to the relevant safety and industry standards in accordance with the Pipelines Safety Regulations 1996 and the appropriate notifications will be made.

Hazardous Substances (NPS EN-1, 4.12 and EN-4, 2.4)

- 5.2.66 EN-1, paragraph 4.12.1, confirms that all establishments wishing to hold stocks of certain hazardous substances above a certain threshold need 'Hazardous Substances Consent' ('HSC'). Applicants should consult the HSE at the pre-application stage if a proposed development is likely to need such consent.
- 5.2.67 VPIB has reviewed substances that would be stored in connection with the Proposed Development and considers that no HSC would be required for the types and volume of substances proposed to be stored on Site as part of the Proposed Development.

Health (NPS EN-1, 4.13)

- 5.2.68 Section 4.13 of EN-1 highlights that energy production has the potential to impact on the health and well-being of the population (paragraph 4.13.1) and that where the Proposed Development has the potential to result in effects on human beings, the ES should assess those effects for each element of the proposed development, identifying any adverse health impacts and measures to avoid, reduce or compensate the impacts as appropriate (paragraph 4.13.2).

- 5.2.69 The ES sets out and assesses the potential health-related effects associated with the Proposed Development, including in respect of emissions to air, noise and vibration, and the effects of electro-magnetic fields ('EMFs') relating to the Proposed Electricity Connection in accordance with guidance contained in EN-5. The ES does not identify any significant residual health effects associated with the Proposed Development taking account of the implementation of mitigation measures, either embedded within the design of the Proposed Development or secured through requirements within the DCO.
- 5.2.70 With regard to EMFs, within a conservative 50 m radius of the Electricity Connection (a short connection to the existing substation on the Existing VPI CHP Plant Site), there are no residential receptors. Indeed, there are no residential receptors within 300 m. As such, the only potential exposure to EMFs arises for construction workers and operational staff. With appropriate precautions in place taking account of industry standards, no significant health effects in the medium to long-term are predicted for construction workers and operational staff.

Common law nuisance and statutory nuisance (NPS EN-1, 4.14)

- 5.2.71 Paragraph 4.14.2 of EN-1 states that it is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the Environmental Protection Act ('EPA') 1990, and how they may be mitigated or limited are considered by the SoS so that appropriate requirements can be included in any subsequent order granting development consent. There is also a requirement to provide such a statement under APFP Regulation 5(2)(f).
- 5.2.72 VPIB has therefore prepared a Statutory Nuisance Statement (Application Document Ref: 5.8) in order to satisfy the requirements of APFP Regulation 5(2)(f). The Statement identifies the sources where there is the potential for the Proposed Development to result in nuisance and the measures to prevent and mitigate such nuisance occurring.
- 5.2.73 Article 37 of the draft DCO 'Defence to proceedings in respect of statutory nuisance' seeks to provide VPIB with a defence to statutory nuisance proceedings under the EPA in respect of noise emitted from premises so as to be prejudicial to health or a nuisance. As previously stated in paragraph 5.2.68, no such effects are anticipated within the ES. The draft DCO also includes a number of requirements that would mitigate and limit nuisance, including Requirements 14 'Construction environmental management plan', 18 'Construction hours', 19 'Control of noise and vibration - construction' and 20 'Control of noise - operation'.

Security considerations (NPS EN-1, 4.15)

- 5.2.74 Paragraph 4.15.1 states that national security considerations apply across all national infrastructure sectors. Overall responsibility for security of the energy sector lies with BEIS. Paragraph 4.15.2 goes on to state that government policy is to ensure that, where possible, proportionate protective security measures are designed into new infrastructure at an early stage. Where applications for development consent for infrastructure relate to potentially critical infrastructure, there may be national security considerations.
- 5.2.75 The Proposed Development would be located on land within and immediately adjacent to the Existing VPI CHP Plant. There are existing security measures at the

Existing VPI CHP Plant, including restricted access and security fencing. Further measures would be provided as appropriate at other parts of the Site and these are set out in the DAS (Application Document Ref: 5.4).

Generic Impacts

- 5.2.76 The 'generic impacts' set out in Part 4 of EN-1 are considered on the following pages in Table 5.1. Where the same impacts appear in the 'assessment and technology-specific information' parts of EN-2, EN-4 and EN-5 they are also dealt with below (Table 5.2) and the relevant part of the NPS is referenced.

Table 5.1: Generic impacts

Generic Impact	Summary	Assessment
<p>Air quality and emissions (EN-1, 5.2 & EN-2, 2.5)</p>	<p>EN-1 acknowledges that air quality and emissions are likely to be a key area of concern when assessing the development of generating stations. Paragraph 5.2.4 of NPS EN-1 states:</p> <p><i>“Emissions from combustion plants are generally released through exhaust stacks. Design of exhaust stacks, particularly height, is the primary driver for the delivery of optimal dispersion of emissions and is often determined by statutory requirements”.</i></p> <p>Paragraphs 5.2.6 and 5.2.7 of EN-1 set out the requirements for applicants to assess issues relating to air quality and emissions as part of an ES.</p> <p>EN-1 states that the ES should describe:</p> <ul style="list-style-type: none"> any significant air emissions, their mitigation and any residual effects distinguishing between the Proposed Development stages and taking account of any significant emissions from any road traffic generated by the Proposed Development; the predicted absolute emission levels of the proposed Development, after mitigation methods have been applied; 	<p>Chapter 6 ‘Air Quality’ of ES Volume I (Application Document Ref: 6.2.6) provides an assessment of the effects of the Proposed Development in terms of air quality.</p> <p>The effects of construction emissions from construction dust, with the application of best practice mitigation, are considered to be not significant.</p> <p>The effects of emissions from construction road traffic and on-site plant are also considered to be not significant. Therefore, the effects of construction activities on air quality and from the Proposed Development as a whole are considered to be not significant.</p> <p>The operational point source emissions effects on identified receptors have been determined to have a negligible adverse effect through the use of technology that meets the required emissions standards, the use of natural gas fuel and the use of appropriate stack heights, and therefore the operational effects are considered to be not significant.</p> <p>The effects on air quality and emissions from the Proposed Development as a whole are therefore not significant.</p>

Generic Impact	Summary	Assessment
	<ul style="list-style-type: none"> existing air quality levels and the relative change in air quality from existing levels; and any potential eutrophication impacts. <p>Paragraph 5.2.9 states that air quality considerations will be given substantial weight where a Proposed Development would lead to deterioration in air quality in an area, or leads to a new area where air quality breaches any national air quality limits. Air quality considerations will also be important where substantial changes in air quality levels are expected, even if this does not lead to any breaches of national air quality limits.</p> <p>Paragraph 5.2.10 requires decisions to take account of any relevant statutory air quality limits. Where the limits would be breached, developers should work with the relevant authorities to secure appropriate mitigation measures to allow the proposal to proceed.</p> <p>Consideration should be given whether mitigation measures are needed for both operational and construction emissions. A construction management plan may help codify mitigation.</p> <p>EN-2 (paragraph 2.5.5) confirms that the applicant should carry out an assessment as required by EN-1, consulting the Environment Agency ('EA') and other statutory consultees. Paragraph 2.5.6 goes on to state that in considering whether to grant consent, the SoS should take account of likely environmental impacts resulting from air</p>	<p>The management of dust and particulates and the application of adequate mitigation measures will be enforced through the Construction Environmental Management Plan ('CEMP'), and through the application of appropriate mitigation according to the risk of dust emissions from Site activities as identified in this assessment. A framework CEMP has been submitted as part of the Application, and Requirement 14 forming part of the draft DCO secures the submission and approval (prior to construction), and then implementation of a final CEMP.</p>

Generic Impact	Summary	Assessment
	<p>emissions and that in the case of SOX, NOX or particulates it follows the advice in EN-1 on interaction with the EA's regulatory processes.</p>	
Biodiversity and geological conservation (EN-1, 5.3, EN-4, 2.21 and EN-5, 2.7)	<p>Paragraph 5.3.18 of EN-1 states that during construction appropriate mitigation measures should be included to ensure that activities will be confined to the minimum areas required for the works and to ensure that the risk of disturbance or damage to species is minimised.</p> <p>Paragraph 5.3.18 of EN-1 also states that, during operation, appropriate mitigation measures should be included to ensure that the risk of disturbance or damage to species is minimised. Development should aim to avoid significant harm to biodiversity and geological conservation interests through mitigation and consideration of reasonable alternatives.</p> <p>EN-4 (paragraph 2.21.1) states that applicants should include an assessment of the biodiversity and landscape effects of proposed pipelines and the main alternative routes considered. The application should also set out proposals for the reinstatement of the pipeline route after construction as close to its original state as possible.</p> <p>EN-5 (section 2.7) considers the affects that electricity network infrastructure can have on biodiversity, especially birds. Paragraph 2.7.2 requires the applicant to consider any such possible impacts, particularly on feeding and</p>	<p>Chapter 9 'Ecology' of ES Volume I (Application Document Ref: 6.2.9) provides an assessment of the potential effects of the Proposed Development upon ecology, biodiversity and geological conservation.</p> <p>A number of mitigation and enhancement measures are proposed to support the ecology, biodiversity and geology on the Site, as well as a number of habitat enhancements to meet the requirements of the NPPF, NLC Core Strategy policy CS17 and Local Plan policies LC5 and LC7 and NELC Local Plan policy 41.</p> <p>A Biodiversity Enhancement and Management Plan ('BEMP') will be prepared and agreed with the local planning authority prior to the commencement of works, which will be in accordance with the framework BEMP that will accompany the DCO application. The BEMP will include details on:</p> <ul style="list-style-type: none"> • Protected species mitigation; • The location and planting specifications for habitat enhancements;

Generic Impact	Summary	Assessment
	<p>hunting grounds, migration corridors and breeding grounds.</p>	<ul style="list-style-type: none"> • The location and construction specifications for log pile refuges and bird nest boxes; • Long-term management of the habitats; • Any post-construction protected species monitoring (if required); and • Timetables and responsibilities for undertaking the above tasks. <p>The ES concludes that with the implementation of the measures set out in the BEMP, there would be no significant adverse effects on the ecology and/or biodiversity of the Site.</p> <p>The loss of the County value terrestrial invertebrate habitat within the Site would be offset by the creation and management of areas of species-rich wildflower grassland. Once established, the new areas of grassland would mitigate the impact of habitat loss at the County level.</p> <p>The ES also concludes that the Proposed Development would result in no significant adverse effects on qualifying wintering bird species of the Humber Estuary SPA/Ramsar as a result of noise or visual disturbance to functionally linked habitat adjacent to the Site. There would be no significant air</p>

Generic Impact	Summary	Assessment
		<p>quality or surface water quality effects on any statutory or non-statutory designation.</p> <p>Chapter 11 'Ground Conditions & Hydrogeology of ES Volume I (Application Document Ref: 6.2.11) provides an assessment of the potential effects of the Proposed Development upon geotechnical and geo-environmental ground conditions and groundwater.</p> <p>The Proposed Development would result in no significant effects on ground conditions and no additional mitigation measures are required.</p>
Civil and military aviation and defence interests (EN-1, 5.4)	<p>EN-1, section 5.4 notes that civil and military aerodromes and aviation technical sites, as well as other types of defence interests can be affected by new energy developments.</p>	<p>No civil and military aviation and defence interests have been identified through the EIA Scoping or pre-application consultation that would be affected by the Proposed Development.</p> <p>The proposed exhaust stack of the COGT Power Station would not represent the highest structure in the area. Approximately 250 m south of the proposed stack location is the existing exhaust stack associated with the existing VPI CHP Plant, which stands at approximately 90 m high.</p>
Dust, odour, artificial light, smoke, steam and insect and vermin	<p>NPS EN-1 acknowledges that the construction/demolition, operation and decommissioning of energy infrastructure has the potential to affect air quality through the release of</p>	<p>Chapter 6 'Air Quality' of ES Volume I (Application Document Ref: 6.2.6) confirms that the operation of the Proposed Development is not considered to have the potential to cause insect or vermin infestation,</p>

Generic Impact	Summary	Assessment
infestation (EN-1, 5.6 and EN-2, 2.8)	<p>odour, dust, steam, smoke, artificial light and insect infestation.</p> <p>Paragraph 5.6.5 of EN-1 provides advice regarding the assessment of these impacts. It is advised that the assessment should describe:</p> <ul style="list-style-type: none"> • the type, quantity and timing of emissions; • aspects of the development which may give rise to emissions; • premises or locations that may be affected by the emissions; • effects of the emissions on identified premises or locations; and • measures to be employed in preventing or mitigating the emissions. <p>Paragraph 5.6.7 of EN-1 states that, in decision making, the SoS should be satisfied that an assessment of the potential effects in respect of artificial light, dust, odour, smoke, steam and insect infestation has been carried out; and be satisfied that all reasonable steps have been taken to minimise any detrimental impacts.</p>	<p>odour, dust, steam or smoke impacts based on the choice of fuel and nature of plant operation. Management of artificial light would be controlled at the detailed design stage in accordance with the Lighting Strategy secured Requirement 7 of the draft DCO.</p> <p>The air impact assessment details the identified sensitive receptors in the vicinity of the Site, the current baseline air quality conditions, the assumptions regarding the nature, duration and scale of emissions, and the predicted effect of emissions on identified sensitive receptors, using conservative assumptions where necessary in order to present a worst-case scenario. Embedded mitigation measures were included with the assessment concluding no significant impact on any identified receptor.</p> <p>The effects on air quality from the Proposed Development as a whole are not significant.</p> <p>The Local Authority and the EA have been consulted through pre-application consultation and through the Scoping Report regarding the proposed approach to assessment of air impacts.</p>

Generic Impact	Summary	Assessment
	<p>Section 2.8 of EN-2 deals with the release of dust from coal-fired generating stations during operation. Paragraph 2.8.3 states that the applicant's ES should estimate the potential for release of dust and set out measures to mitigate any amenity impacts.</p>	
<p>Flood risk (EN-1, 5.7 and EN-5, 2.4.1)</p>	<p>Paragraph 5.7.4 of EN-1 requires that applications for energy Proposed Developments of 1 hectare or greater in Flood Zone 1 in England or Zone A in Wales and all proposals for energy Proposed Developments located in Flood Zones 2 and 3 in England should be accompanied by a Flood Risk Assessment ('FRA').</p> <p>Similar considerations apply in relation to substations that are vital for the electricity transmission and distribution network (EN-5, paragraph 2.4.1).</p>	<p>Land within the northern area of the Site is located in Flood Zone 3 and Flood Zone 2 (Access Area Site)</p> <p>A Flood Risk Assessment is provided at Appendix 12A of ES Volume III (Application Document Ref: 6.4). This demonstrates that the Proposed Development would remain safe during construction and throughout its lifetime and would not increase flood risk elsewhere and is, therefore, considered to be acceptable in flood risk terms.</p>
<p>Historic environment (EN-1, 5.8)</p>	<p>Section 5.8 of EN-1 acknowledges that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment.</p> <p>Paragraph 5.8.8 requires applicants to provide a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance.</p> <p>Where a development site affects, or possibly includes heritage assets with an archaeological interest, the</p>	<p>Chapter 13 'Cultural Heritage' of ES Volume I (Application Document Ref: 6.2.13) provides an assessment of the effects of the Proposed Development upon designated heritage assets (within a 5 km study area) and non-designated assets (within a 1 km study area).</p> <p>A total of 58 assets have been recorded within the 1km study area, with 15 listed buildings and three scheduled monuments recorded within a 3km study area. There are nine sites recorded within the Proposed Development Site boundary. These</p>

Generic Impact	Summary	Assessment
	<p>applicant should carry out an appropriate desk-based assessment.</p> <p>The extent of the impact of the proposed development on the significance of any heritage asset affected should be able to be adequately understood from the application documents.</p> <p>Paragraph 5.8.11 states that the SoS should assess the significance of any heritage asset that may be affected by the proposed development, taking account of:</p> <ul style="list-style-type: none"> • evidence provided with the application; • any designation records; • the Historic Environment Record; • the heritage assets themselves; • the outcome of consultations with interested parties; and • where appropriate, expert advice. 	<p>comprise a prehistoric flint scatter, two Iron Age ditches, an Iron Age/Roman settlement site, medieval ridge and furrow, the line of a historically important hedgerow, the site of a 20th century chapel, a modern service trench and cropmarks of a square enclosure. There is potential for previously unrecorded assets to be located within the Proposed Development, particularly of Iron Age to Roman date. There is potential for physical effects on the sites of the Iron Age ditch (A17) and the square enclosure (A26). This will result in a moderate adverse significance of effect with mitigation in place. There will also be a minor adverse effect on the listed lighthouses.</p> <p>It is proposed that archaeological strip, map and record is carried out during intrusive ground works within the Proposed Development boundary, in accordance with a Written Scheme of Investigation to be agreed with the local authority in accordance with Requirement 13 of the draft DCO.</p> <p>The predicted residual effect following mitigation is minor adverse as there would be a negative residual effect on the setting of the three listed lighthouses, which are located approximately 1.4 km from the Site.</p>
Landscape and Visual (EN-1, 5.9, EN-2, 2.6,	Section 5.9 of EN-1 states that adverse landscape and visual effects may be minimised through appropriate siting	Chapter 10 'Landscape and Visual Amenity' of ES Volume I (Application Document Ref: 6.2.10) provides an assessment of the effects of the Proposed Development on landscape character (as a resource

Generic Impact	Summary	Assessment
EN-4, 2.21 and EN-5, 2.8)	<p>of infrastructure, materials and design, and landscaping schemes.</p> <p>Paragraph 5.9.15 states that the SoS should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits of the Proposed Development.</p> <p>Paragraph 5.9.17 states that the SoS should consider the design of the Proposed Development, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by reasonable mitigation.</p> <p>Paragraph 5.9.18 recognises that all proposed energy infrastructure is likely to have visual effects for receptors around proposed sites; however, in determining proposals, a judgement is to be made as to whether the visual effects on sensitive receptors outweigh the benefits of the Proposed Development.</p> <p>Section 2.6 of EN-2 sets out the landscape and visual considerations in relation to fossil fuel generating stations, recognising that many of the main structures (e.g. boiler and turbine halls and emissions stacks) are large and will have an impact upon the surrounding landscape and visual amenity. Paragraph 2.6.3 states that applicants should include a Landscape and Visual Impact Assessment ('LVIA') as part of the ES and consider the design of the plant and materials to be used, including the visual impact of the stack. In terms of SoS decision-</p>	<p>in its own right) and visual amenity. The study area for landscape and visual effects includes areas where it is considered that there is potential for significant direct or indirect effects on landscape character or sensitive views due to the construction, operation and decommissioning stages of the Proposed Development.</p> <p>The visual assessment initially considered ten viewpoints, agreed with NLC and NELC. The viewpoints have been chosen to illustrate the typical range of views of the Site from within the 5 km Study Area as experienced from settlements, publicly accessible roads, and Public Right of Ways towards the Site.</p> <p>In terms of effects, the assessment concludes that no significant adverse landscape or visual effects for receptors have been identified at the representative viewpoints. As such, it is anticipated that standard construction practices already incorporated into the design would provide the best fit with the existing local landscape and minimise visual impact through appropriate choice of external finish and colour.</p>

Generic Impact	Summary	Assessment
	<p>making, paragraph highlights that it is not possible to eliminate the visual impacts associated with fossil fuel generating stations and so the focus should be on minimising impacts as far as it reasonably practicable.</p> <p>EN-4 (paragraph 2.21.1) states that applicants should include an assessment of the landscape effects of proposed pipelines and the main alternative routes considered. The application should also set out proposals for the reinstatement of the pipeline route after construction as close to its original state as possible.</p> <p>EN-5 paragraph 2.8.4 requires applicants to give appropriate consideration to undergrounding electrical connections as a way of mitigating landscape and visual impacts.</p>	
Land use including open space, green infrastructure and Green Belt (EN-1, 5.10)	<p>EN-1 notes at section 5.10 that as energy infrastructure proposed developments will have direct effects on the existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development.</p> <p>Paragraph 5.10.3 recognises that it may not be possible for many forms of energy infrastructure to be sited on previously developed land, while paragraph 5.10.5 requires applicants to assess the effects of the proposed development on existing land uses at and near the site.</p>	<p>The Site has been selected by the Applicant for the Proposed Development, as opposed to other potentially available sites, for the following reasons:</p> <ul style="list-style-type: none"> • 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;

Generic Impact	Summary	Assessment
	<p>Paragraph 5.10.9 requires applicants to safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place.</p> <p>Paragraph 5.10.9 states mitigation measures should be considered for development affecting green infrastructure to ensure the connectivity of the green infrastructure network is maintained.</p>	<ul style="list-style-type: none"> • 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; • 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; and • it is not designated Green Belt land. <p>Therefore, no notable or significant impacts are anticipated.</p> <p>A more detailed description of the Site is provided in ES Volume 1 Chapter 3 'Description of the Site' (Application Document Ref: 6.2.3).</p>
<p>Noise and vibration (EN-1, 5.11, EN-2, 2.7, EN-4, 2.20 and EN-5, 2.9)</p>	<p>EN-1 (section 5.11) requires a noise assessment for development that is likely to cause noise impacts through operational use and proximity to noise sensitive receptors.</p> <p>Paragraph 5.11.8 of EN-1 requires demonstration of good design through selection of the quietest cost-effective plant available; containment of noise within buildings</p>	<p>The noise and vibration effects of the Proposed Development are assessed at Chapter 8 'Noise and Vibration' of ES Volume I (Application Document Ref: 6.2.8).</p> <p>The location of key noise sensitive receptors ('NSRs') has been considered when assessing the effects</p>

Generic Impact	Summary	Assessment
	<p>wherever possible; optimisation of plant layout to minimise noise emissions and, where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission.</p> <p>Paragraph 5.11.9 goes on to state that developments should:</p> <ul style="list-style-type: none"> • avoid significant adverse impacts on health and quality of life from noise; • mitigate and minimise other adverse impacts on health and quality of life from noise; and, • where possible contribute to improvements to health and quality of life through the effective management and control of noise. <p>EN-2, section 2.7 covers noise and vibration in relation to fossil fuel generating stations. Paragraph 2.7.2 confirms that the ES should include a noise assessment, while paragraph 2.7.3 states that the SoS should be satisfied that noise will be adequately mitigated through requirements. Furthermore, consideration should be given to the extent that operational noise will be controlled by the EA.</p> <p>EN-4 (Paragraph 20.20.1 to 2.20.5) states that the ES include an assessment of noise and vibration effects; to cover specific issues including site clearance, soil movement, ground excavation, tunnelling, trenching, pipe</p>	<p>associated with noise and vibration levels from the various phases of the Proposed Development. One Key NSR location has been selected which is considered to be representative of the nearest and most sensitive existing receptor to the Site. It is considered that if noise and vibration levels can be suitably controlled at the receptor identified, then noise and vibration levels would be suitably controlled at other sensitive receptors in the surrounding area.</p> <p>Chapter 8 sets out a number of development design and impact avoidance measures that would be employed to limit and mitigate noise and vibration effects. These include limiting construction work to certain hours, adhering to construction noise limits and using plant with lower noise levels, amongst others.</p> <p>Chapter 8 sets out the summary of significant noise and vibration effects taking account of mitigation (residual effects). In all cases, residual effects are assessed as being negligible.</p>

Generic Impact	Summary	Assessment
	<p>laying and welding, and ground reinstatement. In addition, consideration should be given to increased HGV traffic on local roads for the movement of materials.</p> <p>EN-5 (Paragraph 2.9.11) requires relevant assessment methodologies to assess the noise impacts from the proposed electricity network infrastructure. It goes on to state that (paragraph 2.9.12) mitigation measures that should be followed, including the positioning of lines to help mitigate noise through:</p> <ul style="list-style-type: none"> • ensuring that the appropriately sized conductor arrangement is used to minimise potential noise; • quality assurance through manufacturing and transportation to avoid damage to overhead line conductors which can increase potential noise effects; and • ensuring that conductors are kept clean and free of surface contaminants during stringing/installation 	
Socio-economics (EN-1, 5.12)	<p>Paragraph 5.12.1 on EN-1 acknowledges that the construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at local and regional levels.</p> <p>Paragraph 5.12.3 states that the assessment within the ES should consider all relevant socio-economic impacts.</p>	<p>Chapter 14 ‘Socio-economics’ of ES Volume I (Application Document Ref: 6.2.14) provides a socio-economic impact assessment of the Proposed Development.</p> <p>It is estimated that 146 construction jobs would be generated, of which 110 are expected to be from the Grimsby TTWA. The direct, indirect and induced</p>

Generic Impact	Summary	Assessment
	<p>Paragraph 5.12.6 confirms that SoS will have regard to the potential socio-economic impacts of new energy infrastructure.</p> <p>Paragraph 5.12.9 states that it should be considered whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of a development.</p>	<p>employment created by the construction phase of the Proposed Development is likely to have a Moderate beneficial short-term and therefore a Significant effect on the Grimsby TTWA's economy.</p> <p>The direct, indirect and induced employment created by the operational phase of the Proposed Development is likely to have a Minor beneficial and therefore not significant long-term effect on the Grimsby TTWA's economy.</p> <p>The decommissioning phase of the Proposed Development is likely to have a minor beneficial effect on employment in the local area.</p> <p>No adverse effects have been identified during the construction or operation of the Proposed Development, and as such no mitigation is required.</p>
<p>Traffic and transport (EN-1, 5.13 and EN-2, 2.2.5-2.2.6)</p>	<p>EN-1 (paragraph 5.13.3) states that if a Proposed Development is likely to have significant transport implications, the applicant's ES should include a transport assessment, using the NATA/WebTAG methodology stipulated in Department for Transport guidance, or any successor to such methodology.</p> <p>Applicants should also consult the Highways Agency and highways authorities as appropriate on the assessment and mitigation.</p>	<p>ES Volume I, Chapter 7 'Traffic and Transportation' (Application Document Ref: 6.2.7) provides an assessment of traffic and transportation. A Transport Assessment is provided at Appendix 7A of ES Volume III (Application Document Ref: 6.4.5).</p> <p>Chapter 7 assesses the overall effects of construction traffic associated with the Proposed Development as negligible and not considered to be significant. During the operational phase of the Proposed Development,</p>

Generic Impact	Summary	Assessment
	<p>Paragraph 5.13.4 requires applicants to prepare a travel plan including demand management measures to mitigate transport impacts.</p> <p>Paragraph 5.13.6 also requires applicants to include mitigation measures to sufficiently reduce the impact on transport infrastructure to acceptable levels.</p> <p>EN-2 (paragraph 2.2.5) states new fossil fuel generating stations need to be accessible for the delivery and removal of construction materials, fuel, waste and equipment and for employees, while paragraph 2.2.6 notes that the Government supports the multi-modal transportation of materials by water or rail where possible.</p>	<p>the potential effects are considered to be of negligible adverse effect and not considered to be significant.</p> <p>In order to ensure that the Proposed Development is accessible for the delivery and removal of construction materials, fuel, waste and equipment and for employees, the Applicant will apply the following mitigation measures in respect of the local highways:</p> <ul style="list-style-type: none"> • Pedestrian and cycle access routes to/from the Site will be identified and communicated to employees during construction. Appropriate facilities will be provided on the site for the safe storage of cycles; • Local bus connections to the Site will be identified and communicated to all construction employees; • The Applicant will liaise with the Contractor for potential to implement staff minibuses and car sharing options; • The Contractor will be required to prepare a Construction Traffic Management Plan (CTMP_ to identify appropriate and safe routes to and from the site including the options listed above such as pedestrian and cycle access; and • A Construction Staff Travel Plan aimed at reducing the volume of construction staff trips to the Site, especially during peak hours will be implemented

Generic Impact	Summary	Assessment
		<p>(a Travel Plan Framework is included at Appendix 7B).</p> <p>A Construction Worker Travel Plan ('CWTP') and Construction Traffic Management Plan ('CTMP') will be secured Requirement 16 and 17 of the draft DCO (Application Document Ref: 2.1).</p>
Waste management (EN-1, 5.14)	<p>Section 5.14 of EN-1 acknowledges that all large infrastructure Proposed Developments are likely to generate hazardous and non-hazardous waste.</p> <p>Paragraph 5.14.6 requires applicants to produce a Site Waste Management Plan ('SWMP') and states that the applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal.</p> <p>Paragraph 5.14.6 states the SoS should be satisfied that:</p> <ul style="list-style-type: none"> • waste will be properly managed, both on and off site; • can be dealt with appropriately by the available waste infrastructure; and • adequate steps have been taken to minimise the volume of waste. 	<p>The Application includes a Framework Site Waste Management Plan ('FSWMP') (appended to the CEMP (ES Volume III, Appendix 4A – Application Document Ref: 6.4) which deals with development design and impact avoidance in relation to waste management. The FSWMP also includes measures aimed at minimising the quantities of waste requiring disposal, including how waste would be managed during construction and the opportunities to re-use and recycle waste in accordance with the waste hierarchy.</p> <p>Requirement 22 of the Draft DCO (Application Document Ref. 2.1) secure the provision of detailed waste management plans to cover the construction phase. These would be in accordance with the principles set out in the FSWMP. The FSWMP will also include operational waste management principles which the Proposed Development will be implemented in accordance with.</p>

Generic Impact	Summary	Assessment
		<p>The effects of the Proposed Development in terms of construction and operational waste are considered to be not significant with appropriate management.</p>
<p>Water quality and resources (EN-1, 5.15, EN-2, 2.10 and EN-4, 2.22)</p>	<p>EN-1 (section 5.15) states that, where a Proposed Development is likely to have effects on water quality and resources, an assessment should be undertaken of the impacts of the Proposed Development.</p> <p>Paragraph 5.15.6 states that the SoS should be satisfied that Proposed Developments have regard to the River Basin Management Plans and meet the requirement of the Water Framework Directive and related directives, including those on priority substances and groundwater.</p> <p>Paragraph 5.15.9 states that the risk of impacts on the water environment can be reduced through careful design to facilitate adherence to good pollution control practice.</p> <p>EN-2 (paragraphs 2.2.7 - 2.2.9) notes that generating stations have very high water demands, which means that preferred site locations are likely to be coastal or alongside large rivers to extract sufficient water.</p>	<p>The effect of the Proposed Development on water quality and resources is considered in Chapter 12 'Surface Water, Flood Risk and Drainage' of ES Volume I (Application Document Ref: 6.2.12).</p> <p>In relation to the Proposed Development, potential impacts during construction can be avoided and minimised through standard construction management practices, as outlined in the framework CEMP Appendix 5A (ES Volume III) (Application Document Ref: 6.4).</p> <p>During the operational phase, land quality impacts are also assessed as not likely to be significant taking account of measures included in the CEMP. Potentially significant effects on the water environment are also unlikely as the Proposed Development would be constructed to make use of the existing site water disposal and drainage infrastructure.</p> <p>Potential impacts during operation can be avoided and minimised through appropriate water management plans and designs for flood prevention management measures.</p>

Generic Impact	Summary	Assessment
		Following a review of available information, it is considered that the risks can be appropriately managed and there should be no significant adverse effects on the ground, water resources and flooding during the construction, operation and decommissioning of the Proposed Development.

Table 5.2: Assessment and Technology Specific Considerations

Generic Impact	Summary	Assessment
<p>Factors influencing site selection by developers (EN-2, 2.2, EN-4, 19.7.10 - 19 and EN-5, 2.2)</p>	<p>EN-2, paragraph 2.2.2, notes that fossil fuel generating stations have large land footprints and will therefore only be possible where the applicant is able to acquire a suitably sized site. Depending on the processes (paragraph 2.2.3) fossil fuel generating station may require storage and use of hazardous substances, which may have an impact on potential land use in the vicinity. Development of a CHP facility may also have implication for the size of site (paragraph 2.2.4).</p> <p>EN-2, paragraph 2.2.5, states that fossil fuel generating stations need to be accessible for the delivery of construction materials, fuel, waste and equipment and for employees. Government policy encourages multi-modal transport and materials may be transport by rail and water where possible. This will however be determined by the economics of the Proposed Development (paragraph 2.2.6). EN-2 (paragraphs 2.2.7 - 2.2.9) also highlights a number of matters relating to the demand that fossil fuel generating station may place on water resources and access to water supplies.</p> <p>EN-4 states (paragraphs 2.19.7 – 2.19.10) that when designing the route of new pipelines applicants should research relevant constraints, including proximity to existing and planned residential properties, schools, hospitals, railway</p>	<p>The Site has been selected by the Applicant for the Proposed Development, as opposed to other potentially available sites, for the following reasons:</p> <ul style="list-style-type: none"> • 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; • 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; and

Generic Impact	Summary	Assessment
	<p>crossings, major road crossings, below surface usage (e.g. former mineral workings, abandoned industrial sites, water disposal and other activities and utilities) and proximity to environmentally sensitive areas, main river and watercourse crossings.</p> <p>Applicants should demonstrate that mitigating measures will be put in place to minimise impacts. Such measures may include protection or diversion of utilities, horizontal directional drilling ('HDD') techniques and rerouting.</p> <p>EN-5 (paragraphs 2.2.1 – 2.2.7) sets out various considerations in relation to the selection of routes and locations for electricity infrastructure. Paragraph 2.2.2 recognises that the general location of such infrastructure is normally determined by the location of the generating station and existing network infrastructure.</p>	<ul style="list-style-type: none"> it is not designated Green Belt land. <p>Therefore, no notable or significant impacts are anticipated.</p> <p>A more detailed description of the Site is provided in ES Volume 1 Chapter 3 'Description of the Site' (Application Document Ref: 6.2.3). Two potential gas pipeline corridors for the Gas Connection were assessed; taking into account technical, environmental and planning considerations. The two options are routes across the Existing VPI CHP Plant Site connecting to the Existing AGI located within and adjacent to the southern boundary of the Existing VPI CHP Plant Site. The routes are approximately 800m in length.</p>
<p>Electric and Magnetic Fields (EMFs) (EN-5, 2.10)</p>	<p>Paragraph 2.10.13 states the applicant should consider the following factors in relation to EMFs:</p> <ul style="list-style-type: none"> height, position, insulation and protection (electrical or mechanical as appropriate) measures subject to ensuring compliance with the Electricity Safety, Quality and Continuity Regulations 2002; that optimal phasing of high voltage overhead power lines is introduced wherever possible 	<p>With regard to EMFs, within a conservative 50m radius of the Electricity Connection (a short connection to the existing substation on the Existing VPI CHP Plant Site), there are no residential receptors. Indeed, there are no residential receptors within 300m. As such, the only potential exposure to EMFs arises for construction workers and operational staff. With appropriate precautions in place taking account of industry standards, no significant health effects in</p>

Generic Impact	Summary	Assessment
	<p>and practicable in accordance with the Code of Practice to minimise effects of EMFs; and</p> <ul style="list-style-type: none"> any new advice emerging from the Department of Health relating to Government policy for EMF exposure guidelines. 	<p>the medium to long-term are predicted for construction workers and operational staff.</p>
Pipeline Safety (EN-4, 2.19.4 - 2.19.6)	<p>Pipelines need to comply with the Pipelines Safety Regulations 1996, which requires pipelines to be designed, constructed and operated so that the risks are as low as is reasonably practicable ('ALARP').</p>	<p>The Gas Connection works would be constructed to the relevant safety and industry standards in accordance with the Pipelines Safety Regulations 1996 and the appropriate notifications will be made, which will include notifying the HSE.</p>
Soil and Geology (EN-4, 2.23)	<p>Paragraphs 2.23.2 – 2.23.4 state that applicants should assess the stability of the ground conditions associated with the pipeline route and incorporate the findings of that assessment in the ES (see section 4.2 of EN-1) as appropriate.</p> <p>The assessment should cover the options considered for installing the pipeline and weigh up the impacts of the means of installation.</p> <p>Where the applicant proposes to use HDD as the means of installing a pipeline under a National or European Site and mitigating the impacts, the assessment should cover whether the geological conditions are suitable for HDD.</p> <p>When considering any application where the pipeline goes under a designated area of geological or geomorphological interest, the</p>	<p>Chapter 11 'Ground Conditions & Hydrogeology' of ES Volume I (Application Document Ref: 6.2.11) includes an assessment of the effects of the Proposed Development on soils and agriculture.</p> <p>The assessment concludes that no significant effects have been identified and that no additional mitigation measures are required in order to further reduce the potential impacts and effects from the ground conditions on the Proposed Development.</p> <p>As the impact avoidance measures are to be employed and any further mitigation measures identified following an appropriately designed ground investigation would be implemented, the significance of effects related to potential geological, hydrogeological and contamination</p>

Generic Impact	Summary	Assessment
	<p>applicant should submit details of alternative routes, which either bypass the designated area or reduce the length of pipeline through the designated area to the minimum possible, and the reasons why they were discounted.</p> <p>Applicants should consult with the relevant statutory consultees at an early stage.</p>	<p>related impacts associated with the Proposed Development during the construction, operation, maintenance and decommissioning phases are likely to be negligible or minor adverse, and therefore not significant.</p>

5.3 NPPF

- 5.3.1 A revised NPPF was adopted in February 2019 and replaced the version published in March 2012.
- 5.3.2 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 clear that the document does not contain specific policies for NSIPs and that these are to be determined in accordance with the decision-making framework set out in the Act and relevant NPSs, as well as any other matters that are considered both 'important and relevant'. The paragraph goes on to confirm that matters that can be considered to both 'important and relevant' to NSIPs may include the NPPF.
- 5.3.3 Paragraph 7 of the NPPF is clear that the purpose of the planning system is to contribute to the achievement of sustainable development and that the policies that are set out in the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice. Paragraph 8 goes on to identify three dimensions to sustainable development: economic, social and environmental. It states that these dimensions give rise to the need for the planning system to perform a number of key roles as follows:
- an economic role - contributing to a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development, including the provision of infrastructure;
 - a social role - supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generation and by creating a high-quality built environment, with accessible local services that reflect communities needs and support their health, social and cultural well-being; and
 - an environmental role - contributing to protecting and enhancing our natural, built and historic environment, and as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change, including moving to a low carbon economy.
- 5.3.4 Paragraph 9 emphasises that these roles should not be undertaken in isolation, because they are mutually dependent. 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.
- 5.3.5 It is considered that the Proposed Development supports these key roles of the planning system. The provision of secure and diverse supplies of low carbon energy is critical in terms of both contributing toward the reduction of greenhouse gas emissions and supporting industry and local communities. Furthermore, the Proposed Development would generate employment and increased spending within the local and regional economy during the construction and operational phases. In addition, the ES demonstrates that the Proposed Development would not result in unacceptable environmental effects, while its design includes measures to enhance biodiversity and ensure that it is resilient to the effects of climate change.

- 5.3.6 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.
- 5.3.7 It will be demonstrated later within this section that the Proposed Development accords with relevant development plan policy.
- 5.3.8 The NPPF sets out planning principles that should underpin decision making. Those of particular relevance includes to:
- proactively drive and support sustainable economic development to deliver the infrastructure that the country needs;
 - always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
 - support the transition to a low carbon future in a changing climate, taking full account of flood risk and encouraging the reuse of existing resources and the use of renewable energy sources (for example, by the development of renewable energy);
 - contribute to conserving and enhancing the natural environment and reducing pollution;
 - encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value; and
 - actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
- 5.3.9 The Proposed Development accords with these core land-use planning principles as follows:
- it would contribute toward sustainable economic development by providing new electricity generating capacity, for which there is a confirmed need, thereby contributing to the security and diversity of energy supplies for businesses and homes;
 - the Design and Access Statement (Application Document Ref: 5.4) demonstrates that the Proposed Development is appropriate in terms of its context and setting and incorporates the principles of 'good design', while the ES demonstrates that it would not result in unacceptable impacts on the amenity of people living in the surrounding area;
 - it has been designed to be resilient to flooding and would not increase the risk of flooding at the Site or elsewhere;
 - the ES demonstrates that the Proposed Development would conserve the natural environment and it includes measures to enhance biodiversity at the Site, while it would not result in significant effects in terms of pollution;
 - the Site is within close proximity of the existing VPIB Immingham Power Station;

- while the assessment of traffic and transport in the ES for the Proposed Development is based on a worst-case scenario, it demonstrates the transport effects during construction and operation would be acceptable.

5.3.10 A summary of the NPPF policies of most relevance to the Proposed Development and how it complies with these is provided in Table 5.3.

5.4 Local planning policy

5.4.1 Table 5.4 (following Table 5.3) considers the compliance of the Proposed Development with relevant local development plan policies. These include the policies from the North Lincolnshire Council Core Strategy and saved policies from the Local Plan. It also considers the policies within the recently adopted North East Lincolnshire Local Plan (adopted March 2018); although, these policies are of lesser relevance given that the Site is not located within the NELC administrative area.

5.4.2 Only a part of the Existing Gas Pipeline is located within NELC's area and no works are proposed to the Existing Gas Pipeline. This report addresses NELC's policies however as VPIB has sought powers of compulsory acquisition over the Existing Gas Pipeline.

5.4.3 Each of the relevant local development plan policies is summarised in Tables 5.4. Given that EN-1, EN-2, EN-4 and EN-5 provide the primary basis upon which any decision on the Application should be made, combined with the fact the matters covered by these local planning policies have for the most part already been considered in detail above in relation to the NPSs, a summarised response has been made to each policy, except where a more detailed response is considered necessary.

Table 5.3 NPPF Policies

NPPF Ref.	Policy Summary	Assessment
<p>Part 6 Building a strong, competitive economy</p>	<p>Confirms that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meet the twin challenges of global competition and of a low carbon future. Paragraph 81 makes it clear that the planning system should do all it can to support sustainable economic growth through, amongst other measures, planning proactively and removing barriers to investment such as a lack of infrastructure. It goes on to state that local authorities should identify priority areas for economic regeneration, infrastructure provision and environmental enhancement.</p>	<p>The Proposed Development would support sustainable economic growth through the provision of electricity generating capacity, for which there is a confirmed need, enhancing the security and diversity of UK energy supplies. The provision of secure energy supplies that are resilient to potential supply disruptions is critical to economic growth. It would have a significant effect on the Grimsby TTWA's economy during the construction phase and a not insignificant number of permanent operational jobs, creating both direct and indirect benefits for the local and regional economy. In addition, it would contribute to the delivery of the local development plan strategy, which refers to the suitability of the location for further power generation development.</p>
<p>Part 9 Promoting sustainable transport</p>	<p>Aimed at facilitating more sustainable transport choices so as to contribute to wider sustainability and health objectives. Paragraph 111 states that all developments that generate significant amounts of movement should be supported by a transport statement or assessment and these should consider the opportunities to make use of sustainable transport modes.</p>	<p>In order to promote sustainable transport, VPIB would implement traffic and travel management plans during construction to minimise transport effects and encourage sustainable modes of transport. The traffic and travel management plans are secured by Requirements 16 and 17 of the draft DCO.</p>

NPPF Ref.	Policy Summary	Assessment
<p>Part 11</p> <p>Making effective use of land</p>	<p>Focuses on the effective use of land in meeting the need for development, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Paragraph 117 stresses the importance of accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land.</p>	<p>The Site has been selected by the Applicant for the Proposed Development, as opposed to other potentially available sites, for the following reasons:</p> <ul style="list-style-type: none"> • 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; • 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; and • it is not designated Green Belt land.

NPPF Ref.	Policy Summary	Assessment
		<p>Therefore, no notable or significant impacts are anticipated.</p> <p>A more detailed description of the Site is provided in ES Volume 1 Chapter 3 'Description of the Site' (Application Document Ref: 6.2.3).</p>
<p>Part 12 Achieving well-designed places</p>	<p>Deals with the matter of design in the built environment. Paragraph 124 confirms that the Government attaches great importance to the design of the built environment and that good design is a key aspect of sustainable development and is indivisible from good planning.</p>	<p>The DAS demonstrates how VPIB has taken account of and appraised the Site's context, the approach that has been taken to design and how this has changed, and evolved as a result of engineering design development and consultation. In view of the heavily industrialised context of the Site, the appearance of the buildings/structures would be functional, reflective of the setting and purpose and would be typical of a modern power station. Where possible, opportunities have been taken to incorporate biodiversity enhancement.</p> <p>The draft DCO includes Requirement 5 that secures the detailed design of the Proposed Development. The requirement must be approved by the relevant planning authority.</p>
<p>Part 14</p>	<p>Focuses upon adapting to and mitigating the effects of climate change. Paragraph 148 highlights that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability</p>	<p>Construction materials would be stored outside of the 1 in 100 year floodplain extent wherever possible. If areas located within Flood Zone 2 are to be utilised for the storage of construction materials, then a permit will be obtained from the EA. Other standard practice</p>

NPPF Ref.	Policy Summary	Assessment
<p>Meeting the challenge of climate change, flooding and coastal change</p>	<p>and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy.</p> <p>Paragraph 155 stresses that new development should be planned to avoid increased vulnerability to the range of impacts arising from climate change, including flood risk, coastal change, water supply and changes to biodiversity and landscape. Where development is necessary in areas at risk of flooding (paragraph 159) it should be made safe without increasing flood risk elsewhere. In such cases, it may be necessary for the development to satisfy the 'Sequential' and 'Exception' tests. The latter involves demonstrating that the development would provide wider sustainability benefits to the community that outweigh the flood risk and that it would be safe for its lifetime, without increasing flood risk elsewhere (paragraphs 155-165).</p>	<p>measures would be used in the construction of the Proposed Development, thereby ensuring that the temporary works would not increase flood risk in the area or exacerbate flooding for neighbouring properties, and to avoid any adverse environmental effects if the Site flooded during construction.</p> <p>There are tidal flood defences in place along the entire south bank of the Humber Estuary. The existing defences to the north and east of the Proposed Development comprise a combination of earth embankments topped by concrete wave return walls and small areas of reclaimed land.</p> <p>The Proposed Development would not increase the risk of flooding off-site because the drainage and landscape design would follow appropriate guidance to attenuate and control run-off rates from the Site.</p> <p>A Flood Risk Assessment is provided at Appendix 12A of ES Volume III (Application Document Ref: 6.4). This demonstrates that the Proposed Development would remain safe during its construction and throughout its lifetime and would not increase flood risk elsewhere and is, therefore, considered to be acceptable in flood risk terms.</p>
<p>Part 15</p>	<p>Aimed at protecting and enhancing valued landscapes; geological conservation interests and soil; minimising impacts on biodiversity and</p>	<p>The Proposed Development is located on land that is considered suitable for power generation. It is therefore considered that the Site represents an</p>

NPPF Ref.	Policy Summary	Assessment
<p>Conserving and enhancing the natural environment</p>	<p>providing net gains in biodiversity where possible; and preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability (paragraph 170).</p>	<p>appropriate location for the Proposed Development. The ES includes an assessment of the potential effects of the Proposed Development upon the natural environment in terms of soils, hydrogeology and land quality; surface water resources and flood risk; air quality; noise and vibration; ecology; and landscape and visual amenity.</p> <p>The ES confirms that with appropriate mitigation, where required, the Proposed Development would not result in unacceptable impacts upon the natural environment. Neither would it result in significant effects upon the health or amenity of people living within the locality of the Site. In addition, the Proposed Development incorporates measures to enhance biodiversity at the Site.</p>
<p>Part 16 Conserving and enhancing the historic environment</p>	<p>Matters relating to the conservation of the historic environment are dealt with at section 16 of the NPPF (paragraphs 184-202). Paragraph 189 states that where development is proposed on a site that includes or has the potential to include heritage assets or archaeological interests, applicants should be required to submit an appropriate desk-based assessment and, where necessary, a field evaluation.</p>	<p>Chapter 13 ‘Cultural Heritage’ of ES Volume I (Application Document Ref: 6.2.13) provides an assessment of the effects of the Proposed Development upon designated heritage assets (within a 5 km study area) and non-designated assets (within a 1 km study area).</p> <p>A total of 58 assets have been recorded within the 1km study area, with 15 listed buildings and three scheduled monuments recorded within a 3km study area. There are nine sites recorded within the Proposed Development Site boundary. These comprise a prehistoric flint scatter, two Iron Age</p>

NPPF Ref.	Policy Summary	Assessment
		<p>ditches, an Iron Age/Roman settlement site, medieval ridge and furrow, the line of a historically important hedgerow, the site of a 20th century chapel, a modern service trench and cropmarks of a square enclosure. There is potential for previously unrecorded assets to be located within the Proposed Development, particularly of Iron Age to Roman date. There is potential for physical effects on the sites of the Iron Age ditch (A17) and the square enclosure (A26). This will result in a moderate adverse significance of effect with mitigation in place. There will also be a minor adverse effect on the listed lighthouses.</p> <p>It is proposed that archaeological strip, map and record is carried out during intrusive ground works within the Proposed Development boundary, in accordance with a Written Scheme of Investigation to be agreed with the local authority in accordance with Requirement 13 of the draft DCO.</p> <p>The predicted residual effect following mitigation is minor adverse as there would be a negative residual effect on the setting of the three listed lighthouses, which are located approximately 1.4km from the Site.</p>

Table 5.4: Local Development Plan Policies

Policy No. / Title	Policy Summary	Assessment
North Lincolnshire Policies		
CS1 (Spatial Strategy for North Lincolnshire) North Lincolnshire Core Strategy	<p>Opportunities for economic development will be provided within existing established employment locations as well as on additional sites.</p> <p>The development of key strategic employment sites at the South Humber Bank will be supported.</p>	<p>The Core Strategy key diagram shows the Site as lying within the 'South Humber Bank Strategic Employment Site'. Policy CS12 of the Core Strategy deals with the SES and is generally supportive of industrial and port-related activities within the designated area. It states that the area will be reserved for industrial type uses. There are also similar, supportive policies within the Local Plan (2003) and the Housing and Employment Land Allocations Development Plan Document (2016).</p> <p>The Proposed Development would support sustainable economic growth through the provision of electricity generating capacity, for which there is a confirmed need, enhancing the security and diversity of UK energy supplies. The provision of secure energy supplies that are resilient to potential supply disruptions is critical to economic growth. It would have a significant effect on the Grimsby TTWA's economy during the construction phase and a not insignificant number of permanent operational jobs, creating both direct and indirect benefits for the local and regional economy. In addition, it would contribute to the delivery of the local</p>

Policy No. / Title	Policy Summary	Assessment
		development plan strategy, which refers to the suitability of the location for further power generation development.
CS2 (Delivering More Sustainable Development North Lincolnshire Core Strategy	All future development in North Lincolnshire will be required to contribute towards achieving sustainable development. Proposals should comply with the overall spatial strategy together with the following sustainable development principles contribute to achieving sustainable economic development to support a competitive business and industrial sector; to be constructed and operated using a minimum amount of non-renewable resources including increasing the use of renewable energy in construction and operation; take account of local environmental capacity and to improve air, water and soil quality and minimize the risk and hazards associated with flooding, and be designed to a high standard, consistent with Policy CS5, and use sustainable construction and design techniques.	<p>The Proposed Development is located on land that is considered suitable for power generation. It is therefore considered that the Site represents an appropriate location for the Proposed Development.</p> <p>The ES includes an assessment of the potential effects of the Proposed Development upon the natural environment in terms of soils, hydrogeology and land quality; surface water resources and flood risk; air quality; noise and vibration; ecology; and landscape and visual amenity.</p>
CS6 (Historic Environment) North Lincolnshire Core Strategy	The council will promote the effective management of North Lincolnshire's historic assets through preserving and enhancing the rich archaeological heritage of North Lincolnshire.	Chapter 13 'Cultural Heritage' of ES Volume I (Application Document Ref: 6.2.13) provides an assessment of the effects of the Proposed Development upon designated heritage assets (within a 5 km study area) and non-designated assets (within a 1 km study area). A total of 58 assets have been recorded within the 1km study area, with 15 listed

Policy No. / Title	Policy Summary	Assessment
		<p>buildings and three scheduled monuments recorded within a 3km study area. There are nine sites recorded within the Proposed Development Site boundary. These comprise a prehistoric flint scatter, two Iron Age ditches, an Iron Age/Roman settlement site, medieval ridge and furrow, the line of a historically important hedgerow, the site of a 20th century chapel, a modern service trench and cropmarks of a square enclosure. There is potential for previously unrecorded assets to be located within the Proposed Development, particularly of Iron Age to Roman date. There is potential for physical effects on the sites of the Iron Age ditch (A17) and the square enclosure (A26). This will result in a moderate adverse significance of effect with mitigation in place. There will also be a minor adverse effect on the listed lighthouses.</p> <p>It is proposed that archaeological strip, map and record is carried out during intrusive ground works within the Proposed Development boundary, in accordance with a Written Scheme of Investigation to be agreed with the local authority in accordance with Requirement 13 of the draft DCO</p> <p>The predicted residual effect following mitigation is minor adverse as there would be</p>

Policy No. / Title	Policy Summary	Assessment
		<p>a negative residual effect on the setting of the three listed lighthouses, which are located approximately 1.4km from the Site.</p>
<p>CS12 (South Humber Bank Strategic Employment Site) North Lincolnshire Core Strategy</p>	<p>The South Humber Bank Strategic Employment Site will be reserved for B1, B2 and B8 port related activities.</p> <p>The aim of the policy is not only to recognise the economic advantages of developing the site for employment use and port extension but also to acknowledge the importance of the environmental and ecological assets of the area. Any proposed development must harmonise with these assets.</p>	<p>The Core Strategy key diagram shows the Site as lying within the 'South Humber Bank Strategic Employment Site'.</p> <p>The Proposed Development would support sustainable economic growth through the provision of electricity generating capacity, for which there is a confirmed need, enhancing the security and diversity of UK energy supplies. The provision of secure energy supplies that are resilient to potential supply disruptions is critical to economic growth. Supporting text at paragraph 9.46 of CS12 recognises uses in relation to power and energy generation as existing and important within the South Humber Bank Strategic Employment Site.</p> <p>In addition, it would contribute to the delivery of the local development plan strategy, which refers to the suitability of the location for further power generation development.</p> <p>The Proposed Development is located on land that is considered suitable for power generation. It is therefore considered that the Site represents an appropriate location for the Proposed Development. The ES</p>

Policy No. / Title	Policy Summary	Assessment
		includes an assessment of the potential effects of the Proposed Development upon the natural environment in terms of soils, hydrogeology and land quality; surface water resources and flood risk; air quality; noise and vibration; ecology; and landscape and visual amenity.
CS16 (North Lincolnshire’s Landscape, Greenscape and Waterscape) North Lincolnshire Core Strategy	<p>The council will protect, enhance and support a diverse and multi-functional network of landscape, greenspace and waterscape through:</p> <ul style="list-style-type: none"> Identifying in supporting documents within or evidencing the Local Development Framework, a network of strategically and locally important landscape, greenspace and waterscape areas. Development on or adjacent to these areas will not be permitted where it would result in unacceptable conflict with the function(s) or characteristic of that area. Requiring development proposals to improve the quality and quantity of accessible landscape, greenspace and waterscape, where appropriate. Requiring development proposals to address local deficiencies in accessible 	The ES confirms that with appropriate mitigation, where required, the Proposed Development would not result in significant adverse impacts upon the natural environment. Neither would it result in significant effects upon the health or amenity of people living within the locality of the Site. In addition, the Proposed Development incorporates measures to enhance biodiversity at the site.

Policy No. / Title	Policy Summary	Assessment
	<p>landscape, waterscape and greenspace where appropriate.</p> <p>Requiring the protection of trees, hedgerows and historic landscape to be specified where appropriate.</p>	
CS17 (Biodiversity) North Lincolnshire Core Strategy	<p>The council will promote effective stewardship of North Lincolnshire's wildlife by ensuring development retains, protects and enhances features of biological and geological interest and provides for the appropriate management of these features.</p>	<p>A Biodiversity Enhancement and Management Plan ('BEMP') will be prepared and agreed with the local planning authority prior to the commencement of works, which will be in accordance with the framework BEMP that will accompany the DCO application. The BEMP will include details on:</p> <ul style="list-style-type: none"> • Protected species mitigation; • The location and planting specifications for habitat enhancements; • The location and construction specifications for log pile refuges and bird nest boxes; • Long-term management of the habitats; • Any post-construction protected species monitoring (if required); and • Timetables and responsibilities for undertaking the above tasks. <p>The ES concludes that with the implementation of the measures set out in</p>

Policy No. / Title	Policy Summary	Assessment
		the BEMP, there would be no significant adverse effects on the ecology and/or biodiversity of the Site.
CS18 (Sustainable Resource Use and Climate Change) North Lincolnshire Core Strategy	<p>The Council will actively promote development that utilises natural resources as efficiently and sustainably as possible. This will include:</p> <ul style="list-style-type: none"> • Requiring the use of Sustainable Urban Drainage Systems (SuDS) where practicable; • Meeting required national reductions of predicted CO2 emissions; • Ensuring building design reduces energy consumption by appropriate methods; • Supporting development that minimizes the consumption and extraction of minerals; • Supporting development that seeks to minimize waste; and <p>Supporting renewable sources of energy in appropriate locations, where possible, and ensuring that development maximises the use of combined heat and power, particularly at the South Humber Bank employment site and where energy demands for more than 2MW are required for development.'</p>	<p>The FRA concludes that development of the Site would not increase the risk of flooding from fluvial, tidal, groundwater or overland flow sources.</p> <p>The Proposed Development would meet existing capacity shortfall as other less efficient power stations are going off line, and would provide a secure energy supply to the national grid.</p> <p>The Proposed Development has several characteristics incorporated into its design construction and management which meet the key sustainability requirements as set out in national and local policy.</p>

Policy No. / Title	Policy Summary	Assessment
CS19 (Flood Risk) North Lincolnshire Core Strategy	<p>Development in areas of high flood risk will only be permitted where it meets the following prerequisites:</p> <ul style="list-style-type: none"> • It can be demonstrated that the development provides wider sustainability benefits to the community and the area that outweigh flood risk. • The development should be on previously used land. If not, there must be no reasonable alternative developable sites on previously developed land. • A flood risk assessment has demonstrated that the development will be safe, without increasing flood risk elsewhere by integrating water management methods into development. <p>In addition development will be required, wherever practicable, to incorporate Sustainable Urban Drainage Systems (SUDS) to manage surface water drainage.</p>	<p>There are tidal flood defences in place along the entire south bank of the Humber Estuary. The existing defences to the north and east of the Proposed Development comprise a combination of earth embankments topped by concrete wave return walls and small areas of reclaimed land. The Proposed Development would not increase the risk of flooding off-site because the drainage and landscape design will follow appropriate guidance to attenuate and control run-off rates from the Site. A FRA is provided at Appendix 12A of ES Volume III (Application Document Ref: 6.4.20). This demonstrates that the Proposed Development would remain safe during its construction and throughout its lifetime and would not increase flood risk elsewhere and is, therefore, considered to be acceptable in flood risk terms.</p>
CS20 (Sustainable Waste Management) North Lincolnshire Core Strategy	<p>The Council will consider new and enhanced facilities for the treatment and management of waste in the following broad strategic areas: South Humber Bank Employment Area.</p>	<p>The Application includes a FSWMP which deals with development design and impact avoidance in relation to waste management. The FSWMP also includes measures aimed at minimising the quantities of waste requiring disposal, including how waste would be managed during construction and</p>

Policy No. / Title	Policy Summary	Assessment
	<p>The Council will promote sustainable waste management by:</p> <p>-Requiring Site Waste Management Plans for future major developments to minimize waste.'</p>	<p>the opportunities to re-use and recycle waste in accordance with the waste hierarchy. Requirement 22of the Draft DCO (Application Document Ref. 2.1) secure the provision of detailed waste management plans to cover construction phase. This would be in accordance with the principles set out in the FSWMP. The FSWMP will also include operational waste management principles which the Proposed Development will be implemented in accordance with. The effects of the Proposed Development in terms of construction and operational waste are considered to be not significant with appropriate management.</p>
<p>CS25 (Promoting Sustainable Transport) North Lincolnshire Core Strategy</p>	<p>The Council will support and promote a sustainable transport system in North Lincolnshire that offers a choice of transport modes and reduces the need to travel through spatial planning and design and by utilising a range of demand and network management tools.</p>	<p>In order to promote sustainable transport, VPIB would implement traffic and travel management plans during construction to minimise transport effects and encourage sustainable modes of transport. The traffic and travel management plans are secured by Requirements 16 and 17 of the draft DCO.</p>
<p>IN1 (Industrial Development Location and Uses) North Lincolnshire Local Plan IN3 (Industrial and Commercial Development) North Lincolnshire Local Plan</p>	<p>Site IN1-1 : South Humber Bank: Area – 740.7 Hectares Use Classes Permitted – Estuary related B1, B2, B8 Greenfield – 100%</p>	<p>The Site falls within the area and the permitted use identified. The DAS demonstrates how VPIB has taken account of and appraised the Site’s context, the approach that has been taken to design and how this has changed, and evolved as a result of engineering design development and consultation. In view of the industrialised context of the Site, the appearance of the</p>

Policy No. / Title	Policy Summary	Assessment
	<p>Proposals for B1, B2 and B8 industrial and commercial development in the South Humber Bank Area will be permitted provided that:</p> <p>The development should respect its position and setting within the landscape and be compatible with existing and proposed surrounding uses, in particular adjoining residential areas;</p> <p>Sites should be planned and laid out on a comprehensive basis;</p> <p>Outside storage areas which are open to public view from beyond the site should be screened;</p> <p>Provision should be made within the curtilage of each industrial site for loading, offloading and vehicle turning facilities; and</p> <p>Comprehensive landscaping schemes.</p>	<p>buildings/structures would be functional, reflective of the setting and purpose and would be typical of a modern power station. Where possible, opportunities have been taken to incorporate biodiversity enhancement.</p>
<p>LC1 (Special Protection Areas, Special Areas of Conservation and RAMSAR Sites) North Lincolnshire Local Plan</p>	<p>Proposals for development which may affect an SPA, a proposed SPA, a SAC or candidate SAC will be assessed according to their implications for the site's conservation objectives.</p>	<p>No significant adverse effects on any designated sites have been identified.</p>
<p>LC5 (Species Protection) North Lincolnshire Local Plan</p>	<p>Planning permission will not be granted for development or land use changes which would have an adverse impact on [REDACTED] or</p>	<p>A BEMP will be prepared and agreed with the local planning authority prior to the</p>

Policy No. / Title	Policy Summary	Assessment
	species protected by Schedules 1, 5 or 8 of the Wildlife and Countryside Act 1981 (as amended).	commencement of works. See previous comments on the BEMP in this table.
LC7 (Landscape Protection) North Lincolnshire Local Plan	Where development is permitted within rural settlements or within the open countryside, special attention will be given to the protection of the scenic quality and distinctive local character of the landscape.	<p>The Study Area does not contain land covered by a national or local landscape designation.</p> <p>The Site is not located within any national or local landscape designations. It lies some 29km from the Lincolnshire Wolds Area of Outstanding Natural Beauty ('AONB') to the south of the Site, 5km from Brocklesby Registered Park and Garden ('RPG') to the south west and 14km from the People's Park RPG to the south east in Grimsby.</p> <p>These designations are unlikely to be significantly affected by the Proposed Development owing to distance, together with intervening vegetation and built form, and therefore are not considered further within this assessment.</p>
LC12 (Protection of Trees, Woodland and Hedgerows) North Lincolnshire Local Plan	Proposals for all new development will, wherever possible ensure the retention of trees, woodland and hedgerows...landscaping and tree and hedgerow planting schemes will be required to accompany applications for new development where it is appropriate to the development and its setting.	Enhancement in the form of hedge and tree planting to the periphery of the Site would assist in reducing the visibility of the Proposed Development from visual receptors to the east including those at viewpoint 2 and users of Rosper Road.

Policy No. / Title	Policy Summary	Assessment
LC20 (South Humber Bank Landscape Initiative)	'It is proposed that the following measures will be undertaken throughout the South Humber Bank Landscape Initiative area/	Chapter 9 'Ecology' of ES Volume I (Application Document Ref: 6.2.9) provides an assessment of the potential effects of the Proposed Development upon ecology.
North Lincolnshire Local Plan	<ul style="list-style-type: none"> • Softening – provision of stepped-back security fences, fringed with shrubs and trees; • Screening – establishment of mixed broad-leaf and conifer belts; • Habitat conservation; • Habitat creation; • Field boundary; • Tree and hedge planting. 	<p>A number of mitigation and enhancement measures are proposed to support the ecology on the Site, as well as a number of habitat enhancements to meet the requirements of the NPPF.</p> <p>A BEMP would be prepared and agreed with the local planning authority prior to the commencement of works.</p>
HE9 (Archaeological Excavation) North Lincolnshire Local Plan	Where development proposals affect sites of known or suspected archaeological importance, an archaeological assessment to be submitted prior to the determination of a planning application will be required. Planning permission will not be granted without adequate assessment of the nature, extent and significance of the remains present and the degree to which the proposed development is likely to affect them.	The Site and surrounding area have been subject to significant modern disturbance. Notwithstanding this, any archaeological remains would be investigated in line with a WSI to be agreed with NLC in accordance with Requirement 13 of the draft DCO. The Application also includes a Framework WSI (es Volume III, Appendix 13E – Application Document Ref: 6.4).

Policy No. / Title	Policy Summary	Assessment
M23 (Oil and Gas Production) North Lincolnshire Local Plan	Proposals for oil and gas production facilities will be permitted, provided that the proposal incorporates environmental protection measures that are adequate to mitigate the impacts arising from a long term or permanent site.	The Proposed Development would not provide for the production of oil or gas. However, it would utilise gas, therefore this policy has been considered here. With the exception of the potential impacts identified on a limited number of buried archaeological assets, the ES has not identified any significant adverse effect on any identified receptor including receptors representative of the natural and human environments. In addition, the Proposed Development incorporates measures to enhance biodiversity at the Site.
DS1 (General Requirements) North Lincolnshire Local Plan	A high standard of design is expected in all developments in both built-up areas and the countryside and proposals for poorly designed development will be refused.	<p>The design of the Proposed Development has been informed by the context within which it would sit, in addition to the opportunities and constraints that are presented by the Site.</p> <p>The design has been influenced by technical, engineering, environmental and safety considerations, in addition to the need for the existing power station to be able to operate during the construction phase for the Proposed Development.</p> <p>The design and layout of the Proposed Development has sought to take advantage of the opportunities presented by the Site to minimise landscape and visual effects.</p>

Policy No. / Title	Policy Summary	Assessment
		<p>The approach that has been taken to the design of the Proposed Development is considered appropriate given its context and purpose – to generate and export electricity to the National Grid. It is also important to recognise that this is not a situation where large-scale development is being introduced into an area that is devoid of built development and characterised by particularly sensitive landscapes.</p>
<p>DS7 (Contaminated Land) North Lincolnshire Local Plan</p>	<p>In the case of proposals for development on land known or strongly suspected as being contaminated, applicants will be required to demonstrate that the level of contamination can be overcome by remedial measures or improvements.</p>	<p>Impact avoidance measures are to be employed and any further mitigation measures identified following an appropriately designed ground investigation would be implemented, the significance of effects related to potential geological, hydrogeological and contamination related impacts associated with the Proposed Development during the construction, operation, maintenance and decommissioning phases are likely to be negligible or minor adverse, and therefore not significant. Please refer to Chapter 11 'Ground Conditions and Hydrogeology' of ES Volume I (Application Document Ref: 6.2.11) for further information.</p>
<p>DS11 (Polluting Activities) North Lincolnshire Local Plan</p>	<p>Planning permission for development...will only be permitted where it can be demonstrated that the levels of potentially polluting emissions...do not pose a danger.</p>	<p>Chapter 6 'Air Quality' of ES Volume I (Application Document Ref: 6.2.6) provides an assessment of the effects of the Proposed Development in terms of air quality.</p>

Policy No. / Title	Policy Summary	Assessment
		<p>The effects of construction emissions from construction dust, with the application of best practice mitigation, are considered to be not significant.</p> <p>The effects of emissions from construction road traffic and on-site plant are also considered to be not significant. Therefore, the effects of construction activities on air quality and from the Proposed Development as a whole are considered to be not significant.</p> <p>The operational point source emissions effects on identified receptors have been determined to have a negligible adverse effect through the use of technology that meets the required emissions standards, the use of natural gas fuel and the use of appropriate stack heights, and therefore the operational effects are considered to be not significant.</p> <p>The effects on air quality and emissions from the Proposed Development as a whole are therefore not significant.</p> <p>The management of dust and particulates and the application of adequate mitigation measures will be enforced through the CEMP, and through the application of appropriate mitigation according to the risk of dust emissions from Site activities as</p>

Policy No. / Title	Policy Summary	Assessment
		<p>identified in this assessment. A framework CEMP has been submitted as part of the Application, and Requirement 14 forming part of the draft DCO secures the submission and approval (prior to construction), and then implementation of a final CEMP.</p>
DS13 (Groundwater Protection and Land Drainage) North Lincolnshire Local Plan	<p>All development must take account of the need to secure effective land drainage measures and ground water protection in order to control the level of water in the land drainage system.</p>	<p>The area surrounding the Site is drained via a network of small land drainage ditches that convey surface water from the surrounding greenfield areas located between the Site and the Humber Estuary.</p> <p>There are tidal flood defences in place along the entire south bank of the Humber Estuary. The existing defences to the north and east of the proposed development comprise a combination of earth embankments topped by concrete wave return walls and small areas of reclaimed land.</p>
DS15 (Water Resources) North Lincolnshire Local Plan	<p>Development will not be permitted which would adversely affect the quality and quantity of water resources or adversely affect nature conservation.</p>	<p>Embedded mitigation in the drainage design to control surface water run-off during operation would ensure that there is negligible potential for any pollution to habitats that may be used by foraging/passage of water vole.</p> <p>There would be no adverse surface water quality effects on any statutory or non-statutory designated sites.</p>
DS16 (Flood Risk) North Lincolnshire Local Plan	<p>Development will not be permitted within floodplains where it would: i) increase the</p>	<p>There are tidal flood defences in place along the entire south bank of the Humber Estuary.</p>

Policy No. / Title	Policy Summary	Assessment
	<p>number of people or buildings at risk; or ii) impede the flow of floodwater; or iii) impede access for the future maintenance of watercourses; or iv) reduce the storage capacity of the floodplain; or v) increase the risk of flooding elsewhere or vi) undermine the integrity of existing flood defences unless adequate protection or mitigation measures are undertaken.</p>	<p>The existing defences to the north and east of the proposed development comprise a combination of earth embankments topped by concrete wave return walls and small areas of reclaimed land.</p> <p>The Proposed Development would not increase the risk of flooding off-site because the drainage and landscape design will follow appropriate guidance to attenuate and control run-off rates from the Site.</p> <p>A Flood Risk Assessment is provided in Appendix 12A of ES Volume III (Application Document Ref: 6.4). This demonstrates that the Proposed Development would remain safe during its lifetime and would not increase flood risk elsewhere and is, therefore, considered to be acceptable in flood risk terms.</p>
<p>T1 (Location of Development) North Lincolnshire Local Plan</p>	<p>Development proposals, which generate a significant volume of traffic movement, will be permitted provided that they are located: i) in the areas identified for development at the South Humber Bank; ii) where there is good access to rail, water and air transport, or to the North Lincolnshire Strategic Road Network; and iii) where there is good foot, cycle and public transport provision or where there are opportunities for foot, cycle and public transport to be provided.</p>	<p>The Proposed Development is in an area identified for development; there is good access to the site and there are opportunities for foot, cycle and public transport to be provided.</p>

Policy No. / Title	Policy Summary	Assessment
T2 (Access to Development) North Lincolnshire Local Plan	All development must be provided with a satisfactory access. In larger developments it should be served adequately by: i) being readily accessible by a choice of transport modes; and ii) existing public transport services and infrastructure; or iii) additions or extensions to such services linked directly to the development; and iv) the existing highway network.'	<p>The Applicant is committed to the implementation of sustainable transport solutions for the Proposed Development. During the construction phase, the Applicant would apply the following mitigation measures in respect of the local highways:</p> <ul style="list-style-type: none"> • Pedestrian and cycle access routes to/from the Site will be identified and communicated to employees during construction. Appropriate facilities will be provided on the site for the safe storage of cycles; • A CTMP will identify appropriate and safe routes to and from the site. • All construction vehicles will be required to use only the approved access routes to the site in accordance with the CTMP. <p>A Framework CWTP and CTMP are appended to the ES (Application Document Ref: 6.4).</p>
T18 (Traffic Management) North Lincolnshire Local Plan	Traffic management measures (such as accident reduction schemes, speed reduction schemes and traffic regulation orders) will be introduced on the road network.	In order to promote sustainable transport, VPIB would implement traffic and travel management plans during construction to minimise transport effects and encourage sustainable modes. The traffic and travel management plans are secured by Requirements 16 and 17 of the draft DCO.
North East Lincolnshire Policies		

Policy No. / Title	Policy Summary	Assessment
SO1 (Population) North East Lincolnshire Local Plan	<p>Meet development needs and facilitate economic development by supporting population growth, retaining working age population and providing for a generally ageing population.</p> <p>Critical success factors:</p> <ul style="list-style-type: none"> Delivered new jobs (a minimum of 8,800). 	<p>146 construction jobs would be generated, of which 110 are expected to be from the Grimsby TTWA. The direct, indirect and induced employment created by the construction phase of the Proposed Development is likely to have a Moderate beneficial short-term and therefore a Significant effect on the Grimsby TTWA's economy.</p> <p>The direct, indirect and induced employment created by the operational phase of the Proposed Development is likely to have a Minor beneficial and therefore not significant long-term effect on the Grimsby TTWA's economy.</p> <p>The decommissioning phase of the Proposed Development is likely to have a minor beneficial effect on employment in the local area.</p>
SO2 (Climate Change) North East Lincolnshire Local Plan	<p>Critical success factors:</p> <ul style="list-style-type: none"> Reduced the waste generated and increased waste recycling; Addressed the issue of poor air quality; Reduced the number of declared Air Quality Management Areas in the Borough; 	<p>The Proposed Development would meet existing energy supply shortfall as other less efficient power stations are going off line, and would provide a secure energy supply to the national grid.</p> <p>The Proposed Development has several characteristics incorporated into its design, construction and management which meet</p>

Policy No. / Title	Policy Summary	Assessment
	Increased functional green infrastructure.	<p>the key sustainability requirements as set out in national, regional and local policy. The Proposed Development is designed, constructed and implemented to minimise the creation of waste and maximise the use of recycled materials.</p> <p>The effects on air quality from the Proposed Development as a whole are not significant.</p>
SO3 (Economy) North East Lincolnshire Local Plan	<p>Critical success factors:</p> <ul style="list-style-type: none"> • Reduced unemployment, through job creation and development to skills to support sector growth; • Reduced the proportion of population subject to social deprivation; • Delivered infrastructure to support economic development; and <p>Strengthened rural economy.</p>	<p>146 construction jobs would be generated, of which 110 are expected to be from the Grimsby TTWA. The direct, indirect and induced employment created by the construction phase of the Proposed Development is likely to have a Moderate beneficial short-term and therefore a Significant effect on the Grimsby TTWA's economy.</p> <p>The direct, indirect and induced employment created by the operational phase of the Proposed Development is likely to have a Minor beneficial and therefore not significant long-term effect on the Grimsby TTWA's economy.</p> <p>The decommissioning phase of the Proposed Development is likely to have a minor beneficial effect on employment in the local area.</p>

Policy No. / Title	Policy Summary	Assessment
		No adverse effects have been identified during the construction or operation of the Proposed Development, and as such no mitigation is required.
SO5 (Social and health inequality) North East Lincolnshire Local Plan	<p>Critical success factors:</p> <ul style="list-style-type: none"> • Reduced deprivation narrowing the gap in terms of social and health inequality; and • Safeguarded and develop, open space and sport and recreation facilities to maintain or exceed local accessibility standards, promoting healthy lifestyles. 	<p>The Proposed Development would have no adverse impact on any open space or recreational facilities. It is located in an industrial area that is allocated for industrial development.</p> <p>It would provide a significant contribution to the local and regional economy through employment during construction and operation.</p>
SO6 (Built, historic and natural environment) North East Lincolnshire Local Plan	<p>Relevant critical success factors:</p> <ul style="list-style-type: none"> • Safeguarded designated, landscape, and heritage assets, and protected important species and habitats; • Delivered net gains in biodiversity; • Maximized use of brownfield land; and • Delivered development in locations of least environmental value. 	<p>The residual effect following mitigation is minor adverse as there would be a negative residual effect on the setting of the three listed lighthouses. Further information is set out in Chapter 13 'Cultural Heritage' of ES Volume I (Application Document Ref: 6.2.13).</p> <p>The Site is not of high value from an environmental perspective and is located in an industrial area.</p> <p>The majority of the Site is previously developed.</p> <p>The Application includes a BEMP (Application Document Ref: 6.4)</p>
SO7 (Transport) North East Lincolnshire Local Plan	Critical success factors:	In order to promote sustainable transport, VPIB would implement travel and traffic

Policy No. / Title	Policy Summary	Assessment
	<ul style="list-style-type: none"> Delivered key transport infrastructure to support sustainable growth; and <p>Improved sustainable transport options to reduce the dependency on the car.</p>	<p>management plans during construction to minimise transport effects and encourage sustainable modes. The travel and traffic management plans are secured by Requirements 16 and 17 of the draft DCO (Application Document Ref: 2.1).</p>
<p>SO10 (Minerals and Waste) North East Lincolnshire Local Plan</p>	<p>Critical success factors:</p> <ul style="list-style-type: none"> Safeguarded mineral resource; Planned for the supply of minerals to accommodate future growth; Delivered adequate provision for the management of waste arisings; and <p>Achieved reduction in waste generation and increased waste recycling.</p>	<p>The Proposed Development would not impact on safeguarded mineral resources within NELC's administrative area. The FSWMP which deals with development design and impact avoidance in relation to waste management. The FSWMP also includes measures aimed at minimising the quantities of waste requiring disposal, including how waste would be managed during construction and the opportunities to re-use and recycle waste in accordance with the waste hierarchy.</p> <p>Requirements 14 and 16 of the Draft DCO (Application Document Ref. 2.1) secure the provision of detailed waste management plans to cover both construction and operation. These would be in accordance with the principles set out in the FSWMP. The FSWMP will also include operational waste management principles which the Proposed Development will be implemented in accordance with.</p>

Policy No. / Title	Policy Summary	Assessment
		The effects of the Proposed Development in terms of construction and operational waste are considered to be not significant with appropriate management.
Policy 6 (Infrastructure) North East Lincolnshire Local Plan	The Council will support developments to create, expand or alter service facilities...and key infrastructure to meet the needs of existing and new communities.	The Proposed Development would support sustainable economic growth through the provision of electricity generating capacity, for which there is a confirmed need, enhancing the security and diversity of UK energy supplies. The provision of secure energy supplies that are resilient to potential supply disruptions is critical to economic growth. It would generate substantial employment during the construction phase and a significant number of permanent operational jobs, creating both direct and indirect benefits for the local and regional economy. In addition, it would contribute to the delivery of the local development plan strategy, which refers to the suitability of the location for further power generation development.
Policy 32 (Energy and low carbon living) North East Lincolnshire Local Plan	Design and Access Statements accompanying applications for major development should include information to demonstrate how appropriate design and construction practices have been considered and incorporated.	The DAS includes all necessary information (Application Document Ref: 5.4).
Policy 33 (Flood Risk) North East Lincolnshire Local Plan	In order to minimize flood risk impacts and mitigate against the likely effects of climate	There are tidal flood defences in place along the entire south bank of the Humber Estuary. The existing defences to the north and east

Policy No. / Title	Policy Summary	Assessment
	<p>change, development proposals should demonstrate that:</p> <ul style="list-style-type: none"> • Where appropriate, a site specific flood risk assessment has been undertaken, which takes account of the best available information related to all potential forms of flooding; • There is no unacceptable increased risk of flooding to the development site or to existing properties; • The development will be safe during its lifetime; • Sustainable Drainage Systems (SuDS) have been incorporated into the development unless their use has been deemed inappropriate; • Opportunities to provide natural flood management and mitigation through green infrastructure have been assessed and justified, based upon sound evidence, and, where appropriate, incorporated, particularly in combination with delivery of other aspects of green infrastructure in an integrated approach across the site; 	<p>of the Proposed Development comprise a combination of earth embankments topped by concrete wave return walls and small areas of reclaimed land.</p> <p>The Proposed Development would not increase the risk of flooding off-site because the drainage and landscape design will follow appropriate guidance to attenuate and control run-off rates from the Site.</p> <p>A Flood Risk Assessment is provided at Appendix 12A of ES Volume III (Application Document Ref: 6.4). This demonstrates that the Proposed Development would remain safe during its lifetime and would not increase flood risk elsewhere and is, therefore, considered to be acceptable in flood risk terms.</p>

Policy No. / Title	Policy Summary	Assessment
	<ul style="list-style-type: none"> • Arrangements for the adoption, maintenance and management of any mitigation measures have been established and the necessary agreements are in place; • Access to any watercourse or flood defence asset for maintenance, clearance, repair or replacement is not adversely affected; and • The restoration, improvement or provision of additional flood defence infrastructure represents an appropriate response to local flood risk and does not conflict with other Plan policies. 	
Policy 34 (Water Management) North East Lincolnshire Local Plan	Development proposals should consider how water will be used on the site and ensure that appropriate methods for management are incorporated into the design.	<p>The area surrounding the Site is drained via a network of small land drainage ditches that convey surface water from the surrounding greenfield areas located between the Site and the Humber Estuary.</p> <p>The design of the plant is such that large quantities of water, raw or otherwise are not required. A local connection to a potable supply is required for domestic uses by the construction and operational staff and a small supply required for maintaining cooling water levels during the operation of the plant.</p>

Policy No. / Title	Policy Summary	Assessment
Policy 37 (Safeguarding and Transport Infrastructure) North East Lincolnshire Local Plan	<p>The Council will safeguard the routes of, and support measures which deliver, maintain and improve, key transport infrastructure, identified on the Policies Map, namely:</p> <ul style="list-style-type: none"> • South Humber Bank Link Road. 	<p>For both the construction and operational phases of the Proposed Development, there would be no impacts of significance to South Humber Bank Link Road or any of the roads within the study area.</p> <p>Please refer to ES Volume I, Chapter 7 for more detail (Application Document Ref 6.2.7).</p>
Policy 39 (Conserving and enhancing the historic environment) North East Lincolnshire Local Plan	<p>Proposals for development will be permitted where they would sustain the cultural distinctiveness and significance of North East Lincolnshire's historic urban, rural and coastal environment by protecting, preserving and, where appropriate, enhancing the character, appearance, significance and historic value of designated and non-designated heritage assets and their settings.</p>	<p>The immediate context within which much of the Site sits is already very much industrialised in terms of its character and appearance. It is dominated by the large and functional power generation buildings and structures of the Existing VPI CHP Plant.</p> <p>While the wider area around the Existing VPI CHP Plant, including the area through which the Proposed Gas Connection would pass, is generally rural and for the most part comprises agricultural land interspersed with small settlements, it is still dominated by the existing power station, which is visible across the flat landscape for several kilometres.</p> <p>The wider area is also subject to significant humanising influences, including significant port and petrochemicals related industrial development. The Site does not therefore sit within a setting or landscape that is highly sensitive to change.</p>

Policy No. / Title	Policy Summary	Assessment
		No significant impacts on built heritage assets are anticipated as a result. Please refer to ES Volume I, Chapter 13 for more detail (Application Document Ref 6.2.13).
Policy 41 (Biodiversity and Geodiversity) North East Lincolnshire Local Plan	<p>The Council will have regard to biodiversity and geodiversity when considering development proposals, seeking specifically to:</p> <ul style="list-style-type: none"> • Establish and secure appropriate management of, long-term mitigation areas within the Estuary Employment Zone, managed specifically to protect the integrity of the internationally important biodiversity sites; • Designate Local Wildlife Sites (LWss) and Local Geological Sites (LGSs) in recognition of particular wildlife and geological value; • Protect manage and enhance international, national and local sites of biological and geological conservation importance, having regard to the hierarchy of designated sites, and the need for appropriate buffer zones; • Minimise the loss of biodiversity features, or where loss is unavoidable and justified 	A BEMP will be prepared and agreed with the local planning authority prior to the commencement of works. See further detail earlier in this table.

Policy No. / Title	Policy Summary	Assessment
	<p>ensure appropriate mitigation and compensation measures are provided;</p> <ul style="list-style-type: none"> • Create opportunities to retain, protect, restore and enhance features of biodiversity value, including priority habitats and species; and • Take opportunities to retain, protect and restore the connectivity between components of the Borough's ecological network. 	
Policy 42 (Landscape) North East Lincolnshire Local Plan	<p>Landscape character should be given due consideration in the nature, location, design and implementation of development proposals. Developers should:</p> <ul style="list-style-type: none"> • Have regard to the landscape context and type within which the development is to be located; considering the landscape guidelines and management strategies relevant to the prevalent landscape type. Priority will be given to the protection and enhancement of the landscape character and natural beauty, and setting of the Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB); • Complete a site-specific landscape appraisal, proportionate to the anticipated scale and impact of a proposal, and submit a landscaping scheme for all 	<p>The Site is not located within or adjacent to any national or regional designations for landscape protection (e.g. AONB). The Site is located within National Character Area 41: the Humber Estuary, which focussed on the expanse of the Humber Estuary and associated low-lying land.</p> <p>The immediate context within which much of the Site sits is already very much industrialised in terms of its character and appearance. It is dominated by the large and functional power generation buildings and structures of the Existing VPI CHP Plant.</p> <p>While the wider area around the Existing VPI CHP Plant, including the area through which the Proposed Gas Connection would pass, is generally rural and for the most part</p>

Policy No. / Title	Policy Summary	Assessment
	<p>development where this is appropriate, which complements the character and appearance of the site, responds to landscape character, climate change and food alleviation where appropriate, and improves local biodiversity and levels of amenity;</p> <ul style="list-style-type: none"> • Seek opportunities, when incorporating landscape buffers to offset development impacts, to enhance landscape quality including opportunities to incorporate suitable landscape planting; • Retain and protect trees and hedgerows which offer value for amenity, biodiversity and landscape; and • Take opportunities where appropriate, to retain, protect and restore elements that contribute to historic landscape character. 	<p>comprises agricultural land interspersed with small settlements, it is still dominated by the existing power station, which is visible across the flat landscape for several kilometres. The wider area is also subject to significant humanising influences, including significant port and petrochemicals related industrial development. The Site does not therefore sit within a setting or landscape that is highly sensitive to change.</p> <p>No significant impacts on the local landscape are anticipated as a result.</p> <p>Please refer to ES Volume I, Chapter 10 for more detail (Application Document Ref 6.2.10).</p>

5.5 Summary

- 5.5.1 This section has considered the conformity of the Proposed Development relative to the assessment principles, generic impacts and assessment and technology specific considerations of the relevant NPSs (EN-1, EN-2, EN-4 and EN-5). Regard has also been had to the NPPF and relevant local development plan policy. It is considered to have been demonstrated that the Applicant has fully taken into account the guidance contained within the NPSs and that there is no conflict with NPS policy or with the NPPF and local development plan policy.
- 5.5.2 It is however important to recognise that although the NPPF and local development plan policy may be 'important and relevant', the NPSs are the primary consideration for the determination of NSIPs and take precedence where there is any conflict with such policies.

6. THE BENEFITS AND ADVERSE EFFECTS OF THE PROPOSED DEVELOPMENT

6.2 Benefits of the Proposed Development

6.2.1 The Proposed Development would have a number of very clear benefits, which can be summarised as follows:

- EN-1 clearly confirms the urgent 'need' that exists for all types of nationally significant energy infrastructure. It is clear that the SoS should assess applications on the basis that this 'need' and its scale and urgency has been proven.
- The Proposed Development, with a gross output capacity of up to 299MW, would respond to this urgent need in a timely manner.
- The Proposed Development would support the increased deployment of renewable energy in the UK, which is crucial if the country is to move to a low carbon economy. In this respect, EN-1 recognises that fossil fuel generating stations have a vital role to play in adding to the security, diversity and resilience of the UK's 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.
- Gas is more efficient and results in lower carbon dioxide emissions than other fossil fuels such as coal and oil and, as such, the OCGT Power Station would result in much lower carbon dioxide emissions than existing coal-fired power stations. 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.
- The Proposed Development would have benefits for the regional and local economy, in terms of employment during the construction phase.
- The Proposed Development would make use of previously development and disturbed land and is located immediately adjacent to the Existing VPI CHP Plant that already benefits from electrical and gas connections, and other infrastructure. This would assist in minimising the impact of the Proposed Development upon the environment.
- Further to the above, the draft DCO includes Requirement 25 'Employment, skills and training plan' that is aimed at promoting employment, skills and training development opportunities for local residents during construction and employment opportunities during operation.

6.3 Likely significant adverse effects of the Proposed Development

6.3.1 The likely significant adverse effects of the Proposed Development as identified by the ES and taking account of mitigation are as follows:

- Moderate adverse – construction of the Proposed Development on impact on Iron Age Ditch (A17); and

- Moderate adverse – construction of Temporary Construction and Laydown Site may impact the Square Enclosure (A26).
- 6.3.2 Please refer to ES Volume 1, Chapter 18 ‘Summary of Significant Residual Effects’ (Application Document Ref: 6.2.18) for further detail.

6.4 Summary

- 6.4.1 As with all development proposals, it is necessary to assess the Proposed Development in terms of conformity and compliance with relevant policy and weigh the benefits and adverse effects against each other (the ‘planning balance’).
- 6.4.2 Section 5 of this Planning Statement has considered the conformity of the Proposed Development against relevant planning policy. It is considered to have been demonstrated that VPIB has fully taken into account the guidance contained within relevant planning policy documents and that there is no conflict with local planning policy, the NPPF or , most importantly, the NPSs.
- 6.4.3 This section has identified a number of very clear and substantial benefits that the Proposed Development would deliver and facilitate. In contrast, few significant adverse effects have been identified. It is therefore considered that the benefits of the Proposed Development outweigh the limited harm that would result.

7. OTHER MATTERS

7.1.1 This section refers to a number of other matters that are relevant to the Application. These include the other 'non-DCO' consents and licences required for the Proposed Development; the need for the compulsory acquisition of land or interests and rights in land; the requirements included within the draft DCO; and finally, the need or otherwise for a development consent obligation.

7.2 Other consents and licences

7.2.1 There are other consents and licences, in addition to the DCO, that are required in respect of the construction and operation of the Proposed Development. The PA 2008 provides the ability to include some these within a DCO. However, a number of consents and licences, such as the EP for the Proposed Development, will be advanced separately to the DCO.

7.2.2 As confirmed in section 5 of this report, EN-1 (paragraph 4.10.6) advises applicants to make early contact with relevant regulators to discuss the requirements for the necessary applications and to ensure that these take account of all relevant considerations and that the regulators are able to provide timely advice and assurance to the SoS with regard to the consents and licences. EN-1 also states that where possible, applicants are encouraged to submit applications for Eps and other necessary consents at the same time as applying to the SoS for a DCO.

7.2.3 The Other Consents and Licences document (Application Document Ref: 5.4) lists those consents and licences that are required for the Proposed Development that are being/will be advanced separately of the DCO. As stated above, these include the EP for the operation of the OCGT Power Station. The Other Consents and Licences document (Application Document Ref: 5.2) sets out the position with regard to obtaining the consents required for the Proposed Development under other regulatory regimes. It is a 'live' document and will be updated during the examination of the Application.

7.3 Compulsory Acquisition

7.3.1 The Application is accompanied by a Statement of Reasons (Application Document Ref: 3.2) which cross refers to the Book of Reference and the Land Plans (Application Document Refs: 3.1 and 4.2). These documents detail the land and interests over which powers of compulsory acquisition are sought within the DCO, and which are necessary to construct and operate the Proposed Development.

7.3.2 The 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, for the reasons set out in the Statement of Reasons, 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.

7.4 Requirements

- 7.4.1 Schedule 2 'Requirements' of the draft DCO (Application Document Ref: 2.1) contains a number of requirements that would control the detailed design of the Proposed Development in addition to its construction and operation to ensure that it remains within the scope of the EIA carried out and does not result in unacceptable impacts. These would require the submission to and approval by NLC of further details of the Proposed Development. A significant number of the requirements must be discharged prior to the commencement of the Proposed Development with others needing to be discharged prior to commissioning or commercial use.
- 7.4.2 The draft requirements take account of the advice contained in EN-1 (paragraph 4.1.7) and the guidance contained within the NPPF (paragraphs 54-57). It is considered that they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects.
- 7.4.3 The requirements would ensure that, amongst other matters:
- the relevant planning authority has control over the final design of the Proposed Development in relation to matters such as the detailed design of the Proposed Power Plant layout and its buildings and structures, the highway accesses, lighting, boundary treatment, surface and foul water drainage and flood risk mitigation, all within the confines of the limits of deviation and parameters secured in the Draft DCO;
 - the construction and operational effects of the Proposed Development are controlled, including in relation to matters such as noise and vibration, contaminated land and groundwater, construction working hours and traffic management;
 - all other necessary mitigation identified in the ES is secured;
 - construction waste arisings are suitably controlled and managed; and
 - a suitable plan for decommissioning is submitted to and agreed by the relevant planning authority.
- 7.4.4 The intended purpose and effect of the draft requirements is explained in more detail within the Explanatory Memorandum (Application Document Ref: 2.2).

8. CONCLUSIONS

8.1.1 The following conclusions can be drawn from this Planning Statement:

- There is an urgent need for new electricity generating capacity in the UK as confirmed by NPS EN-1 and this 'need' is not open to debate or interpretation.
- The Proposed Development has been considered against the assessment principles, generic impacts and assessment and technology specific considerations of NPSs EN-1, EN-2, EN-4 and EN-5, in addition to the NPPF and relevant local development plan policy. It is considered to have been demonstrated that VPIB has fully taken into account the guidance contained within the NPSs and that there is no conflict with NPS policy or with the NPPF or local development plan policy.
- The Proposed Development would deliver a number of very clear and positive benefits, including the timely delivery of new electricity generating capacity that would contribute to the security, diversity and resilience of UK energy supplies and support the increased deployment of renewable energy; make a positive contribution toward the UK's carbon dioxide reduction targets; deliver substantial benefits for the regional and local economy, in terms of employment during the construction phase as well as providing a net additional number of long-term jobs during operation; and provide biodiversity enhancements.
- VPIB understands the other 'non-DCO' consents and licences that are required for the Proposed Development and is progressing the necessary applications and will provide updates during the examination. There are no known reasons why these consents and licences would not be forthcoming.
- The draft DCO includes appropriate requirements that would control the detailed design of the Proposed Development and its construction and operation in order to ensure that it accords with the EIA undertaken and does not result in unacceptable effects.

8.1.2 VPIB considers that the Proposed Development is acceptable in planning terms and that a DCO should therefore be made by the SoS.

APPENDIX 1: ABLE MARINE ENERGY PARK DCO 2014

2014 No. 0000

INFRASTRUCTURE PLANNING

HARBOURS, DOCKS, PIERS AND FERRIES

**The Able Marine Energy Park Development Consent Order
2014**

<i>Made</i> - - - -	<i>13th January 2014</i>
<i>Laid before Parliament</i>	<i>10th February 2014</i>
<i>Coming into force</i> - -	<i>29th October 2014</i>

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An application has been made to the Infrastructure Planning Commission, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), for an order under sections 37, 114, 115, 120, and 122 of the Planning Act 2008(b) (“the 2008 Act”).

A Panel of three members (“the Panel”) was appointed by the Secretary of State in accordance with Chapter 2 of Part 6 of the 2008 Act. The Panel examined the application in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Panel has considered the representations made and not withdrawn and the application, together with accompanying documents, and has submitted a report to the Secretary of State in accordance with section 74 of the 2008 Act.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application and consent for ancillary works with modifications which, in the opinion of the Secretary of State, do not make any substantial change to the proposals comprised in the application.

The Order authorises the compulsory acquisition of land which has been acquired by statutory undertakers for the purposes of their undertakings. Representations were made by the statutory undertakers concerned about the application for the Order before the completion of the examination of the application, the representations contained objections to the compulsory acquisition of the land and the objections have not been withdrawn.

The Order will not come into force until it has been laid before Parliament and has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(d).

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 30A to 32, 32B to 34, 36, and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation

1. This Order may be cited as the Able Marine Energy Park Development Consent Order 2014.

Interpretation

- 2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);

(a) S.I. 2009/2264, as amended by S.I. 2010/493, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, and S.I. 2013/522.

(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(c) S.I. 2010/103, as amended by S.I. 2010/635.

(d) 1945 c.18 (9 & 10 Geo 6), and 1965 c. 43. Section 1 was repealed in part by the Statute Law (Repeals) Act 1974. The remainder amends the Statutory Orders (Special Procedure) Act 1945, ss 3(1), (3), 4(1), (2), 9(a), 10 (3).

“the 1961 Act” means the Land Compensation Act 1961**(b)**;

“the 1965 Act” means the Compulsory Purchase Act 1965**(c)**;

“the 1980 Act” means the Highways Act 1980**(d)**;

“the 1984 Act” means the Road Traffic Regulation Act 1984**(e)**;

“the 1990 Act” means the Town and Country Planning Act 1990**(f)**;

“the 1991 Act” means the New Roads and Street Works Act 1991**(g)**;

“the 2008 Act” means the Planning Act 2008;

“AB Ports” means Associated British Ports, company reference number ZC000195, whose principal office is at 71-91 Aldwych, London WC2B 4HN;

“address” includes any number or address used for the purposes of electronic transmission;

“the approach channel” means the area bounded by co-ordinates (53°39.579’N, 00°13.223’W), (53°39.094’N, 00°12.296’W), (53°38.956’N, 00°12.570’W), (53°38.972’N, 00°12.631’W) and (53°38.956’N, 00°12.570’W) and shown on sheets 8 and 9 of the works plans;

“area of jurisdiction” means the area within the limits of the harbour;

“area of seaward construction activity” means the area of the sea within the Order limits;

“authorised development” means the nationally significant infrastructure project and associated development described in Schedule 1 (authorised development) and any other

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- (a) 1847 (10 & 11 Vict) c. 27. Sections 12 and 13 were amended by SR & O 1924/1370, section 1 of the Crown Estates Act 1956 (c. 53), and section 1 of the Crown Estate Act 1961 (c. 55). Sections 5, 24, 94 and 95 were repealed by the Statute Law (Repeals) Act 1993 (c. 50); section 26 was repealed by section 56(4) of, and Schedule 11 to, the Courts Act 1971 (c. 23); section 28 was amended by section 141 of, and Schedule 11 to, the Post Office Act 1969 (c. 48); sections 28, 54, 67 and 98 were amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48); section 71 was amended by S.I.1987/37; section 91 was repealed by the Statute Law Revision Act 1894 (c.56); section 93 was repealed by the Statute Law Revision Act 1875 (c.66); and section 96 was repealed by the Perjury Act 1911 (c. 6), section 17. There are other amendments to the 1847 Act which are not relevant to this Order.
- (b) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (c) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991(c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (d) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by and section 1(3) was amended by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (e) 1984 c. 27.
- (f) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (g) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the berthing pocket” means the area bounded by co-ordinates (53°39.506’N, 00°13.416’W), (53°39.496’N, 00°13.448’W), (53°39.515’N, 00°13.463’W), (53°39.537’N, 00°13.376’W), (53°38.972’N, 00°12.631’W) and (53°38.946’N, 00°12.678’W) and shown on sheets 4, 8 and 9 of the works plans;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“Centrica” means Centrica Plc, company number 03033654, whose principal office is at Millstream, Maidenhead Road, Windsor, Berkshire, SL4 5GD, and all of its subsidiaries, and Group companies, transferees, assignees, etc., including but not limited to Centrica KPS Ltd, Centrica Storage Limited and Centrica Energy;

“Cherry Cobb sands breach” means the area bounded by co-ordinates (53°39.427’N, 00°08.633’W), (53°39.457’N, 00°08.581’W), (53°39.554’N, 00°08.737’W) and (53°39.524’N, 00°08.789’W);

“the Company” means Able Humber Ports Limited, company number 107029, registered at Ogier House, The Esplanade, St Helier, Jersey, JE4 9WG and whose UK branch is at Able House, Billingham Reach Industrial Estate, Billingham TS23 1PX;

“the compensation environmental management and monitoring plan” means the plan for environmental management and monitoring on the north bank of the River Humber referred to in paragraph 19(1) of Schedule 11 (requirements);

“compulsory acquisition notice” means a notice served in accordance with section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act;

“the Conservancy Authority” means AB Ports in its role as harbour authority for the River Humber;

“C.GEN” means C.GEN Killingholme Limited, company number 06422434, whose principal office is at 130 Shaftesbury Avenue, London, W1D 5EU;

“C.RO” means C.RO Ports (Killingholme) Limited, company number 00278815, whose principal office is at Clough Lane, North Killingholme, North Lincolnshire, DN40 3LX;

“the dockmaster” means the dockmaster appointed by the Harbour Authority under this Order;

“the design drawings” means the design drawings submitted under regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as the design drawings by the Secretary of State for the purposes of this Order;

“the ecology plans” means the plans certified as the ecology plans by the Secretary of State for the purposes of this Order;

“environmental management and monitoring plan” means all or any of the compensation environmental management and monitoring plan, the marine environmental management and monitoring plan and the terrestrial environmental management and monitoring plan;

“E.ON” means E.ON UK Plc whose registered office is at Westwood Way, Westwood Business Park, Coventry, West Midlands CV4 8LG (company registration number 02366970);

“harbour” means the authorised development within the limits of the harbour, and includes any works, land, buildings, ancillary works, plant, property and conveniences connected with it, as from time to time existing within the limits of the harbour;

“the Harbour Authority” means the Company in its capacity as harbour authority established by article 8 (jurisdiction of the Harbour Authority), or to the extent of any transfer under article 13(1)(a) (consent to transfer benefit of order), any transferee;

“the harbour master” means the harbour master appointed by the Conservancy Authority for the purposes of the Humber Conservancy Acts 1852 to 1951^(a) and the Humber Harbour Reorganisation Scheme 1966 Confirmation Order 1967^(b) to be a harbour master for an area that includes the area of jurisdiction and includes the harbour master’s deputies and assistants;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“level of high water” means the level of mean high-water springs;

“limits of deviation” means the limits of deviation shown on the works plans;

“limits of the harbour” means the boundary line shown on the plan at Schedule 10 (limits of harbour);

“maintain” includes to inspect, repair, adjust, alter, remove, reconstruct or replace and any derivative of “maintain” is to be construed accordingly;

“the marine environmental management and monitoring plan” means the plan for environmental management and monitoring below the high water mark referred to at paragraph 19(2) of Schedule 11;

“MMO” means the Marine Management Organisation;

“Network Rail” means Network Rail Infrastructure Limited, company number 02904587 registered at Kings Place, 90 York Way, London N1 9AG;

“Order land” means the land shown on the land plans as within the boundary of land required for or affected by the proposed development, and described in the book of reference;

“the Order limits” means the limits shown as the limits within which the authorised development and works may be carried out on the works plans;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981^(c);

“the planning application drawings” means the drawings referred to in paragraph 6(a) of Schedule 11;

“plans” include sections, elevations, drawings, specifications, programmes, method statements and hydraulic information;

“the pumping station outfall” means the area bounded by co-ordinates (53°38.993N, 00°13.188W), (53°38.956N, 00°13.085W), and (53°38.926N, 00°13.138W) and shown on sheets 3 and 9 of the works plans;

“the quay limits” means the area bounded by co-ordinates (53°39.457’N, 00°13.681’W), (53°39.464’N, 00°13.662’W), (53°39.447’N, 00°13.645’W), (53°39.487’N, 00°13.546’W), (53°39.475’N, 00°13.511’W), (53°39.506’N, 00°13.416’W), (53°38.946’N, 00°12.678’W), (53°38.876’N, 00°12.849’W), (53°38.984’N, 00°13.165’W) and (53°38.985’N, 00°13.178’W) and shown on sheets 8 and 9 of the works plans;

“relevant planning authority” means the local planning authority for the area in which the relevant land to which the provisions of this Order apply is situated;

“requirement” means any requirement set out in the relevant paragraph of Schedule 11;

“the rights of way plans” means the plans certified as the rights of way plans by the Secretary of State for the purposes of this Order;

“the sections” means the sections referred to in paragraph 6(c) of Schedule 11;

“statutory undertaker” means a person falling within the definition of statutory undertaker in section 127(8), 128(5) or 129(2) of the 2008 Act;

(a) 1852 c. cv; 1868 c. lviii; 1871 c. civ; 1876 c. cxxix; 1899 c. cci; 1905 c. clxxix; 1907 c. xcvi; 1951 c. xv.

(b) S.I. 1968/237.

(c) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageway, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the terrestrial environmental management and monitoring plan” means the plan for environmental management and monitoring above the high water mark on the south bank of the River Humber referred to at paragraph 19(3) of Schedule 11;

“tidal work” means so much of any work or operation authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“turning area” means the area bounded by co-ordinates (53°39.406’N, 00°12.893’W), (53°39.414’N, 00°12.524’W), (53°39.112’N, 00°12.261’W) and (53°39.094’N, 00°12.296’W) and shown on sheets 8 and 9 of the works plans.

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and articles 12 (benefit of order) and 13 (consent to transfer benefit of order);

“the undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

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

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

Incorporation of the 1847 Act

3.—(1) With the exception of sections 6 to 23, 25, the proviso to section 28, section 31, the proviso to section 32, sections 35, 36, 38, 39, 42, 43, 45, 48 to 50, 53 to 55, 59 to 64, 66 to 69, 71 to 73, 76 and 79 to 90, 92, 97, 98 and 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraph (2).

(2) In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the undertaker;
- (c) the expression “the harbour, dock or pier” means the authorised development within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master”, in relation to the authorised development means the harbour master as defined in article 2(1) (interpretation);

- (g) the definition of “vessel” in article 2(1) is to be substituted for the definition in section 3 (interpretations in this and the Special Act) of the 1847 Act; and
- (h) any requirement to comply with a notice or direction given by the harbour master is to be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction must also comply with any relevant notice or direction given by AB Ports or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

Modification of enactments

4.—(1) Sections 25 and 26 of the River Humber Conservancy Act 1852(a), section 9 (licences for execution of works) of the Humber Conservancy Act 1899(b) and section 6(2) (no erections in Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905(c) do not apply to the authorised development.

(2) The requirement to obtain consent under section 23(1) of the Land Drainage Act 1991(d) does not apply to the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order and to the requirements in Schedule 11 (requirements) the undertaker is granted development consent for the authorised development, to be carried out within the Order limits.

(2) Subject to article 6 (limits of deviation) the authorised development may only be constructed or carried out in the lines and situations shown on the works plans and at the levels shown on the sections.

Limits of deviation

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

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 1 metre upwards; or
 - (ii) to any extent downwards as may be found necessary or convenient.

Period for completion of work

7. If the authorised development is not completed within 10 years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights granted by this Order to the undertaker for making and maintaining the works cease except as to so much of them as is then substantially commenced.

(a) 1852 c. cxxx.
(b) 1899 c. cci.
(c) 1905 c. clxxix.
(d) 1991 c. 59.

Jurisdiction of the Harbour Authority

8.—(1) Regardless of the functions of AB Ports exercisable within its limits, the Company is to be the harbour authority for the area of jurisdiction.

(2) Regardless of any provision of the 1847 Act as incorporated by article 3 (incorporation of the 1847 Act), the area within which the Harbour Authority and the dockmaster may exercise their functions under this Order is to be the area of jurisdiction.

(3) The jurisdiction of the Harbour Authority over vessels within the area of jurisdiction does not extend to—

- (a) any vessel unless it is at anchor or otherwise moored or is causing an obstruction within the area of jurisdiction; or
- (b) signalling or any other activity connected with the movement of the vessel.

(4) Where any person referred to in paragraph (5)(a) considers that there is an actual or anticipated conflict between—

- (a) the exercise of any function of any person mentioned in paragraph (5)(a); and
- (b) the exercise of any function of any person mentioned in paragraph (5)(b),

then that person may give notice to the relevant person in paragraph (5)(b).

(5) The persons referred to in paragraph (4) are—

- (a) AB Ports, C.RO and the harbour master; and
- (b) the Harbour Authority and the dockmaster.

(6) The notice referred to in paragraph (4) must set out any requirements concerning the exercise of the relevant function by the relevant person mentioned in paragraph (5)(b).

(7) The requirements referred to in paragraph (6) may—

- (a) make general provision in relation to the exercise of functions over time; or
- (b) make specific provision about the exercise of a particular function or functions on a particular occasion.

(8) If—

- (a) a notice sets out requirements falling within paragraph (7)(a) it must be made in writing; and
- (b) a notice sets out requirements falling within paragraph (7)(b) it may be made in writing or in any other manner considered appropriate by the person giving the notice.

(9) On receipt of a notice given under paragraph (4), the recipient of the notice must comply with the notice.

(10) Except where expressly provided elsewhere in this Order, no person mentioned in paragraph (5)(b) is obliged to seek any permission or otherwise notify any person mentioned in paragraph (5)(a) prior to exercising any function.

(11) Subject to the requirements of any notice given under paragraph (4), the functions of the Harbour Authority and the dockmaster must be exercised in accordance with Part 1 of Schedule 9 (for the protection of the Humber Conservancy) and Part 6 of Schedule 9 (for the protection of C.RO).

Agreements entered into by the Company etc.

9. Any agreement or undertaking entered into by the Company before the coming into force of this Order in connection with the proposed exercise of its functions as Harbour Authority is binding upon the Harbour Authority regardless of the fact that it was entered into by the Company before it was established as the Harbour Authority by article 8 (jurisdiction of the Harbour Authority) unless any provision of the agreement or undertaking would be outside the statutory functions of the Harbour Authority.

Maintenance of authorised development

10. The undertaker may at any time maintain the authorised development and within the limits of the harbour, from time to time relay temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under it provides otherwise.

Provision of works

11.—(1) The undertaker may from time to time within the area of jurisdiction provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the authorised development or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without limitation on the scope of paragraph (1) the undertaker may within the area of jurisdiction carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including—

- (a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
- (c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

(3) Article 3 of, and Part 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995^(a) apply as if this Order were a grant of planning permission.

Benefit of Order

12. Subject to article 13 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the Company.

Consent to transfer benefit of Order

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

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related rights as may be so agreed.

(2) The powers of paragraph (1)(a) may only be exercised by the Company or a transferee.

(3) A lessee (“the granting lessee”) may not make a grant under paragraph (1)(b)—

- (a) for a longer period than the period of the grant to the granting lessee; or
- (b) conferring any benefit or right that is not conferred by the grant to the granting lessee.

^(a) SI 1995/418. Relevant amending instruments are S.I. 1999/293, S.I. 2003/2155 and S.I. 2011/1824.

(4) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

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

(6) Before giving consent under this article, the Secretary of State must consult the harbour master and such other parties as the Secretary of State thinks appropriate.

Guarantees in respect of payment

14.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers conferred by Part 5 (powers of acquisition) unless either guarantees or alternative forms of security for that purpose in respect of—

- (a) the liabilities of the undertaker to pay compensation under this Order; and
- (b) the liabilities of the undertaker to construct and maintain the compensatory environmental habitat referred to at paragraph 4(a) of Schedule 1 (authorised development) and any additional compensatory habitat identified in the compensation environmental management and monitoring plan,

are in place which have been approved by the relevant planning authority.

(2) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.

PART 3 STREETS

Street works

15.—(1) The undertaker may, for the purposes of the authorised development, enter on any of the streets specified in Schedule 2 (streets subject to street works) within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Temporary stopping up of streets

16.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians and, where reasonably practicable, vehicles going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters shown on the rights of way plan, in column (3) of that Schedule.

(4) The undertaker must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

17.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access to a public highway, or improve existing means of access to a public highway, in the locations specified in columns (1) and (2) of Schedule 4 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access to a public highway or improve existing means of access to a public highway, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for approval under paragraph (1)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.

Agreements with street authorities

18.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street required as a result of the exercise of the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 15(1) (street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Public rights of way

19.—(1) With effect from the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan, the section of each public right of way (being a footpath) specified in columns (1), (2) and (3) of Schedule 5 (footpaths to be stopped up) is extinguished.

(2) With effect from that same date, the alternative section of each footpath specified in column (4) of Schedule 5 is created.

(3) In this article—

“implementation plan” means the plan referred to at requirement 11 in Schedule 11 (requirements); and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

20.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works further to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(b) (requirement for an environmental permit).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, or a sewerage undertaker; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675, to which there are amendments not relevant to this Order.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(d) 1991 c. 57.

Protective work to buildings

21.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 57 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required upon entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Nothing in this article overrides any requirement to obtain permits or consents under the Conservation of Habitats and Species Regulations 2010(a) or the Wildlife and Countryside Act 1981(b).

Tidal works not to be executed without approval of Secretary of State

23.—(1) Unless its construction has commenced within 5 years of the coming into force of this Order, no tidal work is to be constructed, altered or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

(2) If a tidal work is constructed, altered or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

(a) S.I. 2010/490, as amended by S.I. 2011/625 and S.I. 2012/1927.
 (b) 1981 c. 69.

- (a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in doing so is recoverable from the undertaker.

Abatement of works abandoned or decayed

24.—(1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or allowed to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in doing so is recoverable from the undertaker.

Survey of tidal works

25. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination is recoverable from the undertaker.

Lights on tidal works etc. during construction

26.—(1) The undertaker must, at or near—

- (a) a tidal work, including any temporary work; or
- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 11 (provision of works), within the area of seaward construction activity,

during the whole time of the construction, alteration or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State and the Conservancy Authority or, failing agreement between them, the Secretary of State may from time to time direct.

(2) If the undertaker fails to comply in any respect with any requirements of a direction given under this article, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision against danger to navigation

27.—(1) In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify the Conservancy Authority and Trinity

House and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House and the Conservancy Authority or, failing agreement between them, the Conservancy Authority may from time to time direct.

(2) If the undertaker fails to notify the Conservancy Authority or Trinity House as required by this article or to comply in any respect with any requirements of a direction given under this article, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Permanent lights on tidal works

28.—(1) After the completion of a tidal work the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Conservancy Authority may from time to time direct.

(2) If the undertaker fails to comply in any respect with any requirements of a direction given under this article, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to appropriate

29.—(1) Regardless of anything in section 33 (harbour, dock, and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, the undertaker may from time to time set apart and appropriate any part of the harbour for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.

(2) No person or vessel may make use of any part of the harbour so set apart or appropriated without the consent of the harbour master, and—

- (a) the harbour master may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, extend and apply with the necessary modifications to any such vessel.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

30.—(1) The undertaker may acquire compulsorily so much of the Order land as is shown washed pink on the land plans as is required for the authorised development or to facilitate it.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) No interest in Crown land may be acquired and no authorised development may be carried out on Crown land pursuant to this Order unless the appropriate Crown authority consents to the acquisition of that Crown land to enable the authorised development.

(5) This article is subject to article 40 (temporary use of land for carrying out the authorised development).

Power to override easements and other rights

31.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—

- (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(5) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(6) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 or 10 of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
 - (i) the compensation is to be estimated in connection with a purchase under those acts; or
 - (ii) the injury arises from the execution of works on or use of land acquired under those acts.

(7) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(8) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

Compulsory acquisition of land – incorporation of the mineral code

32. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) are incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

33.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 36 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The authority conferred by article 40 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), but nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

34.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is later, the land over which any new rights is acquired is discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 38 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Private rights of way

35.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 42 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land,
- (ii) the undertaker's appropriation of it,
- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

36.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

(b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

37.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 30 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 38 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

38.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions)) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat is, unless the undertaker agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

39.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

40.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land of which temporary possession may be taken, after the end of the period of 1 year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 6;
- (b) in the case of any Order land, after the end of the period of 2 years beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment

in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights over any part of that land under article 34 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 37 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

41.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

42. The undertaker may only extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers if such extinguishment, removal or repositioning is necessary for carrying out the authorised development.

Recovery of costs of new connections

43.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 42 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 42, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003^(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

44. The undertaker is deemed to be granted a licence under Part 4 (marine licences) of the Marine and Coastal Access Act 2009^(b) to carry out the works described in Schedule 8 (deemed marine licence), subject to the provisions set out in that Schedule, which are to be treated as licence conditions.

Felling or lopping of trees

45.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) 2003 c. 21.

(b) 2009 c. 23.

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation orders

46.—(1) The undertaker may fell or lop any tree described in Schedule 7 (trees subject to tree preservation orders) and identified on the land plans, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Railway and navigation undertakings

47.—(1) Subject to the following provisions of this article, the undertaker may not under article 15 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Arrangements with Her Majesty's Revenue and Customs

48. The undertaker and Her Majesty's Revenue and Customs may enter into any such agreement or arrangement as they think fit to provide for, or to facilitate, the assessment, collection or

recovery of charges, including an agreement or arrangement as to the provision and maintenance of accommodation at the harbour.

Application of landlord and tenant law

49.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

50. Development consent granted by this Order within the area of jurisdiction is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 27; or
- (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

52. Schedule 9 (protective provisions) has effect.

Saving for Trinity House

53. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Planning etc. jurisdiction

54.—(1) During the period beginning with the date on which this Order comes into force and ending on the accretion date, the area within the limits of deviation for Work No. 1 is, for the purposes of the Control of Pollution Act 1974(a) and the 1990 Act, annexed to and incorporated with the area of the relevant planning authority.

(2) In this article, “accretion date” means the date on which the works authorised by this Order have been completed or, if earlier, the date on which the benefits and rights granted by this Order cease to have effect under article 7 (period for completion of work).

Certification of plans etc

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

- (a) the book of reference;
- (b) the design drawings;
- (c) the ecology plans;
- (d) the land plans;
- (e) the rights of way plans;
- (f) the environmental statement as defined in paragraph 1 of Schedule 11 (requirements); and
- (g) the works plans,

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

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

(a) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 16 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

Service of notices

56.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(a) 1978 c. 30. There are amendments to this Act which are not relevant to this Order.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

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

Requirements - appeals

58.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

13th January 2014

Robert Goodwill
Parliamentary Under Secretary of State
Department for Transport

SCHEDULES

SCHEDULE 1

Article 5

AUTHORISED DEVELOPMENT

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

1. In the district of North Lincolnshire—

Work No. 1—a quay of solid construction comprising a quay wall and reclamation behind it on the south side of the River Humber, the quay wall being enclosed by the existing flood wall and the quay limits.

ASSOCIATED DEVELOPMENT

2. In the district of North Lincolnshire—

Work No. 2— improvement works to the junction of Humber Road and Rosper Road;

Work No. 3—a passing loop on the North Killingholme Branch Line;

3. In the district of North Lincolnshire and within the Order limits—

- (a) dredging the approach channel, the berthing pockets, the turning area, the pumping station outfall and the other areas within which dredging is deemed to be licensed by virtue of the deemed marine licence and land reclamation behind the new quay wall (Work No. 1) that does not form part of the quay in accordance with Schedule 8 (deemed marine licence);
- (b) the provision of onshore facilities for manufacture, assembly and storage;
- (c) improvement works to Rosper Road and the A160;
- (d) surface and foul water disposal arrangements;
- (e) lighting;
- (f) parking;
- (g) ecological mitigation works in accordance with the environmental management and monitoring plans; and
- (h) the re-siting of apparatus.

4. In the district of the East Riding of Yorkshire and within the Order limits—

- (a) the development of compensatory environmental habitat in accordance with the environmental management and monitoring plans, to include dredging and tidal works licensed in accordance with Schedule 8; and
- (b) dredging the Cherry Cobb Sands breach.

SCHEDULE 2

Article 15

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
District of North Lincolnshire	Rosper Road
	Chase Hill Road

SCHEDULE 3

Article 16

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
District of North Lincolnshire	Rosper Road	Between points C and D as shown on the rights of way plan
	Rosper Road	Between points E and F as shown on the rights of way plan
	Eastfield Road	Between points G and H as shown on the rights of way plan

SCHEDULE 4

Article 17

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
District of North Lincolnshire	Improved access from Rosper Road shown at the point marked A on sheet 2 of the rights of way plan
	New access from Rosper Road shown at the point marked A on sheet 3 of the rights of way plan

SCHEDULE 5

Article 19

FOOTPATHS TO BE STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New footpath to be substituted</i>
District of North Lincolnshire	Footpath 50	From point F1 to point F2 as shown in orange on the rights of way plan	A footpath between points F1 and F3 as shown in blue on the rights of way plan
District of the East Riding of Yorkshire	Paull Footpath 6	From point F4 to point F5 as shown in orange on the rights of way plan	A footpath between points F4 and F5 as shown in blue on the rights of way plan

SCHEDULE 6

Article 40

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
District of North Lincolnshire	01002, 01003	Works to A160 / Rosper Road junction	Works to Rosper Road
	02001, 03001, 04001, 05001	Works to Rosper Road	Works to Rosper Road
	02009, 02010, 02011, 02012, 03027	Footpath diversion	Footpath diversion
	03026	Private track diversion	Private track diversion

SCHEDULE 7

Article 46

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> Area	<i>(2)</i> <i>Identification of tree shown on ecology plans</i>	<i>(3)</i> <i>Work to be carried out</i>
District of North Lincolnshire	Marked with T1 on sheet 3 of the ecology plans	Felling to allow authorised development to proceed
	Marked with T2 on sheet 3 of the ecology plans	Felling to allow authorised development to proceed

DEEMED MARINE LICENCE

PART 1

INTRODUCTORY

Interpretation

1.—(1) In this Schedule:—

“the 2009 Act” means the Marine and Coastal Access Act 2009(a);

“the Centrica outfall” means the area bounded by co-ordinates (53°39.670’N, 00°13.696’W), (53°39.713’N, 00°13.570’W), (53°39.666’N, 00°13.523’W) and (53°39.623’N, 00°13.647’W) and shown on sheet 5 of the works plans;

“clay” means dredged materials with a diameter of less than 31.25 micrometres;

“the E.ON outfall” means the area bounded by co-ordinates (53°39.557’N, 00°13.561’W), (53°39.600’N, 00°13.426’W), (53°39.550’N, 00°13.382’W) and (53°39.508’N, 00°13.517’W) and shown on sheet 5 of the works plans;

“earthworks season” means the period from April to October or such other period set out in British Standard 6031;

“gravel” means dredged materials with a diameter of at least 2 and less than 64 millimetres;

“HU080” means the area bounded by co-ordinates (53°36.30’N, 00°00.62’W), (53°36.47’N, 00°02.32’W), (53°36.95’N, 00°03.47’W) and (53°36.55’N, 00°00.42’W);

“HU082” means the area bounded by co-ordinates (53°37.47’N, 00°02.27’W), (53°37.25’N, 00°00.80’W), (53°36.97’N, 00°00.81’W) and (53°37.12’N, 00°02.29’W);

“licence holder” means the undertaker and any agent or contractor acting on its behalf;

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity described in Part 2 of this Schedule;

“marine piles” means piles that will be in a free water condition during construction;

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“named vessel” means a vessel whose name and type has been notified to the MMO in writing;

“percussive piles” means driven piles but excludes the handling, placing and vibro-driving of piles;

“sand” means dredged materials with a diameter of at least 62.5 micrometres and less than 2 millimetres;

“sea bed” means the ground under the sea; and

“silt” means dredged materials with a diameter of at least 31.25 and less than 62.5 micrometres.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

(3) Tonnages of dredged materials are expressed in wet tonnes.

(a) 2009 c.23.

Addresses

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this Schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH and where contact to the MMO District Office is required, the following contact details should be used: Estuary House, Wharnccliffe Road, Grimsby, Lincolnshire, DN31 3QL. Tel: 01472 355112 email: grimsby@marinemangement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this Schedule is infrastructure@marinemangement.org.uk.

PART 2

LICENSED ACTIVITIES

3. For the purpose of constructing and maintaining the authorised development the licence holder may carry out the activities set out in this Part as if those activities were licensed under the 2009 Act.

Construction of the quay

4.—(1) The licence holder is permitted to construct the quay (Work No. 1) and carry out associated land reclamation within the quay limits and according to the following specification:—

- (a) no more than 650 tubular and 1300 sheet steel perimeter piles may be driven into the bed of the estuary to form the external face of the quay, where such piles are to be installed from named vessels moored in the estuary;
- (b) 2 return walls may be constructed between the ends of the quay and the existing flood defence wall, comprising no more than 500 tubular and 1000 sheet piles driven into the bed of the estuary from named vessels and also earthwork revetments with no more than 100,000 tonnes of rock armour protection, such revetments and rock armour to be constructed using land-based plant;
- (c) no more than 750 flap anchor piles may be fixed to the landward face of the perimeter piles and seated in a trench on the bed of the estuary, to be installed from named vessels moored in the estuary;
- (d) no more than 100 steel anchor piles may be driven into the bed of the estuary and fixed to perimeter piles, to be installed from named vessels moored in the estuary;
- (e) the area of estuary approximately 50 metres landward of the quay perimeter piles may be reclaimed by depositing marine dredged sands and gravels from named vessels using rainbowing techniques;
- (f) the remaining area of estuary enclosed by the quay perimeter piles and the two return walls may be reclaimed using marine dredged sands and gravels by constructing two granular dams that extend from the existing flood defence wall to the area reclaimed under paragraph (e), so that the dams divide the remaining reclaim area into three approximately equal cells, after which named vessels are to pump fluidised granular material into each cell in sequence, allowing estuarine water that is retained within each cell to overflow the dams as the fluidised material is deposited and settles within the cell, such activity to continue until all cells attain their design levels; and
- (g) steel plates may be attached to the perimeter piles by welding and bolting, and then a fender may be attached to each steel plate by bolts, all such works being undertaken from a man basket suspended from a crane located on land.

(2) Drainage and disposal outfalls and cooling water outfalls may be incorporated into the quay but for the avoidance of doubt the use of these outfalls is not licensed by this Schedule.

(3) Monitoring equipment fixed to buoys must be deployed at locations in the estuary before, during and after the piling works permitted by sub-paragraph (1) in accordance with the marine environmental management and monitoring plan.

Temporary dolphins

5.—(1) The licence holder is permitted to construct and remove up to seven temporary dolphins within the berthing pocket, such that each dolphin comprises three tubular steel piles driven into the bed of the estuary from named plant moored in the estuary, after which the piles must be braced with interconnecting steelwork.

(2) Monitoring equipment fixed to buoys must be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with the marine environmental management and monitoring plan referred to in paragraph 15.

(3) Each temporary dolphin must be removed as soon as practicable once the activities for which they have been constructed have been completed.

Berthing pocket infill

6. Following or during the dredging of the berthing pocket, the licence holder is permitted to deposit up to 250,000 tonnes of gravel and rock from named vessels into the berthing pocket up to a maximum level of -11.5 metres chart datum and must not undertake maintenance dredging below the level of -11 metres chart datum.

Pumping station

7.—(1) The licence holder is permitted to construct a pumping station at the pumping station outfall according to the following specification—

- (a) a temporary steel cofferdam for the installation of up to six drainage pipes may be installed through the existing flood defence and extend onto the foreshore, after which the flood defence wall must be reinstated to its original seaward profile using inert soil materials and concrete;
- (b) a stone mattress may be placed within the drainage channel created under (a) over a distance of 20 metres seawards of the outfall pipes; and
- (c) a pumping station may be constructed such that its seaward extent is above the stone mattress.

(2) Works outside the cofferdam must be undertaken using land based plant operating from a berm formed within the south-eastern return wall of the quay.

Compensation site creation

8. The licence holder is permitted to remove a 250 metre section of the existing flood wall to create the Cherry Cobb Sands breach under the following conditions—

- (a) the Cherry Cobb Sands breach must not be created until a new flood defence has been constructed landward of the existing flood defence;
- (b) the Cherry Cobb Sands breach must not be created until a channel has been excavated from the site of the breach to the foreshore at the level of the breach; and
- (c) all material is to be removed using land-based plant.

Rock armour

9. The licence holder is permitted to deposit rock armouring to the northern extent of the flood defence breach at Cherry Cobb Sands under the following conditions—

- (a) the quantity of rock to be placed must be agreed with the MMO at least 4 weeks prior to works commencement;
- (b) the exact location must be agreed with the MMO at least 4 weeks prior to works commencement; and
- (c) the placement of rock armouring must only be carried out in accordance with the agreed location and rock quantity.

Temporary bog matting

10.—(1) The licence holder is permitted to deposit temporary bog matting upon the foreshore at the Cherry Cob Sands site for the purposes of construction plant movement.

(2) The licence holder must ensure the bog matting is removed as soon as practicable once the activities for which they have been deposited have been completed.

Capital dredging

11.—(1) The licence holder is permitted to carry out capital dredging at the following locations—

- (a) the area within the quay limits to a depth of -6.5 metres Chart Datum;
- (b) the berthing pocket to a depth of -14.5 metres Chart Datum;
- (c) the approach channel to a depth of -9 metres Chart Datum;
- (d) the turning area to a depth of -9 metres Chart Datum;
- (e) the pumping station outfall to a depth of +2.0 metres Chart Datum; and
- (f) the Cherry Cobb Sands breach to a depth of +3.0 metres Chart Datum.

(2) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table—

<i>Location</i>	<i>Material</i>	<i>Maximum tonnage per year</i>	<i>Deposit location</i>	<i>Total licensed tonnage</i>
Area within the quay limits	Gravel	50,000	HU080	725,000
	Sand	110,000		
	Silt	390,000		
	Clay	175,000	HU082	
The berthing pocket	Gravel	5,000	HU080	1,835,000
	Sand	50,000		
	Silt	145,000		
	Clay	535,000	HU082	
	Clay	1,100,000	The terrestrial area landward of the existing Killingholme Marshes flood defence wall	
The approach channel	Gravel	150,000	Within the quay limits	1,650,000
	Gravel	150,000	HU080	
	Sand	600,000		
	Silt	500,000		
	Clay	250,000	HU082	
The turning area	Gravel	35,000	HU080	250,000
	Sand	95,000		
	Silt	80,000		
	Clay	40,000	HU082	
The pumping station outfall	Sand	500	HU080	8,000
	Silt	7,500		
The Cherry Cobb Sands breach	Sand	2,000	If the dredged material is suitable, the area within the proposed managed realignment site	10,000
	Silt	8,000		

Maintenance dredging

12.—(1) The licence holder is permitted to carry out maintenance dredging at the following locations within the period specified in paragraph 14(3)—

- (a) the berthing pocket to a depth of -11 metres Chart Datum;
 - (b) the approach channel to a depth of -9 metres Chart Datum;
 - (c) the turning area to a depth of -9 metres Chart Datum;
 - (d) the E.ON outfall to keep it free of siltation by means of plough dredging;
 - (e) the Centrica outfall to keep it free of siltation by means of plough dredging;
 - (f) the pumping station outfall to a depth of +2.0 metres Chart Datum; and
 - (g) the Cherry Cobb Sands breach to a depth of +3.0 metres Chart Datum.
- (2) The dredging under sub-paragraph (1) may only be carried out for the purpose of—
- (a) maintaining the authorised development;
 - (b) maintaining access to the authorised development;
 - (c) maintaining access to neighbouring developments; and
 - (d) removing siltation caused by the authorised development.

(3) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table—

<i>Location</i>	<i>Material</i>	<i>Maximum tonnage per year</i>	<i>Deposit location</i>	<i>Total licensed tonnage</i>
The berthing pocket	Sand	150,000	HU080	3,225,000
	Silt	925,000		
The approach channel	Sand	10,000	HU080	150,000
	Silt	40,000		
The turning area	Sand	10,000	HU080	150,000
	Silt	40,000		
The E.ON outfall	Sand	500	None	7,500
	Silt	2,000		
The Centrica outfall	Sand	500	None	7,500
	Silt	2,000		
The pumping station outfall	Sand	50	HU080	300
	Silt	50		

PART 3

ENFORCEMENT

13. Any breach of this Schedule does not constitute a breach of this Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

PART 4

CONDITIONS

General conditions

14.—(1) The conditions set out at paragraphs 15 to 69 are licence conditions attached to the deemed marine licence granted by article 44 (deemed marine licence).

(2) For such of the licensed activities that involve the construction, alteration or improvement of works in or over the sea or on or under the sea bed, the conditions apply to any person who for the time being owns, occupies or enjoys any use of the licensed activity.

- (3) This licence is for 6 years from the date of coming into force of this Order whereby—
- (a) the construction and capital dredge activities are carried out within the first 3 years; and
 - (b) maintenance dredging is permitted within the second 3 years.

15.—(1) No licensed activities are to be carried out until 4 weeks after a marine environmental management and mitigation plan has been supplied to the MMO, Natural England and the Environment Agency in accordance with paragraph 19(2) of Schedule 11 (requirements).

(2) Before commencing any licensed activities, the licence holder must consult the harbour master, C.RO, E.ON and Centrica on the contents of the marine environmental management and monitoring plan in relation to those elements of the maintenance dredging licensed under paragraph 12 that may affect those parties' interests.

(3) The licence holder must have regard to any consultation responses received from the harbour master, C.RO, E.ON and Centrica.

16. No licensed activity is to be carried out until 4 weeks after a vessel movement management plan has been agreed in writing by the MMO, and the licensed activities must be carried out in accordance with the vessel movement management plan.

17. The MMO must be notified by the licence holder at least 10 working days before the commencement of any licensed activity of its acceptance of the provisions of this Schedule and that the undertaker and any agents or contractors employed by it to carry out the licensed activities have knowledge of the provisions of this Schedule.

18. The licence holder must ensure that the MMO District Marine Office is notified of the timetable of works and operations at least 10 days prior to the commencement of any licensed activity.

19. The MMO must be notified by the licence holder in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder at least 4 weeks before the commencement of the licensed activity.

20. The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder.

21. The licence holder must ensure that the names of vessels are provided to the MMO and agreed in writing at least 4 weeks prior to the commencement of works, such notification setting out—

- (a) the vessel type;
- (b) the vessel International Maritime Organization (IMO) number; and
- (c) the vessel owner or operating company.

22. The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by the master of any vessel being used to undertake any licensed activity, and that a copy of this Schedule is held on board any such vessel.

23. Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

Project wide conditions

24. The works must be carried out in accordance with a works schedule to be agreed in writing between the licence holder and the MMO prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the MMO.

25.—(1) The following dependencies apply to the licensed activities in paragraphs 4 to 12.

(2) If the licence holder carries out any of the activities licensed under paragraph 4 (construction of the quay), then it must:

- (a) carry out the activity licensed under paragraph 8 (compensation site creation) in the June following the creation of the compensation site, which in turn must be done during the first earthworks season following the commencement of the activity licensed under paragraph 4;
- (b) carry out the activity licensed under paragraph 7 (pumping station);
- (c) carry out the activity licensed under paragraph 12(1)(d) (the E.ON outfall maintenance dredging) unless agreed in writing with E.ON; and
- (d) carry out the activity licensed under paragraph 12(1)(e) (the Centrica outfall maintenance dredging) unless agreed in writing with Centrica.

(3) If the licence holder carries out the activity licensed under paragraph 11(1)(b) (berthing pocket capital dredging) then it must carry out the activity licensed under paragraph 6 (berthing pocket infill) but must not undertake maintenance dredging below the level of -11 metres Chart Datum.

26. The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Control Guidelines.

27.—(1) The licence holder must only work and access the works site within a defined and marked out area so as to limit personnel and plant access to the site.

(2) Co-ordinates (in WGS84) and plan diagrams of the work area and access routes must be submitted to the MMO at least 4 weeks prior to the commencement of works.

(3) The written approval of the co-ordinates and plan diagrams by the MMO is required prior to works commencing.

28. The licence holder must ensure that during the works all wastes are stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

29. The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of the works.

30.—(1) The licence holder must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment.

(2) Concrete and cement mixing and washing areas should be contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of run off entering a watercourse.

31.—(1) Prior to any works commencing below the level of Mean High Water Springs, the licence holder must submit detailed method statements to the MMO for approval for each stage of works at least 4 weeks prior to the commencement of works.

(2) All works must be undertaken in accordance with agreed and approved method statements.

32. The licence holder must install bunding and storage facilities to contain and prevent the release into the marine environment of fuel, oils and chemicals associated with plant, refuelling and construction equipment, ensuring that secondary containment is used with a capacity of not less than 110% of any container's storage capacity.

33.—(1) The licence holder must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team: 0870 785 1050 (office hours), 07770 977 825 (outside office hours) and dispersants@marinemanagement.org.uk or such replacement numbers or email address notified to the licence holder by the MMO in writing.

34. The licence holder must ensure that a Notice to Mariners is issued at least 10 days prior to works commencing warning of the start date for the construction of the works and updated as appropriate.

35. The licence holder must ensure that all materials used in construction of any part of the development (including the compensation site) are suitable and approved for use within the marine environment.

36.—(1) The licence holder must ensure that a protocol for archaeological discoveries (PAD) is in place before works commence for the reporting of unexpected remains made during construction activities. This protocol must draw upon the format outlined in the BMAPA/English Heritage (2005), COWRIE (2007) and the Crown Estate (2010) guidelines.

(2) This protocol must be submitted to the MMO at least 4 weeks prior to the commencement of works.

Piling conditions

37.—(1) No operations consisting of piling are to commence until a piling method statement has been submitted to and agreed in writing by the MMO, following consultation with the Environment Agency and Natural England, such statement to include the following—

- (a) the use of pile pads and pile shrouds at all times;
- (b) the maximum pile diameter to be 2.1 metres unless otherwise agreed in writing by the MMO, following consultation with Natural England and the Environment Agency;
- (c) soft start procedures to be followed to include a requirement for a soft start of at least 180 seconds for percussive piling of marine piles;
- (d) marine mammal observation (within 100 metres of the pile being driven) and the cessation of piling while any marine mammals are within this zone;
- (e) implementation of an active monitoring scheme under paragraph 39; and
- (f) details of the anticipated spread of piling activity throughout a working day.

(2) Percussive piling must only be carried out in accordance with the relevant piling method statement.

38. No operations consisting of piling are to commence until a cold weather piling restriction strategy is submitted and agreed with the MMO, following consultation with Natural England, such strategy to include—

- (a) a requirement for temporary cessation of percussive piling (other than to finish driving any pile that is in the process of being driven at the point of imposition of the temporary cessation) following 7 consecutive days of zero or sub-zero temperatures (such “freezing days” to be fully defined in the strategy);
- (b) the establishment of 3 temperature monitoring points within the Humber Estuary;
- (c) provision for the restriction on piling to be lifted on a probationary basis after 24 hours of above freezing temperatures if Meteorological Office forecasts indicate that freezing conditions will not return for the next 5 days (“the probationary period”) on the proviso that if any day within the probationary period is a freezing day the restriction on piling will be imposed at the end of that day; and
- (d) provision for the restriction on piling to be lifted entirely on expiry of the probationary period if none of the days in that period are freezing days (until such a time as the conditions in paragraph (a) are met).

(2) Percussive piling must only be carried out in accordance with the cold weather piling restriction strategy.

39.—(1) No development is to be commenced until an active monitoring scheme has been submitted to and agreed in writing by the MMO, following consultation with the harbour master, Environment Agency and Natural England, such scheme to include the following details—

- (a) the location of active monitoring buoys and the depth and design of sensors;
- (b) the frequency of measurement of temperature and dissolved oxygen;
- (c) 24 hours a day, 7 days a week monitoring of noise;

- (d) when monitoring is to commence and cease, to include a 2-week period of pre- and post-construction monitoring to establish baseline conditions and the return to baseline conditions respectively;
- (e) a log of the number and approximate locations of piling rigs that are in operation on any given day; and
- (f) details of how the monitored information will be accessed by or communicated to the site contractor, the harbour master, MMO, the Environment Agency and Natural England as necessary.

(2) The development must be carried out in accordance with the relevant active monitoring scheme.

(3) No percussive piling is to take place while the data from the relevant active monitoring scheme shows either the temperature to be above 21.5 degrees Celsius or dissolved oxygen to be below 5 milligrams per litre, or both.

40. No percussive piling is to take place between 7 April and 1 June inclusive in any calendar year.

41.—(1) Percussive piling is to be restricted at other times as follows:—

- (a) from 2 June to 22 July inclusive in any year, the maximum amount of percussive piling permitted within any 4-week period must not exceed—
 - (i) 101 hours where a single piling rig is in operation; or
 - (ii) a total of 168 hours where two or more rigs are in operation;
- (b) from 23 July to 10 September inclusive in any year, the maximum amount of percussive piling permitted within any week-long period must not exceed—
 - (i) 25 hours where a single piling rig is in operation; or
 - (ii) a total of 42 hours where 2 or more rigs are in operation;
- (c) from 11 September to 31 October inclusive in any year, the maximum amount of percussive piling permitted within any 4-week period must not exceed—
 - (i) 134 hours where a single piling rig is in operation, or
 - (ii) a total of 224 hours where 2 or more rigs are in operation;
- (d) from 1 November in any year to 6 April in the following year inclusive, the maximum amount of percussive piling permitted within any eight-week period must not exceed—
 - (i) 336 hours where a single piling rig is in operation; or
 - (ii) a total of 560 hours where 2 or more rigs are in operation.

(2) The measurement of time during each work-block must begin at the start of each timeframe, roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works.

42. No percussive piling is to take place before 0600 hours or after 2200 hours on any day.

43. The maximum diameter of marine piles is to be 2.1 metres unless otherwise agreed in writing with the MMO, following consultation with the harbour master, Natural England and the Environment Agency.

General dredging and disposal conditions

44. Conditions 32 to 69 apply to licensed activities consisting of dredging and disposal.

45.—(1) The licence holder must agree a dredge and disposal strategy with the MMO at least 4 weeks before the commencement of any licensed activities.

(2) All dredging and disposal activities must be carried out in accordance with the dredge and disposal strategy.

46. The licence holder must ensure that—

- (a) as a result of the capital dredging activities referred to in paragraph 11:
 - (i) no inerodible material and no more than 2,218,000 tonnes of erodible material site is disposed to site HU080; and
 - (ii) no erodible material and no more than 1,000,000 tonnes of inerodible material is disposed of to site HU082; and
- (b) as a result of the maintenance dredging activities referred to in paragraph 12 no inerodible material and no more than 1,180,100 tonnes of erodible material per year is disposed to site HU080.

47.—(1) The licence holder must ensure that certified returns of quantities of dredged material deposited under this licence are submitted to the MMO by 31 January (for the months August to January inclusive) and 31 July (for the months February to July inclusive) each year.

(2) The returns must specify the full licence number and amounts deposited (in tonnes) each calendar month at each authorised deposit area.

(3) Where no deposit is made in a given period a NIL return is required.

(4) The disposal method used must also be submitted with the returns.

48.—(1) The licence holder must ensure that dredged material is passed through grid screens no larger than 30 centimetres to minimise the amount of man-made materials disposed of at sea.

(2) Any man-made material must be separated from the dredged material and disposed of to land.

49. Should disposal of material be found to be the cause of any detrimental effects to the disposal site then disposal must cease with immediate effect.

Capital dredging and disposal conditions

50. The licence holder must ensure that during the course of disposal, non-erodible material is placed in the depressions of HU082, and that the site is filled to a gradient in keeping with the surrounding bathymetry and ensure that no depths within the disposal site are reduced to less than 5.3 metres below admiralty Chart Datum at its shallowest point.

51. The licence holder must undertake regular bathymetric surveys to ensure that the disposal of dredged material at site HU082 has been undertaken in line with the requirements of this licence.

52.—(1) The licence holder must ensure that no gravel is disposed of to HU080 until sampling of the existing seabed has been undertaken and an assessment made which demonstrates that disposal of gravel to the site is acceptable.

(2) The assessment must be submitted to and agreed by the MMO, prior to disposal activity being undertaken.

(3) If following the assessment gravel is found not to be suitable to disposal to site HU080 the gravel material must be reused or disposed of elsewhere.

53. The licence holder must ensure that during the course of disposal, material is distributed evenly over disposal site HU080.

54.—(1) The licence holder must employ methods to minimise resuspension of sediment during the construction and dredging operations.

(2) The methodology must be submitted to the MMO at least 4 weeks prior to the commencement of the works.

(3) Written approval by the MMO is required prior to works commencing.

Maintenance dredging and disposal conditions

55.—(1) The licence holder must undertake sampling and chemical analysis for contaminated sediments within the 6 months prior to the commencement of any maintenance dredge and disposal operation to ensure the material is still suitable for sea disposal.

(2) The Licence Holder must consult the MMO on the sampling plan and methodology for chemical analysis prior to sampling and analysis being undertaken.

(3) No disposal at sea can take place without the approval of the MMO.

56. The licence holder must ensure that during the course of disposal, material is distributed evenly over disposal site HU080.

57.—(1) The licence holder must monitor disposal site HU080 to ensure that the material is dispersing as predicted.

(2) A Monitoring Plan must be agreed in writing with the MMO at least 4 weeks prior to the commencement of works.

(3) The monitoring must be carried out in accordance with the Monitoring Plan agreed.

58.—(1) The licence holder must notify the Conservancy Authority of the need to update the Humber Maintenance Dredge Protocol and Water Framework Directive Compliance Baseline Document 2011 or any document replacing it (“the baseline document”), to incorporate the dredging and disposal of dredged material consented.

(2) The updated baseline document must be submitted with any subsequent application made to the MMO for maintenance dredging activities.

59. The berthing pocket must be maintained to no deeper than -11.0m CD to ensure that no gravel infill material migrates from the berthing pocket or is dredged and disposed of to unsuitable disposal grounds.

60.—(1) The licence holder must employ methods to minimise resuspension of sediment during dredging operations.

(2) The methodology must be submitted to the MMO at least 4 weeks prior to the commencement of the maintenance dredge.

(3) Written approval by the MMO to the methodology is required prior to the maintenance dredge commencing.

Placement of rock and gravel materials below mean high water springs

61.—(1) Any rock or gravel material to be placed within the marine environment must be from a recognised source agreed by the MMO.

(2) Details of such information must be provided to the MMO at least 4 weeks prior to the commencement of works.

62. Any rock armour surplus to that specified in paragraph 4(1)(b) must be returned to land.

63. Any rock or gravel surplus to that specified in paragraph 6 must be returned to land.

64.—(1) The licence holder must ensure that a full method statement and location of the transshipment area and barge approach routes is submitted to the MMO at least 4 weeks prior to the commencement of works.

(2) Written approval by the MMO is required prior to works commencing.

65. The licence holder must ensure that pre-works and post-works trawl surveys are conducted within any transshipment area and barge approach routes, or Fisheries Liaison Officers are employed on the transshipping vessel to observe all transshipment operations and record any losses.

66.—(1) The licence holder must ensure that any vessels used for rock and gravel transshipment or delivery operations are suitably constructed and loaded to prevent rock and gravel falling over the side by accident.

(2) Suitable screening must be used to prevent rock and gravel loss through drainage holes.

67. The licence holder must ensure that sea-going tug or tugs capable of towing the barge in a loaded condition can be made available within a 12 hour period to tow the barge to sheltered waters in adverse weather conditions.

68. Subject to paragraph 69, the licence holder must ensure that any rock misplaced or lost below mean high water springs is reported to the MMO District Marine Office within 48 hours, and located and recovered.

69. Any rock that is misplaced or lost below mean high water springs and cannot be recovered must be located and its position notified to the MMO within 48 hours.

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF THE HUMBER CONSERVANCY

*Interpretation***1.** In this Part of this Schedule—

“authorised works” means any work, operation or activity that the Harbour Authority is authorised by this Order to construct or carry out;

“environmental document” means—

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the Harbour Authority to the Secretary of State or the Conservancy Authority for the purposes of any tidal works approval under article 23 (tidal works not to be constructed without approval of the Secretary of State) or this Schedule; and

“the river” means the River Humber.

General

2.—(1) The provisions of this Part of this Schedule, unless otherwise agreed in writing between the Harbour Authority and the Conservancy Authority, have effect for the protection of the Conservancy Authority and the users of the river.

(2) For the purposes of this Part of this Schedule, the definition of “tidal work” is taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the Conservancy Authority, whether or not that authorised work is within the limits of the Conservancy Authority.

*Tidal Works: approval of detailed design***3.**—(1) Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for approval under article 23 (tidal works not to be constructed without approval of the Secretary of State);
- (b) agreeing a vessel movement management plan with the MMO under paragraph 16 of Schedule 8 (deemed marine licence);
- (c) agreeing a dredge and disposal strategy with the MMO under paragraph 45 of Schedule 8;
- (d) seeking approval from the relevant planning authority for any alteration of the drawings under paragraph 6 of Schedule 11 (requirements) that affects the area below mean high water mark;
- (e) seeking approval from the relevant planning authority for any external lighting details under paragraph 24 of Schedule 11 that affect the area below mean high water mark;

- (f) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 23 is not required; or
- (g) commencing any operation for the maintenance of a tidal work,

the Harbour Authority must submit to the Conservancy Authority plans and sections of the tidal work or operation and such further particulars as the Conservancy Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) Before submitting for approval, agreement or otherwise as provided by this Order any document specified in columns (1) and (2) of the following Table, the Harbour Authority must submit a copy to the Conservancy Authority for approval of the matters specified in column (3) of the Table and must consult the Conservancy Authority on the remainder of each such document.

TABLE

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Provision of Order</i>	<i>(3)</i> <i>Provision requiring Conservancy Authority approval</i>
Marine environmental management and monitoring plan	Schedule 11, paragraph 19	Provision relating to monitoring equipment fixed to buoys
Works schedule	Schedule 8, paragraph 24	None
Active monitoring scheme	Schedule 8, paragraph 39	Provision relating to the locations of active monitoring buoys
Stages of the development scheme	Schedule 11, paragraph 3	None
Code of construction practice	Schedule 11, paragraph 22	None

(3) No application for the Secretary of State's approval under article 23 is to be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the Conservancy Authority.

(4) Any tidal work not requiring the Secretary of State's approval under article 23 must not be constructed, and no tidal work is to be maintained, except in accordance with such plans as may be approved in writing by the Conservancy Authority or determined under paragraph 25.

(5) Any approval of the Conservancy Authority required under this paragraph must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Conservancy Authority may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(6) Requirements made under sub-paragraph (5) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the Harbour Authority does not commence construction of the tidal work approved within a prescribed period.

(7) Subject to sub-paragraphs (8) and (9), any such approval is deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(8) Before making a decision on any such approval, the Conservancy Authority must take into account any opinion on plans and sections provided to it by the Environment Agency.

(9) Accordingly, an approval of the Conservancy Authority under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (7) has not been given pending the outcome of any consultation on the approval in question that the Conservancy Authority is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, the Conservancy Authority has acted with all due expedition.

(10) In this paragraph “the specified day” means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to the Conservancy Authority under sub-paragraph (1); or
- (b) the day on which the Harbour Authority provides the Conservancy Authority with all such particulars of the work as have been reasonably requested by the Conservancy Authority under that sub-paragraph;

whichever is later.

(11) Whenever the Harbour Authority provides the Secretary of State with an environmental document it must at the same time send a copy to the Conservancy Authority.

4. When submitting any document specified in the Table in paragraph 3(2) to the MMO or the relevant planning authority as the case may be, the Harbour Authority must forward any comments received from the harbour master in response to the consultation undertaken with the harbour master in accordance with that paragraph.

5. Any operations for the construction of any tidal work approved in accordance with this Order, once commenced, must be carried out by the Harbour Authority without unnecessary delay and to the reasonable satisfaction of the Conservancy Authority so that river traffic, the flow or regime of the river and the exercise of the Conservancy Authority’s functions do not suffer more interference than is reasonably practicable, and an officer of the Conservancy Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Discharges, etc.

6.—(1) The Harbour Authority must not without the consent of the Conservancy Authority—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Conservancy Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Conservancy Authority may reasonably impose.

(3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 20 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

7. The Harbour Authority must not, in exercise of the powers conferred by article 20 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Conservancy Authority.

Obstruction in river

8. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the Harbour Authority, as soon as reasonably practicable after the receipt of notice in writing from the Conservancy Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river as the Conservancy Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Conservancy Authority may reasonably require.

Removal etc. of the Conservancy Authority moorings and buoys

9. If—

- (a) by reason of the construction of any tidal work it is reasonably necessary for the Conservancy Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Conservancy Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the Conservancy Authority gives to the Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Harbour Authority may make in response to the notice within 14 days of the receipt of the notice,

the Harbour Authority must pay the costs reasonably so incurred by the Conservancy Authority.

Navigational lights, buoys, etc.

10. In addition to any requirement under articles 26 (lights on tidal works etc. during construction) and 28 (permanent lights on tidal works), the Harbour Authority, at or near every tidal work, and any other work of which the Harbour Authority is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the river), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Conservancy Authority may from time to time reasonably require.

Removal of temporary works

11. On completion of the construction of any part of a permanent authorised work, the Harbour Authority must as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and
- (b) any materials, plant and equipment used for such construction,

and must make good the site to the reasonable satisfaction of the Conservancy Authority.

Protective action

12.—(1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph 3(4); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Conservancy Authority may by notice in writing require the Harbour Authority at the Harbour Authority's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
 - (i) this Part of this Schedule; or
 - (ii) the condition that has been breached; or

- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so, the Conservancy Authority may in writing require the Harbour Authority to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Conservancy Authority reasonably requires) to its former condition; or
- (b) take such other action as the Conservancy Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Harbour Authority, in compliance with its duties under any enactment and, in particular, under section 48A of the Harbours Act 1964(a), must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Conservancy Authority.

(5) If the Conservancy Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Conservancy Authority must notify the Harbour Authority of that environmental impact, the reasons why the Conservancy Authority believes that the environmental impact is being caused by the tidal work and of measures that the Conservancy Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(6) The Harbour Authority must implement the measures that the Conservancy Authority has notified to the Harbour Authority or must implement such other measures as the Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to the Conservancy Authority as to why it has implemented such other measures.

Abandoned or decayed works

13.—(1) If any tidal work or any other work of which the Harbour Authority is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Conservancy Authority may by notice in writing require the Harbour Authority to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Conservancy Authority may by notice in writing require the Harbour Authority to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the Harbour Authority so elects, to remove the tidal work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the Harbour Authority has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Conservancy Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the Harbour Authority.

Facilities for navigation

14.—(1) The Harbour Authority must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the

(a) 1964. c. 40. Section 48A was inserted by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3 para. 6; S.I. 1992/1347, article 2 and Schedule.

Conservancy Authority, and must ensure that access to such aids remains available during and following construction of any tidal works.

(2) The Harbour Authority must provide at any tidal works, or must afford reasonable facilities at such works (including an electricity supply) for the Conservancy Authority to provide at the Harbour Authority's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Conservancy Authority may deem necessary by reason of the construction of any tidal works, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The Harbour Authority must comply with the directions of the harbour master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Survey of riverbed

15.—(1) Before the commencement of construction of the first tidal work to be constructed following approval under article 23 (tidal works not to be executed without approval of the Secretary of State), the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) Before the commencement of construction of any other tidal work approved under article 23, the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

(3) The Conservancy Authority may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the Conservancy Authority must make available to the Harbour Authority the results of any such survey in electronic and paper format.

(4) After completion of, respectively, any tidal work and all the tidal works constructed under this Order, the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Conservancy Authority's functions.

(5) The Conservancy Authority must not under this paragraph carry out a survey of any part of the river as respects which the Harbour Authority has provided to the Conservancy Authority survey material which the Conservancy Authority is reasonably satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (4), the effect of the tidal work, or as the case may be the tidal works.

Sedimentation, etc.: remedial action

16.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Conservancy Authority be removed or made good.

(2) The Harbour Authority must either—

- (a) pay to the Conservancy Authority any additional expense to which the Conservancy Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Conservancy Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the Harbour Authority under this paragraph include any additional expenses accrued or incurred by the Conservancy Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Indemnity

17.—(1) The Harbour Authority is responsible for and must make good to the Conservancy Authority all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Conservancy Authority by reason of—

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy under paragraph 9; or
- (c) any act or omission of the Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,

and the Harbour Authority must indemnify the Conservancy Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the Conservancy Authority on behalf of the Harbour Authority; or
- (b) by the Harbour Authority, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Conservancy Authority, or in a manner approved by the Conservancy Authority, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the Conservancy Authority or its duly authorised representative, employee, contractor or agent) excuse the Harbour Authority from liability under the provisions of this paragraph.

(3) The Conservancy Authority must give the Harbour Authority reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the Harbour Authority.

Entry for survey, etc.

18.—(1) Before exercising the powers conferred by article 22 (authority to survey and enter the land) to enter any land situated below the level of high water the undertaker must provide the harbour master with written particulars of—

- (a) the location of the land (including a plan);
- (b) the nature of the things proposed to be done in that land in exercise of those powers;
- (c) the duration and frequency of the undertaker's intended presence on the land; and
- (d) any vehicles or equipment proposed to be brought on the land,

and such other details as the harbour master may reasonably request.

(2) The undertaker may not enter any land the subject of written particulars provided under sub-paragraph (1) except in accordance with such conditions as the harbour master may impose, including conditions as to the time of entry and the way in which activities are to be carried out.

Statutory functions

19.—(1) Subject to article 4(1) (modification of enactments) and this paragraph, any function of the Harbour Authority or any officer of the Harbour Authority, whether conferred by or under this Order or any other enactment, is subject to—

- (a) any enactment relating to the Conservancy Authority;
- (b) any byelaw, direction or other requirement made by the Conservancy Authority or the harbour master under any enactment; and
- (c) any other exercise by the Conservancy Authority or the harbour master of any function conferred by or under any enactment.

(2) The Harbour Authority or dockmaster must not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 3 (incorporation of the 1847 Act) except with the consent of the harbour master, which must not be unreasonably withheld.

(3) The dockmaster must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3, if to do so would conflict with a special direction given to the same vessel by the harbour master.

(4) The Conservancy Authority must consult the Harbour Authority before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the Able Marine Energy Park.

(5) The Conservancy Authority or the harbour master (as appropriate) must consult the Harbour Authority before giving any general direction which directly affects the construction, operation or maintenance of the Able Marine Energy Park.

(6) The dockmaster must consult the harbour master in relation to the initiation, operation and any change in the Port Marine Safety Code as having effect in relation to the harbour, and the Harbour Authority must comply with any requirement of the harbour master for the adjustment of the Port Marine Safety Code as affecting the river and the functions of the Conservancy Authority or the harbour master.

Operating procedures

20. Before commencing harbour operations the Harbour Authority must submit to the harbour master for approval a written statement of proposed safe operating procedures for access to and egress from the harbour and must operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.

Consideration for dredged material

21.—(1) Subject to any agreement concluded between the Harbour Authority, the Conservancy Authority and any other party benefiting from material dredged by the Conservancy Authority, the Harbour Authority must pay the Conservancy Authority for material dredged by the Conservancy Authority under this Order from so much of the river as is vested in the Conservancy Authority, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Harbour Authority must pay reasonable consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by Schedule 8 (deemed marine licence) based on the quantity of such material that—

- (a) is not used for the construction of—
 - (i) the authorised works;
 - (ii) any other works related to the construction of Able Marine Energy Park; or
 - (iii) the related development; and
- (b) is not owned by the undertaker; and
- (c) is sold by the Harbour Authority or by any other person exercising any powers under this Order.

Removal of wrecks and obstructions, etc.

22.—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995^(a) or under section 56 of the 1847 Act, the dockmaster must notify the harbour master.

(2) The dockmaster must comply with any reasonable instructions that the harbour master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

Transfer of benefit of Order

23. Within 14 days after the date of any transfer or grant under article 13 (consent to transfer benefit of Order), the undertaker who made the transfer or grant must serve notice on the harbour master containing the name and address of the transferee or lessee, the territorial extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

Oil Spillage Plan

24. The Harbour Authority must consult the harbour master before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Conservancy Authority's existing plan known as "Humber Clean" or such other plan as supersedes "Humber Clean".

Disputes

25. Any dispute arising between the Harbour Authority and the Conservancy Authority under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).

PART 2

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

26. The following provisions apply for the protection of the Environment Agency ("the Agency") unless otherwise agreed in writing between the undertaker and the Agency.

27. The authorised development must be carried out in a way that ensures minimum obstruction to flows in the watercourse at all times.

28. The requirements set out in the Agency's Pollution Prevention Guideline 5 (Works and Maintenance in or near Water) must be complied with to ensure that the works are carried out in a proper manner and do not adversely affect the watercourse.

29. On completion of the works, all debris and surplus material must be removed from the banks of the watercourse so that the banks are left in a stable condition with adequate protection provided to avoid erosion, to the satisfaction of the Agency.

30. The undertaker must bring the conditions contained in paragraphs 27 to 29 to the attention of any agent or contractor responsible for carrying out the authorised development.

(a) 1995 c. 21.

PART 3

FOR THE PROTECTION OF THE HIGHWAYS AGENCY

31. For the protection of the Highways Agency, no part of the authorised development is to be occupied until improvements to the following junctions (or alternatives approved in writing by the local planning authority in consultation with the Highways Agency) have been implemented in accordance with details approved by the local planning authority in consultation with the Highways Agency—

- (a) A160/A1173/Humber Road (Manby Road Roundabout),
- (b) A160/Top Road/Habrough Road,
- (c) A160/A1077 Ulceby Road,
- (d) A160/Eastfield Road (signalised junction), and
- (e) A180/A160 Merge/Diverge (Brocklesby Interchange).

PART 4

FOR THE PROTECTION OF NETWORK RAIL

32. For the protection of Network Rail, the following provisions, unless otherwise agreed in writing between the undertaker and Network Rail, have effect.

33. In this Part of this Schedule—

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

34.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions (while recognising that the engineer has sole discretion in matters relating to safety) and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

35.—(1) The undertaker must not exercise the powers conferred by article 22 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act as

applied to this Order by the 2008 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

36.—(1) The undertaker, before commencing construction of any specified work, must supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker.

(3) If by the end of the further period of 28 days the engineer has not intimated approval or disapproval, the engineer is to be deemed to have approved the plans as submitted.

(4) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph.

(5) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail but at the expense of the undertaker, or if Network Rail so desires such protective works must be carried out by the undertaker at its own expense without unnecessary delay, and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

37.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 36(5), when commenced, must be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 36;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker, regardless of any approval described in sub-paragraph (1)(a), must make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

38. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

39. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

40.—(1) If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 36(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to Network Rail all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires that part of the specified work to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker, regardless of any such approval of a specified work under paragraph 36(1), must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to Network Rail under this paragraph.

41. The undertaker must repay to Network Rail all fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 36(4) or in constructing any protective works under the provisions of paragraph 36(5) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part of this Schedule;
- (c) in respect of the employment or procurement of the services of any inspectors and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work; and
- (e) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason.

42. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker, on receipt of such notice, must take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

43. Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing, maintaining or working railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, maintenance or working has been given to the undertaker, must be repaid by the undertaker to Network Rail.

44.—(1) The undertaker must pay to Network Rail all costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably and properly incurred by Network Rail—

- (a) by reason of the construction, working or maintenance of a specified work, or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any claim or demand arising out of or in connection with a specified work or any failure act or omission mentioned in sub-paragraph (1) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs will, in the event of default, be enforceable directly by any train operator concerned to the extent that the relevant costs would be payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993(a).

45. Network Rail, on receipt of a request from the undertaker, must from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 44) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

46. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

47. The undertaker, no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 55 (certification of plans etc) are certified by the Secretary of State, must provide a set of those plans to Network Rail in the form of a computer disc with read only memory, or equivalent electronic storage medium.

PART 5

FOR THE PROTECTION OF C.GEN

48. For the protection of C.GEN the following provisions, unless otherwise agreed in writing between the undertaker and C.GEN, have effect.

49. The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent C.GEN’s access to the railway crossing the Order land.

50. The construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by C.GEN of the railway crossing the Order land by up to five trains per day.

Rosper Road

51. The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent C.GEN’s access to and use of Rosper Road.

52. The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

53. With the exception of any duty owed by C.GEN to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon C.GEN either directly or indirectly, any duty or liability to which C.GEN would not otherwise be subject and which is enforceable by proceedings before any court.

54. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.GEN under this Part of this Schedule must be determined by arbitration as provided in article 57 (arbitration).

55.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance, operation or failure of the authorised development any damage is caused to any property of C.GEN or C.GEN suffers any loss (including without limitation as a

(a) 1993 c.43.

result of the failure by the undertaker to meet its obligations to C.GEN under this Part of this Schedule) the undertaker must—

- (a) bear and pay the cost reasonably incurred by C.GEN in making good such damage; and
- (b) indemnify C.GEN against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage or the exercise by the undertaker of the powers conferred by this Order.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.GEN, its officers, servants, contractors or agents.

(3) C.GEN must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.GEN as may be reasonably necessary.

PART 6

FOR THE PROTECTION OF C.RO

56. For the protection of C.RO the following provisions, unless otherwise agreed in writing between the undertaker and C.RO, have effect.

57. In this Part of this Schedule—

“HST” means the harbour established by the Humber Sea Terminal Orders 1994 to 2006 for which C.RO is the statutory harbour authority;

“HST approach channel” means the approach channel and manoeuvring area for HST; and

“the Humber Sea Terminal Orders 1994 to 2006” has the same meaning as in article 1(2) of the Humber Sea Terminal (Phase III) Harbour Revision Order 2006(a).

58.—(1) Before—

- (a) submitting any plans and sections for any tidal work in or that may affect the HST approach channel to the Secretary of State for approval under article 23 (tidal works not to be executed without approval of Secretary of State);
- (b) commencing any operation for the construction of a tidal work in or that may affect the HST approach channel where approval of the Secretary of State under article 23 is not required;
- (c) submitting any works schedules to the MMO in accordance with Schedule 8 (deemed marine licence) for works in or that may affect the HST approach channel;
- (d) submitting any plans and sections for any tidal work or operation in or that may affect the HST approach channel to the Conservancy Authority in accordance with Part 1 (for the protection of the Humber Conservancy) of this Schedule;
- (e) submitting any written scheme or proposed alteration in the design drawings that may affect the HST approach channel to the relevant planning authority in accordance with Schedule 11 (requirements); or
- (f) commencing any operation for the maintenance of a tidal work in or that may affect the HST approach channel

the Harbour Authority must consult C.RO in accordance with the procedure set out in sub-paragraph (2).

(a) S.I. 2006/2604.

(2) The consultation that the undertaker must carry out with C.RO under sub-paragraph (1) is as follows—

- (a) not less than 42 days prior to carrying out any activity to which sub-paragraph (1) applies the undertaker must submit to C.RO plans and sections of any tidal works or any written scheme or proposed alteration to the design drawings to which this paragraph applies and such further particulars as C.RO may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require; and
- (b) the undertaker must allow C.RO a period of 28 days beginning with the date on which the information required under sub-paragraph (2)(a) has been submitted to C.RO for C.RO to respond for the purposes of consultation, or if later a further period of 28 days from when such further particulars as required by C.RO are submitted by the undertaker to C.RO.

(3) The undertaker must have regard to any consultation response received from C.RO under sub-paragraph (2) and must forward a copy of that response as part of the material it submits to the Secretary of State or the MMO or the Conservancy Authority or any written scheme or proposed alteration to the design drawings that it submits to the relevant planning authority, to which this paragraph applies, together with a statement explaining how it has had regard to any consultation response received from C.RO under this paragraph.

59. Any operations for the construction of any tidal work approved in accordance with this Order and to which paragraph 58 applies, once commenced, must be carried out by the undertaker so that C.RO does not suffer more interference than is reasonably practicable, and an officer or other appointed person of C.RO is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

60. The Harbour Authority must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river relating to HST without the agreement of C.RO, and must ensure that access to such aids remains available during and following construction of any tidal works.

61. The undertaker must pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work or the use of the authorised development, including but without limitation, paying the reasonable costs of C.RO incurred in raising the height of the “IsoGWR.4 s” sector light positioned in the entrance of North Killingholme Haven at HST, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching HST and in its approach channels.

62. The undertaker must afford to C.RO such facilities as C.RO may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

63. The undertaker must provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.RO and must properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works.

64. After the purpose of any temporary tidal work in or that may affect the HST approach channel has been accomplished and after a reasonable period of notice in writing from C.RO requiring it do so, the undertaker, without unnecessary delay, must remove that work or any materials relating to it which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing to do so within a reasonable period after receiving such notice, C.RO may remove the same and charge the undertaker with the reasonable expense of doing so, which expense the undertaker must repay to C.RO.

65. If any tidal work is abandoned or falls into decay and is in such a condition so as to interfere or cause reasonable apprehension that it may interfere with navigation in the river so that it may affect HST or access to HST in any way, C.RO may by notice in writing require the undertaker either to repair or to restore the specified work, or any part of it, or to remove the work and restore

the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as C.RO thinks proper acting reasonably.

66.—(1) The undertaker must not allow vessels associated with the construction of the authorised development to obstruct or remain in the approach channel when vessels are arriving at and sailing from HST.

(2) C.RO must provide the undertaker with a schedule of movements to which sub-paragraph (1) applies on a weekly basis and must give the undertaker reasonable notice of any changes to scheduled sailings or other vessel movements of which it has informed the undertaker.

Dredging

67.—(1) The undertaker must not dredge in the HST approach channel without prior approval of C.RO and C.RO must not dredge in the turning area without prior approval of the undertaker.

(2) Any dredging that is carried out with C.RO's or the undertaker's approval must be carried out in accordance with any conditions attached to that approval.

(3) C.RO's and the undertaker's approval under sub-paragraph (1) must not be unreasonably withheld or delayed and if by the end of the period of 5 days beginning with the date on which the dredging request has been supplied to C.RO or the undertaker, C.RO or the undertaker, as the case may be, has not intimated its disapproval of the request and the grounds of its disapproval each party may serve upon the other written notice requiring the other to intimate its approval or disapproval within a further period of 5 days beginning with the date upon which it receives written notice from the undertaker.

(4) If by the end of the further period of 5 days the other party has not intimated its approval or disapproval, it is deemed to have approved the request as submitted.

Railway

68. The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent C.RO's access to the railway on the Order land in connection with the use of HST.

69. The construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by C.RO of the railway crossing the Order land in connection with the use of HST.

Rosper Road

70. The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent C.RO's access to and use of Rosper Road.

71. The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

Recovery of expenses

72.—(1) C.RO may recover from the undertaker any reasonable expenses however caused which C.RO incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;
- (b) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;
- (c) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;
- (d) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;

- (e) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;
- (f) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —
 - (i) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this paragraph; and
 - (ii) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as mentioned in sub-paragraph (i);
- (g) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure.

(2) Subject to sub-paragraph (3), the undertaker is not required to pay any expense unless—

- (a) C.RO has given the undertaker reasonable notice that it intends to incur the expense including details of the works proposed and an estimate for them; and
- (b) the undertaker has given its consent to C.RO incurring that expense, which may include the undertaker offering to carry out any works to which this paragraph applies with the consent of C.RO.

(3) The undertaker's approval under sub-paragraph (2)(b) must not be unreasonably withheld or delayed, and if by the end of the period of 14 days beginning with the date on which the notice has been supplied to the undertaker, the undertaker has not intimated approval or disapproval, the undertaker is deemed to have approved the request as submitted;

(4) Nothing in this paragraph prevents C.RO from—

- (a) carrying out works to which this paragraph applies without the prior consent of the undertaker; or
- (b) recovering expenses from the undertaker for any such work it has carried out;

where such works are in the reasonable opinion of C.RO urgently necessary to ensure the safe and efficient operation of HST and C.RO must give notice of its intention to carry out such works to the undertaker.

(5) Where C.RO has carried out works under sub-paragraph (4) it must without undue delay submit the expenses for those works including any details of the works to the undertaker for approval and the undertaker's approval for them must not be unreasonably withheld.

(6) Any amount of expenditure approved by the undertaker under this paragraph must be paid to C.RO by the undertaker within 28 days of a demand for it.

73.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance, operation or failure of the authorised development any damage is caused to any property of C.RO (including HST) or C.RO suffers any loss (including without limitation as a result of the failure by the undertaker to meet its obligations to C.RO under this Part of this Schedule) the undertaker must—

- (a) bear and pay the cost reasonably incurred by C.RO in making good such damage; and
- (b) indemnify C.RO against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage or the exercise by the undertaker of the powers conferred by this Order.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.RO, its officers, servants, contractors or agents.

(3) C.RO must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.RO as may be reasonably necessary.

74. With the exception of any duty owed by C.RO to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon C.RO either directly or indirectly, any duty or liability to which C.RO would not otherwise be subject and which is enforceable by proceedings before any court.

75. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).

PART 7

FOR THE PROTECTION OF PHILLIPS 66 LIMITED

76. In this Part of this Schedule—

“P66” means Phillips 66 Limited (Company number 00529086); and

“the pipelines” means the 4 pipelines crossing the Order land owned and operated by P66 used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-Lines Act 1962(a).

77. Before commencing any part of the authorised development or the operation of the authorised undertaking which would have an effect on the operation and maintenance of the pipelines and access to them, the undertaker must submit to P66 plans and sections of the proposed works and such further particulars as P66 may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

78. No works comprising any part of the authorised development or the operation of the authorised undertaking which would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipelines and access to them are to be commenced until plans and sections in respect of those works submitted under paragraph 77 have been approved by P66.

79. Any approval of P66 required under paragraph 78 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as P66 may require to be made for—

- (a) the continuing safety and operational viability of the pipelines; and
- (b) the requirement for P66 to have uninterrupted and unimpeded access to the pipelines at all times.

PART 8

FOR THE PROTECTION OF NATIONAL GRID

80. In this Part of this Schedule—

“apparatus” means—

(a) 1962 c. 58.

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989^(a), belonging to or maintained by National Grid;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“electric line” has the same meaning as contained in section 64(1) of the Electricity Act 1989;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

“National Grid” means National Grid Plc, company number 4031152, registered at Grand Buildings, 1-3 Strand, London, WC2N 5EH, and includes any reference to National Grid Gas Plc.; and

“plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

81. For the protection of National Grid the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

82.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to or in the vicinity of (as defined by reference to the relevant distances contained in the policies applied by National Grid’s ENA43-8 (Electric Lines) and T/SP/SSW/22 (Gas Pipelines) or such other standards as may supersede them from time to time), or will or may affect, any apparatus the removal of which has not been required by the undertaker under the Order, the undertaker must submit to National Grid a plan.

(2) In relation to works which will or may be situated within the tolerances set out in ENA 43-8 (Electricity Lines) and T/SP/SSW/22 (Gas Pipelines) respectively from any apparatus measured in any direction the plan to be submitted to National Grid under sub-paragraph (1) must be detailed describing—

- (a) the exact position of the works;
- (b) the level at which these works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings all proposed works.

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld; and
- (c) is deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(5) In relation to a work to which sub-paragraph (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.

(a) 1989 c. 29.

(7) Where National Grid requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the carrying out of works authorised by the Order and National Grid must give 28 days' notice of such works from the date of submission of a plan in accordance with sub paragraph (1) (except in an emergency).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(9) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable afterwards and must—

- (a) comply with sub-paragraph (6) in so far as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid's policies for safe working in proximity to electrical or gas apparatus ENA43-8 and T/SP/SSW/22 respectively.

83. Subject to the following provisions of this paragraph, the undertaker must repay to National Grid on demand all charges, costs and expenses reasonably incurred by National Grid in connection with, the inspection and protection of any apparatus which may be required in consequence of the execution of any such works as are required under this Part of this Schedule including—

- (a) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if applicable; and
- (b) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

84.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance, operation or failure of the authorised development any damage is caused to any apparatus or property of National Grid or there is any interruption in any service provided by National Grid or National Grid suffers any loss (including without limitation as a result of the failure by the undertaker to meet its obligations to National Grid under this Part of this Schedule) the undertaker must—

- (a) bear and pay the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage, interruption or the exercise by the undertaker of the powers conferred by this Order.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents.

(3) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from National Grid as may be reasonably necessary.

85. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on or after the date on which this Order is made.

86. If in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

General

87. Any dispute arising between the undertaker and National Grid under this Schedule is to be determined by arbitration as provided in article 57 (arbitration).

PART 9

FOR THE PROTECTION OF E.ON UK PLC

88. In this Part of this Schedule—

“the outfall and intake” means that part of the pipelines which are located in the river at grid references (517455.3871, 419565.3965) and (517396.2407, 419527.8371) respectively;

“the pipelines” means the intake and outfall pipelines situated within plots 04023, 04024, 04027, 04028, 04029, 05003 to 05016 (inclusive), 05019, 05026, 05027, 05028, 05036, 05037, 05038, 05044, and 06006 which are the subject of a Deed of Easement dated 9 July 2004 between Able UK Limited and E.ON; and

“the river” means the River Humber.

89. For the protection of E.ON the following provisions, unless otherwise agreed in writing between the undertaker and E.ON, have effect.

90. Before extinguishing any existing rights for E.ON to keep, inspect, renew and maintain its infrastructure on or in the Order land, the undertaker, with the agreement of E.ON, must create a new right to keep, inspect, renew and maintain the infrastructure in the same location that is reasonably convenient for E.ON, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

The pipelines

91.—(1) No stage of the authorised development is to commence until a construction method statement to protect the pipelines (offshore and onshore) and intake and outfall has been prepared by the undertaker and submitted to and agreed with E.ON.

(2) The construction method statement must include provisions in respect of—

- (a) the location and methods of reinforcement of crossing points over the pipelines;
- (b) a mechanism for the enforcement of the undertaker’s use of designated crossing points over the pipelines and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the undertaker to—
 - (i) seek E.ON’s consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and
 - (ii) notify E.ON of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and

the authorised development must be carried out in accordance with the approved construction method statement.

General

92. Any dispute arising between the undertaker and E.ON under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).

PART 10

FOR THE PROTECTION OF CENTRICA PLC

93. For the protection of Centrica the following provisions, unless otherwise agreed in writing between the undertaker and Centrica, have effect.

94. In this Part of this Schedule, “the pipelines” means Centrica’s cooling water pipelines and condensate pipeline.

95. Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its infrastructure on, over or in the Order land or to cross the Order land to access its infrastructure, the undertaker, with the agreement of Centrica, must create a new right to keep, inspect, renew and maintain the infrastructure in the same location or a new right of access that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

The pipelines

96.—(1) No stage of the authorised development is to commence until a construction method statement to protect the pipelines (offshore and onshore) and intake and outfall has been prepared by the undertaker and submitted to and agreed with Centrica.

(2) The construction method statement must include provisions in respect of—

- (a) the location and methods of reinforcement of crossing points over the pipelines and restrictions on building and altering the ground level over the pipelines elsewhere;
- (b) a mechanism for the enforcement of the undertaker’s use of designated crossing points over the pipelines and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the undertaker to—
 - (i) seek Centrica’s consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and
 - (ii) notify Centrica of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and

the authorised development must be carried out in accordance with the approved construction method statement.

97. Before extinguishing any existing rights for Centrica to pass along parcel 03009 (Station Road), the undertaker, with the agreement of Centrica, must create a new right of way for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

Power station access road

98. The undertaker must not make use of the power station access road to access the Order land without the consent of Centrica and on such conditions as Centrica may apply.

General

99. Any dispute arising between the undertaker and Centrica under this Schedule must be determined by arbitration as provided in article 57 (arbitration).

PART 11

FOR THE PROTECTION OF ANGLIAN WATER

100.—(1) For the protection of Anglian Water, the following provisions, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

(2) In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage, and

- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991(a);
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

101. The undertaker must not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3000 millimetres of the apparatus, unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

102. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010(b) for—
 - (i) the sludge and brine waste pipelines; and
 - (ii) the South Killingholme Sewage Treatment Works,and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(a) 1991 c. 56.

(b) S.I. 2010/675.

103. In the situation where, in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension is to take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

104. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker, with the agreement of Anglian Water, must create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

105. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

106. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 101 to 103, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must,

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

107. The undertaker must only exercise its powers of compulsory acquisition over the interests of Anglian Water in the Order land as a last resort and following consultation with Anglian Water and the resolution of any arbitration under article 57.

PART 12

FOR THE PROTECTION OF BETHANY JAYNE LTD

108. Before interfering with or extinguishing any existing rights for Bethany Jayne Ltd to—

- (a) pass along parcel 03009 (Station Road); or
- (b) use services and utilities in, on or over the Order land which serve land owned by Bethany Jayne Limited at the date of the coming into force of this Order,

the undertaker, with the agreement of Bethany Jayne Ltd, must create substitute rights (including appropriate ancillary rights of entry for the purposes of connection, maintenance, repair and renewal) that are reasonably convenient for Bethany Jayne Ltd, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

PART 13

FOR THE PROTECTION OF ROYAL MAIL GROUP LTD

109.—(1) For the protection of Royal Mail Group Ltd ('Royal Mail') the following provisions, unless otherwise agreed in writing between the undertaker and Royal Mail, have effect.

(2) No part of the authorised development is to be occupied until improvements to the A1173 / Pelham Road junction (or alternative mitigation measures to be approved in writing by the relevant planning authority, following consultation with Royal Mail), have been implemented in accordance with details approved by the relevant planning authority in consultation with Royal Mail.

(3) Such improvements must mitigate the effects of the proposed development on the operation of this junction and must be designed in accordance with normal standards.

(4) The undertaker must have due regard to any consultation response received from Royal Mail.

110. Any dispute arising between the undertaker and Royal Mail Group under this Part of this Schedule must be determined by arbitration as provided in article 57 (arbitration).

PART 14

FOR THE PROTECTION OF ASSOCIATED BRITISH PORTS

111. In this Part of this Schedule—

“AB Ports” means Associated British Ports in its capacity as harbour authority for the Ports of Immingham and Grimsby; and

“construction” includes execution and placing and maintenance, extension or enlargement and “construct” and “constructed” are to be construed accordingly.

112. The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and AB Ports, have effect for the protection of AB Ports.

113.—(1) If—

- (a) during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction; or
- (b) during the exercise of the powers to dredge conferred by this Order or within 10 years of the exercise of those powers and wholly or partly in consequence of the exercise of those powers,

there is caused or created an accumulation or erosion, the undertaker, if so requested by AB Ports acting reasonably, must remedy such accumulation or erosion to the extent attributable to such construction or exercise of such powers in the manner specified in sub-paragraph (3) and, if the undertaker refuses or fails so to do, AB Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) If any accumulation or erosion in consequence of such construction or exercise of the powers to dredge arises within such period of 10 years and is remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion must from time to time be so remedied by the undertaker during that period of 10 years and at any time afterwards.

(3) For the purposes of sub-paragraphs (1) and (2) above—

- (a) in the case of an accumulation, the remedy is to be its removal; and
- (b) in the case of erosion, the remedy is to be the carrying out of such reconstruction works,

and other protective works or measures as may be necessary.

(4) In the event that surveys, inspections, tests and sampling carried out under paragraph 15 of Part 1 of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers to dredge, the undertaker is liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

(5) For the purposes of sub-paragraph (1) above the date of completion of a work is the date on which it is brought into use.

114. In exercising the powers conferred by this Order to construct the authorised development the undertaker must use all reasonable endeavours to ensure that the movement of construction vessels does not obstruct or interfere with the operation of the Ports of Immingham and Grimsby.

115. If AB Ports secures access between parcels 03009, 03014 and 03016 (Station Road) to the railway for the purposes of construction, operation and maintenance of a siding leased to it and for no other purpose, then before extinguishing or interfering with any existing rights for AB Ports to pass along those parcels, the undertaker, with the agreement of AB Ports, must create a new right of way for vehicular traffic that is reasonably convenient for AB Ports for that purpose, such agreement not to be unreasonably withheld or delayed.

116. The undertaker, before carrying out any works or exercising the powers conferred by article 15 (street works) in relation to the Rosper Road, the Humber Road, the A160 or the A180, must consult AB Ports and in carrying out the works or exercising such power must ensure that access to the Port of Immingham is not materially impeded.

117.—(1) The undertaker must pay to ABP Ports all costs, charges, damages and expenses which may be occasioned to or reasonably and properly incurred by ABP Ports by reason of or arising from—

- (a) any accumulation or erosion in consequence of the construction of a tidal work or the exercise of the powers to dredge conferred by this Order;
- (b) any surveys, inspections, tests or sampling reasonably carried out to establish whether such accumulation or erosion is occurring or has occurred; or
- (c) any obstruction or interference referred to in paragraphs 114 or 115.

(2) The undertaker must indemnify ABP Ports from and against all claims and demands arising out of, or in connection with such accumulation, erosion, obstruction or interference mentioned in sub-paragraph (1).

(3) ABP Ports must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) Nothing in this paragraph imposes any liability on the undertaker to the extent that any costs, charges, damages or expenses referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of ABP Ports or any person in its employ or its contractors or agents.

118. Any difference arising between the undertaker and AB Ports under this Part must be determined by arbitration as provided in article 57 (arbitration).

PART 15

FOR THE PROTECTION OF THE OIL AND PIPELINES AGENCY

119.—(1) Unless agreed otherwise in writing between the undertaker and the Oil and Pipelines Agency, the provisions of this Part of this Schedule will apply.

(2) This paragraph applies if any part of the river at, or adjacent to, the Oil and Pipelines Agency's facility on the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of a tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of the Oil and Pipelines Agency's facility on the river, should in the reasonable opinion of the Oil and Pipelines Agency be prevented, mitigated or made good.

(3) The undertaker must either—

- (a) pay to the Oil and Pipelines Agency any additional expense to which the Oil and Pipelines Agency may reasonably be put in preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river at, or adjacent to, the Oil and Pipelines Agency's facility so far as (in any case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Oil and Pipelines Agency, such prior approval not to be unreasonably withheld or delayed,

and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Oil and Pipelines Agency in carrying out surveys or studies in connection with the implementation of this paragraph.

120. Before extinguishing any existing rights for the Oil and Pipelines Agency to pass along parcel 03009 (Station Road), the undertaker must, with the agreement of the Oil and Pipelines Agency, create a new right of way for the Oil and Pipelines Agency, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

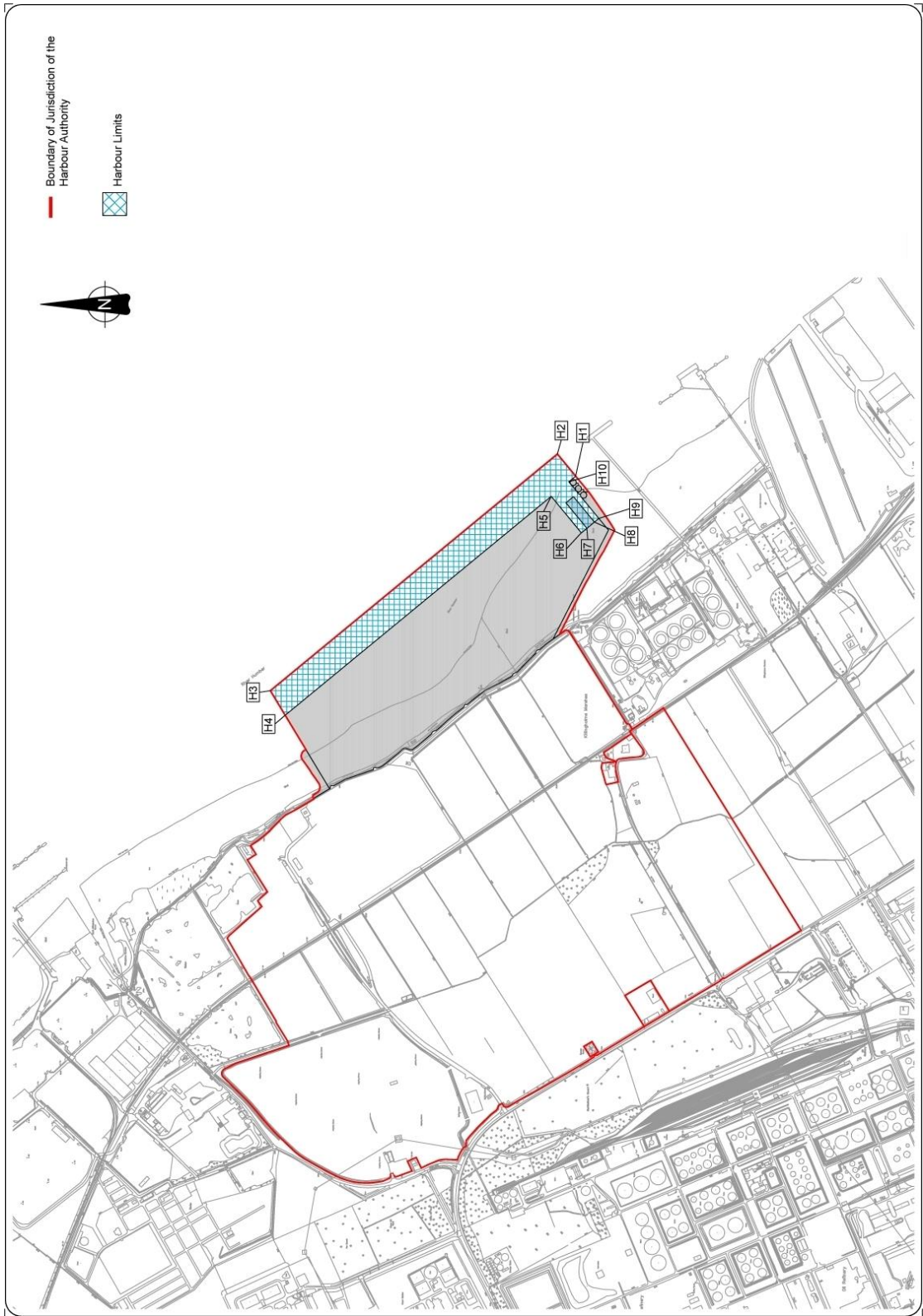
SCHEDULE 10

Article 2

LIMITS OF HARBOUR

1. The limits of the harbour are the boundaries of the polygon whose vertices are given by the co-ordinates in the Table and shown with the corresponding labels on the Plan.

Table		
<i>Latitude</i>	<i>Longitude</i>	<i>Label</i>
53°38.950N	00°12.684W	H1
53°38.984N	00°12.612W	H2
53°39.534N	00°13.336W	H3
53°39.506N	00°13.416W	H4
53°38.997N	00°12.744W	H5
53°38.943N	00°12.863W	H6
53°38.932N	00°12.849W	H7
53°38.917N	00°12.830W	H8
53°38.909N	00°12.818W	H9
53°38.964N	00°12.700W	H10



SCHEDULE 11

Article 5

REQUIREMENTS

1. In this Schedule—

“environmental statement” means the statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a), together with the shadow Habitats Regulations Assessment report, statements of common ground concluded with Natural England, the MMO and the Environment Agency and the following documents submitted by the undertaker and certified under article 55 (certification of plans etc)—

<i>Reference</i>	<i>Title</i>
EX 3.1	Able Humber Port Northern Area Planning Committee Meeting Notes Feb 2012
EX 7.7	AMEP Material Management Plan
EX 7.8	Able Marine Energy Park Dredging Strategy
EX 8.5	Validation of 3D Flow and Sediment Models used for Assessment of Impacts of AMEP on Fine Sediment Transport
EX 8.6	Maintenance Dredge Variability
EX 8.7A	Modelling of Final Quay Design (Supplement to Annex 8.1 of the ES)
EX 8.8	Update to Longer Term Morphology Predictions in the Region of the Centrica and E.ON intakes and outfalls
EX 8.9	Historical Review of Morphological Change North of HIT (2001–2010)
EX 8.10	Long-term Morphological Change at Embayment South of Quay
EX 8.11	Water Framework Directive – Compensation Site
EX 8.12	Water Framework Directive – Project Wide
EX 8.12A	Water Framework Directive
EX 8.13	IOTA Dredge Appropriate Assessment
EX 8.14	Hydraulic & Sediment Regime – Piled Structures
EX 8.15	Effect of Moored Vessels on Flows
EX 8.16	Chapter 8 Signposting Document
EX 9.7	Assessment of the effects of relocations of the E.ON and Centrica outfalls on thermal recirculation
EX 10.4	Effect of Dredged Material Disposal on 1) Subtidal and Intertidal Features and 2) Aquatic Ecology
EX 10.5	Supporting Information on Harbour Porpoises in the Humber Estuary
EX 10.6	Impact of Berthing Pocket Construction
EX 10.7	Soft Start and Seals
EX 10.8	Disposal Site Characterisation and Impact Assessment
EX 10.9	Environmental Management and Monitoring Plan: 1. Marine Works (Draft)
EX 11.14	Biotopes of the Intertidal and Subtidal Sediments around the AMEP site, in the Humber Estuary
EX 11.16	Assessment Update for Breeding Birds
EX 11.17	AMEP Vascular Plant Surveys
EX 11.18	Sensitive Months for Birds Using Intertidal

(a) S.I. 2009/2264.

<i>Reference</i>	<i>Title</i>
EX 11.19	AMEP Bat Surveys Supplementary Note
EX 11.20	Draft Great Crested Newts Licence Application – acknowledgement of receipt
EX 11.22	The Impact of SPMTs and Cranes on the Operational Buffer
EX 11.23	Immediate Habitat Losses Within the Designated Site
EX 11.24	Medium and Long Term Losses Within the Designated Site
EX 11.26	Pumping Station
EX 11.26A	Water Vole Mitigation
EX 11.27	Killingholme Phase 2 Survey
EX 11.27A	Breeding Bird Mitigation
EX 11.28	Great Crested Newt Survey (2006)
EX 11.29	Water Vole Survey (2009)
EX 11.30	Location of Replacement Ponds for Great Crested Newts
EX 11.31	M456 Invertebrate Survey
EX 11.32	Draft Environmental Monitoring and Management Plan: 2. Terrestrial Habitat – Killingholme
EX 11.33	In combination Effects on Curlew
EX 13.2	Addendum to Flood Risk Assessment
EX 14.4	Simulation Videos and Stills
EX 15.3	A160 Killingholme Humber Port Access, Stage 1 Road Safety Audit
EX 15.4	A160 Killingholme Humber Port Access, Stage 1 Road Safety Audit Designer’s Response
EX 15.5	Additional Junction RSA
EX 19.1	Lighting Lux Plans
EX 20.3	Additional Landscape Masterplan
EX 28.1	Compensation Site Interim Report on Detailed Design
EX 28.2	Old Little Humber Farm: Wet Grassland Creation, Management and Monitoring Plan
EX 28.3	Final Compensation Proposals, Parts 1–10
EX 31.5	Re-Use of In Situ Material at CCS (Inc. Cherry Cobb Sands Phase 2 Site Investigation)
EX 31.5A	Factual Report on Geo–Environmental Ground Investigation, Cherry Cobb Sands
EX 34.2	An Assessment of Temporal Variation of Benthic Invertebrate Communities in the Humber Estuary
EX 35.12	Farmland Disturbance at Cherry Cobb Sands
EX 35.13	██████ Bait–Marking Survey
EX 35.14	Cherry Cobb Sands Compensation Site: Bird Survey Results August 2010 to April 2011
EX 36.2	North Bank Flood Defence Crest Height
EX 36.3	Residual Flood Risk to Property on North Bank
EX 36.4	Embankment Inspection and Maintenance Report
EX 44.1	Supplementary In-Combination Assessment
EX 44.2	Addendum to EX 44.1

; and

“the water framework directive” means Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy^(a).

Time limits

2. The authorised development must be begun within 7 years of the date on which this Order comes into force.

Stages of the development

3. No part of the authorised development is to commence until a written scheme setting out all the stages of the authorised development has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

Cargo restriction

4.—(1) The cargo for which the authorised development is authorised to handle the embarkation and disembarkation is restricted to items associated with offshore renewable energy infrastructure and any cargo that is incidental or ancillary to such items.

(2) The development described at paragraph 3(b) of Schedule 1 (authorised development) is restricted to items associated with components and parts for offshore renewable energy infrastructure.

Detailed design approval

5. Except where the authorised development is carried out in accordance with the drawings listed in paragraph 6, no authorised development may commence until details of the layout, scale and external appearance of the authorised development so far as they do not accord with the drawings listed in paragraph 6 have been submitted to and approved by the relevant planning authorities, and the authorised development must be carried out in accordance with the approved details.

6. The authorised development must be carried out in accordance with the drawings listed below, unless otherwise approved by the relevant planning authority in accordance with paragraph 5 and the altered development falls within the Order limits and has no significant environmental effects beyond those assessed in the environmental statement—

- (a) the application drawings, being those drawings with reference TR030001/APP/23a comprising—
 - (i) drawing “AME-02006”;
 - (ii) drawing “AME-02007”;
 - (iii) drawing “AME-02008”;
 - (iv) drawing “AME-02009”;
 - (v) drawing “AME-02010”;
 - (vi) drawing “AME-02011”;
 - (vii) drawing “AME-02012”;
 - (viii) drawing “AME-02013”;
 - (ix) drawing “AME-02014”;
 - (x) drawing “AME-02016”;
 - (xi) drawing “AME-02017”; and
 - (xii) drawing “AME-02018”;
- (b) the design drawings, being those drawings with reference TR030001/APP/23b comprising—

(a) O.J. No L327, 22.12.2000, p. 1-73.

- (i) drawing “AMEP_PID_D_001”;
- (ii) drawing “AMEP_PID_D_002”;
- (iii) drawing “AMEP_PID_D_005”;
- (iv) drawing “AMEP_PID_D_006”;
- (v) drawing “AMEP_PID_D_007”;
- (vi) drawing “AMEP_PID_D_009”;
- (vii) drawing “AMEP_PID_D_101”;
- (viii) drawing “AMEP_PID_D_102”;
- (ix) drawing “AMEP_PID_D_103”;
- (x) drawing “AMEP_PID_D_104”;
- (xi) drawing “AMEP_PID_D_105”;
- (xii) drawing “AMEP_PID_D_106”; and
- (xiii) drawing “AMEP_PID_D_107”; and
- (c) the sections, being those drawings with reference TR030001/APP/23b comprising—
 - (i) drawing “AMEP_PID_D_003”; and
 - (ii) drawing “AMEP_PID_D_004”.

Provision of landscaping

7. No stage of the authorised development, other than tidal works, is to commence until a written landscaping scheme has been submitted to and approved by the relevant planning authority after consultation with National Grid. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above ground, including drainage, power and communications cables and pipelines and supports;
- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant; and
- (j) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) The landscaping works must be carried out in accordance with implementation timetables approved under requirement 7.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives written consent to any variation.

Trees

9. No stage of the authorised development, other than tidal works, is to commence until written details of any proposed tree planting and the proposed times of planting have been approved by the relevant planning authority after consultation with National Grid; and all tree planting must be carried out in accordance with those details and at those times.

Highway access

10.—(1) No stage of the authorised development is to commence until for that stage, written details of the siting, design and layout of any new permanent or temporary means of access to a public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic, has, after consultation with the relevant highway authority, Royal Mail Group Ltd and Centrica plc, been submitted to and approved by the relevant planning authority.

(2) The undertaker must have regard to any consultation responses received.

(3) The public highway accesses must be constructed, or, as the case may be, altered, in accordance with the approved details.

(4) No stage of the authorised development is to commence until for that stage, a written scheme (the “Access Management Scheme”) has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(5) The Access Management Scheme must be carried out in accordance with the approved details.

Public rights of way

11.—(1) No stage of the authorised development is to commence that would affect North Lincolnshire Footpath 50 or East Riding of Yorkshire Paull Footpath 6 until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(2) The alternative Footpath 50 and Paull Footpath 6 must be implemented in accordance with the relevant approved plan and specification.

Fencing and other means of enclosure

12.—(1) No stage of the authorised development is to commence until, for that stage, written details of all proposed permanent and temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

(2) Any temporary fencing must be removed on completion of the authorised development.

(3) Any approved permanent fencing of the authorised development must be completed before the authorised development is brought into use.

Surface water drainage

13.—(1) No stage of the authorised development is to commence until a detailed surface water drainage strategy (based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, and including means of pollution control and funding arrangements) for that stage has been submitted to and approved by the local planning authority, after consultation with the Environment Agency, Anglian Water, E.ON and Centrica plc.

(2) The undertaker must have regard to any consultation responses received.

(3) The authorised scheme must be constructed in accordance with the approved surface water drainage strategy including any timetable embedded within it.

Foul water drainage

14.—(1) No stage of the authorised development is to commence until a detailed foul water drainage strategy (including means of pollution control and funding arrangements) for that stage

has been submitted to and approved by the relevant local planning authority, after consultation with the Environment Agency, Anglian Water, E.ON and Centrica plc.

(2) The undertaker must have regard to any consultation responses received.

(3) The authorised scheme must be constructed in accordance with the approved foul water drainage strategy including any timetable embedded within it.

River basin management

15.—(1) The authorised development must not commence until a monitoring and management strategy document has been submitted to and approved by the Environment Agency, the purpose of such strategy document being to ensure that the authorised development is carried out in compliance with the water framework directive.

(2) The monitoring and management strategy document must in particular consider the spatial and temporal extent of the impact of the approved scheme on—

(a) those “biological elements” and “ecological potential elements” as defined in the Humber River Basin Management Plan for the Humber Middle and Humber Lower Water Bodies (GB53040269201 and GB30402609202), to include, but not limited to—

(i) macro algae,

(ii) angiosperms,

(iii) macrophytes,

(iv) benthic/macro invertebrates, and

(v) fish; and

(b) those biological and ecological elements defined as “water-dependent habitats or species for which the Protected Area was designated” as defined in Annex D of the Humber River Basin Management Plan.

(3) The authorised scheme must be constructed and managed in accordance with the approved strategy document and the monitoring detailed in the approved strategy document must be implemented.

Contaminated land

16.—(1) No stage of the authorised development is to commence until a written scheme applicable to that stage, to deal with the contamination of any land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme and the management plan.

Archaeology

17.—(1) No stage of the authorised development is to commence until, for that stage, a written project design for the investigation of areas of archaeological interest as identified in chapters 18 and 40 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The project design must accord with the evaluation results and mitigation measures included in the document *Able UK Ltd Marine Energy Park: Framework for archaeological investigation and mitigation strategies* prepared by AC Archaeology Ltd (ref: ACW283/3/1 revised June 2012), and the *Written Scheme of Investigation: Coastal and Marine* prepared by Wessex Archaeology (ref 79490.02 revised March 2012) and subsequent updates, to be agreed by the relevant planning authority.

- (3) The project design must identify—
- (a) areas where fieldwork is required;
 - (b) measures to be taken to identify, protect, record and recover any archaeological remains that may be found including artefacts and ecofacts;
 - (c) methodologies for post-excavation assessment and analysis of artefacts and ecofacts;
 - (d) arrangements for dissemination and publication of reports;
 - (e) preparation of archive material and its deposition with recognised repositories;
 - (f) an implementation timetable;
 - (g) monitoring arrangements, including notification and commencement of work;
 - (h) details of contractors involved in the implementation of archaeological works; and
 - (i) proposals for publicity and community outreach work.
- (4) Any archaeological works carried out under the scheme must be carried out by a suitably qualified person or body.
- (5) Any archaeological works must be carried out in accordance with the approved scheme and timings, subject to any variation approved by the relevant planning authority.

Listed building

18.—(1) No stage of the authorised development is to commence until a written management plan for the Killingholme North Low Lighthouse ('the building') has been submitted to and approved by the relevant planning authority, including the following—

- (a) a structural survey to be submitted to and approved by the relevant planning authority;
 - (b) implementation of mitigation measures;
 - (c) a schedule of repair works that ensure the long-term survival of the building;
 - (d) an implementation timetable for all stages of work including timings to ensure that the mitigation measures and repair work are undertaken and completed in accordance with the plan;
 - (e) monitoring arrangements with the relevant planning authority, including notification of the commencement of work;
 - (f) details of all contractors to be involved in implementation of works to the building; and
 - (g) details of the use of the building including proposals for community access and interpretation.
- (2) The management plan must be implemented as approved.

Environmental management and monitoring plans

19.—(1) The authorised development must not commence until the compensation environmental management and monitoring plan reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by Natural England after consultation with the Environment Agency and the relevant planning authority.

(2) The authorised development must not commence until a marine environmental management and monitoring plan, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by the MMO after consultation with the Environment Agency, Natural England and the relevant planning authority.

(3) The authorised development must not commence until a terrestrial environmental management and monitoring plan, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by Natural England after consultation with the Environment Agency and the relevant planning authority.

20. The compensation environmental management and monitoring plan, marine environmental management and monitoring plan and terrestrial environmental management and monitoring plan must require any further surveys deemed necessary to be carried out and include an implementation timetable; the plans must be carried out as approved.

Programming of Works

21.—(1) The undertaker must not commence construction of the quay (Work No. 1) less than 7 months after commencing construction of the compensation site referred to in paragraph 4(a) of Schedule 1 (authorised development)).

(2) The undertaker must use all reasonable endeavours to create the Cherry Cobb Sands breach no more than 15 months after commencing construction of the quay (Work No. 1).

Code of construction practice

22.—(1) No stage of the authorised development is to commence until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

(2) All construction works must be undertaken in accordance with the approved code.

Design of roads

23.—(1) No stage of the authorised development consisting of the construction or alteration of a street which is a trunk road, including any traffic management and control measures, is to commence until written details of the design of the street have been submitted to and approved by the Highways Agency, after consultation with Centrica plc and Royal Mail Group Ltd.

(2) The undertaker must have regard to any consultation responses received.

(3) The authorised development consisting of the construction or alteration of the street and any traffic management and control measures must be carried out in accordance with the approved design.

External lighting

24.—(1) No stage of the authorised development is to commence until written details of any external lighting to be installed at any of the construction sites within that stage, including measures to prevent light spillage, have, after consultation with the highway authority and Natural England, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period, and removed within 6 months of the completion of construction.

(2) Sub-paragraph (1) is subject to any direction given to the undertaker by the harbour master or Trinity House.

(3) The authorised development must not be brought into use until written details of any external lighting to be installed for operational purposes, including measures to prevent light spillage, have, after consultation with the highway authority and Natural England, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained while the authorised development is in operation.

Construction traffic

25.—(1) No stage of the authorised development is to commence until a written transport statement, including any road condition survey, temporary speed limits, lay-bys and details of the preferred route for that stage to be used by construction traffic on public highways, after consultation with the highway authority, Royal Mail Group Ltd and Centrica plc, has been submitted to and approved by the relevant planning authority.

(2) The undertaker must have regard to any consultation responses received.

(3) Notices must be erected and maintained throughout the period of construction at every construction site exit to a public highway, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the site.

Control of noise during construction

26.—(1) No stage of the authorised development is to commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to and approved by the relevant planning authority.

(2) The scheme must set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the relevant stage of the authorised development.

(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

Control of noise during operation

27.—(1) The authorised development must not be brought into use until a written scheme for noise management during operation has been submitted to and approved by the relevant planning authority.

(2) The authorised development must be operated in accordance with the approved operational noise management scheme.

Control of emissions

28.—(1) No stage of the authorised development is to commence until a written scheme for that stage—

- (a) for the management and mitigation of emissions from the authorised development of—
 - (i) odour;
 - (ii) artificial light;
 - (iii) dust;
 - (iv) smoke; and
 - (v) steam; and
- (b) to ensure the prevention of infestation or emanation of insects from the authorised development,

has been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the relevant stage of the authorised development.

(3) For the purposes of this requirement, “insects” excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981^(a) (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

Travel plan

29.—(1) No stage of the of the authorised development is to commence until, for that stage, after consultation with the highway authority, North East Lincolnshire Council, Royal Mail Group Ltd and Centrica plc, a construction travel plan, which must include details of the expected means of travel to and from the authorised development, road safety measures and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development is to be brought into use until, after consultation with the highway authority and Royal Mail Group Ltd, a travel plan, which must include details of the

(a) 1981 c. 69.

expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(3) The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented within one month of the authorised development being brought into use and must continue to be implemented for as long as the authorised development is used.

(4) The undertaker must have regard to any consultation response received.

(5) The plans approved under paragraphs (1) and (2) must be reviewed at least once a year or such other period as is agreed by the relevant planning authority.

Traffic management plan

30.—(1) No stage of the of the authorised development is to commence until, for that stage, after consultation with the highway authority and North East Lincolnshire Council, a traffic management plan, which must include details of how traffic to and from the authorised development will be managed, has been submitted to and approved by the relevant planning authority.

(2) The plan approved under paragraph (1) must be implemented during the construction and operation of the authorised development and must be reviewed every 6 months or such other period as is agreed by the relevant planning authority, following consultation with the highway authority and North East Lincolnshire Council.

European protected species

31.—(1) No stage of the authorised development is to commence until it has been established by existing or further survey work whether any European protected species or nationally protected species is present.

(2) Where a European protected species is shown to be present, that stage must only be commenced following appropriate consultation with Natural England and after any necessary licence has been obtained from Natural England pursuant to regulation 53 (licences for certain activities relating to animals or plants) of the Conservation of Habitats and Species Regulations 2010(a).

(3) “European protected species” has the same meaning as in regulations 40 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2010.

Requirement for consent of Civil Aviation Authority and Ministry of Defence

32. No stage of the authorised development is to commence until for that stage, after consultation with the Civil Aviation Authority and the Ministry of Defence, written details for the operation of the authorised development and its effect on radar have been submitted to and agreed by the relevant planning authority.

Flood warning and evacuation plan

33.—(1) No building of the authorised development is to be occupied until, after consultation with the relevant planning authority, written details of a flood warning and evacuation plan, which must include details of expected means of evacuation or safe refuge during a tidal flood event with safe refuge areas at not less than 6.84 metres above Ordnance Datum Newlyn, has been submitted to and approved by the relevant planning authority.

(2) Unless otherwise agreed with the relevant planning authority, the finished floor level of all buildings must be set a minimum of 300 millimetres above the level of the external storage areas and the buildings must incorporate flood resistant and resilient design with their construction.

(a) S.I. 2010/490.

Listed buildings

34. No stage of the authorised development is to commence until a listed building management plan applicable to that stage, which must include details of protection of any building referred to from vibration damage and the renovation or re-use of the building, has been submitted to and approved by the relevant planning authority in consultation with English Heritage. The management plan must be implemented as approved.

Tall structures

35. No structure is to be erected over 45 metres in height above finished ground level until written details of a lighting scheme applicable to that structure have been submitted to and approved by the relevant planning authority following consultation with the Civil Aviation Authority.

Cooling water intakes and outfalls

36.—(1) No development is to commence until a scheme for the monitoring of sedimentation along the lines of and in front of the Centrica and E.ON cooling intakes and outfalls has been submitted to and approved by the MMO, in consultation with the Environment Agency, Centrica plc and E.ON.

(2) The scheme must include—

- (a) details of monitoring proposals, including location and frequency; and
- (b) details of trigger levels and resultant actions or mitigation required if trigger levels are exceeded.

(3) Development must proceed in accordance with the approved scheme and any timetable contained in the scheme.

Piling

37. For any piling that is to take place above high water mark, the piling conditions at paragraphs 37 to 43 of Schedule 8 (deemed marine licence) apply as if references to the MMO were to the relevant local planning authority.

Sedimentation

38.—(1) No development is to commence until a scheme for the monitoring of the foreshore and sediment levels around the quay has been submitted to and agreed by the MMO, in consultation with the Environment Agency, C.RO and E.ON.

(2) Annual monitoring reports must be submitted to the MMO within 6 weeks of each anniversary of implementation up to 2033.

(3) The approved monitoring scheme must be implemented and complied with at all times.

39.—(1) No development is to commence until a scheme for the monitoring of sediment and siltation for Stone Creek has been submitted to and approved by the relevant planning authority, in consultation with the Stone Creek Boat Club and Sunk Island Parish Council, such scheme to include—

- (a) details of monitoring proposals, including location and frequency; and
- (b) details of trigger levels other pre-determined changes and remedial works required if these are exceeded or have taken place.

(2) The Environment Agency must be consulted when any remedial works are required as set out in sub-paragraph (1)(b).

(3) The methodology for any remedial works must be agreed with the Environment Agency in advance of any remedial works being undertaken where its operational activities or outfall structures at either Stone Creek or Keyingham Drain are shown by the monitoring results to have been affected.

(4) Development must proceed in accordance with the approved scheme and timetable contained in it.

Contaminants and remediation

40.—(1) Prior to the commencement of the relevant stage of the authorised development, the following components of a scheme to deal with the risks associated with contamination of the site must each be submitted to, and approved by, the relevant planning authority:

- (a) a preliminary risk assessment which has identified—
 - (i) all previous uses;
 - (ii) potential contaminants associated with those uses;
 - (iii) a conceptual model of the site indicating sources, pathways and receptors; and
 - (iv) potentially unacceptable risks arising from contamination at the site;
- (b) a site investigation scheme, based on sub-paragraph (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
- (c) the results of the site investigation and detailed risk assessment referred to in sub-paragraph (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
- (d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in sub-paragraph (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

(2) The scheme must be implemented as approved, and any changes to these components require the agreement of the relevant planning authority.

41.—(1) Prior to carrying out the licensed activity referred to in paragraph 8 (compensation site creation) of Schedule 8 (deemed marine licence), a verification report demonstrating completion of the works set out in the approved remediation strategy referred to in paragraph 40(1)(c) and the effectiveness of the remediation must be submitted to, and approved by, the relevant planning authority.

(2) The report must include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met, and must also include any plan (a “long-term monitoring and maintenance plan”) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the relevant planning authority.

(3) The long-term monitoring and maintenance plan must be implemented as approved.

Mitigation site requirements

42.—(1) During the construction and operation of the authorised development, no storage, use of plant or other development is to take place—

- (a) at a height greater than 3 metres from ground level within 70 metres of the North Killingholme Haven Pits Site of Special Scientific Interest; or
- (b) at a height greater than 6 metres from ground level between 70 metres and 150 metres from the North Killingholme Haven Pits Site of Special Scientific Interest; or
- (c) at a height greater than 9 metres from ground level between 150 metres and 200 metres from the North Killingholme Haven Pits Site of Special Scientific Interest; or
- (d) at a height greater than 10 metres from ground level within the 60 metre operational buffer strip adjacent to Mitigation Area ‘A’ (identified in the terrestrial environmental monitoring and management plan),

unless otherwise agreed by the relevant planning authority in consultation with Natural England.

(2) Before any activity referred to in sub-paragraph (1) takes place on the Order land, the buffer areas referred to in sub-paragraph (1) must be clearly marked on-site (by pegs or otherwise) to the written satisfaction of the relevant planning authority.

(3) Noise resulting from the construction and operation of the authorised development must not exceed 65 dB (A) at the boundary of the North Killingholme Haven Pits Site of Special Scientific Interest, unless otherwise agreed by Natural England based on the findings of the monitoring programme and taking account of the noise level duration.

(4) Noise resulting from the construction and operation of the authorised development must not exceed 65 dB (A) anywhere in the core area of Mitigation Area 'A' (as specified in the terrestrial environmental monitoring and management plan), unless otherwise agreed by Natural England based on the findings of the monitoring programme and taking account of the noise level duration.

(5) The terrestrial environmental management and monitoring plan must include a monitoring programme to ensure compliance with the noise levels and the container storage locations and heights specified in this paragraph.

Environment Agency requirements

43.—(1) Following construction of the new flood defence embankment at Cherry Cobb Sands, the Cherry Cobb Sands breach must not be made in the existing flood defences without the prior written consent of the Environment Agency, in consultation with Natural England and the MMO.

(2) The Cherry Cobb Sands breach must not be made until the new embankment has had an adequate period of time (likely to be, but not limited to, one winter period (November to April inclusive)) in which to stabilise and for vegetation to become established on the embankment to ensure the integrity of the new flood defences.

(3) No development is to commence until a scheme to compensate for the impacts of piling noise on migratory salmon from the construction of the authorised development has been agreed with the Environment Agency. This must include, but is not limited to, a monitoring scheme to ensure the intended benefits of the scheme are realised and necessary actions are taken.

(4) No development is to commence until an assessment of the impacts on Stone Creek, Cherry Cobb Sands Creek and Keyingham Drain has been submitted to and agreed by the relevant planning authority, in consultation with the Environment Agency, together with an outline scheme of remedial action if the impacts on those locations should be greater than those assessed.

(5) Any remedial action must be carried out if the corresponding greater impacts occur.

44.—(1) No development is to commence until the detailed design of the Regulated Tidal Exchange ("RTE") sluices has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency.

(2) The detailed design information must include the size and flow capacity of the sluices within the RTE scheme.

(3) No development is to commence until the detailed design of the channel leaving the Managed Realignment site and the invert level has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency, to include detailed design drawings, including dimensions.

(4) The discharge channel exiting the realignment site must be no larger than that currently presented and assessed in EX 28.3 Part 3 (11.6 metres bed width (invert level 1.5 metres AOD) with 1V:3H side slopes rising to an edge weir level of 2.0 metres AOD), unless otherwise agreed with the Environment Agency.

(5) The invert level of the drainage channel must be no higher than that currently presented and assessed in EX28.3 Part 3, *Final Compensation Proposals, October 2012*, (1.5 metres AOD), unless agreed otherwise in writing with the Environment Agency.

Requirement for written approval

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

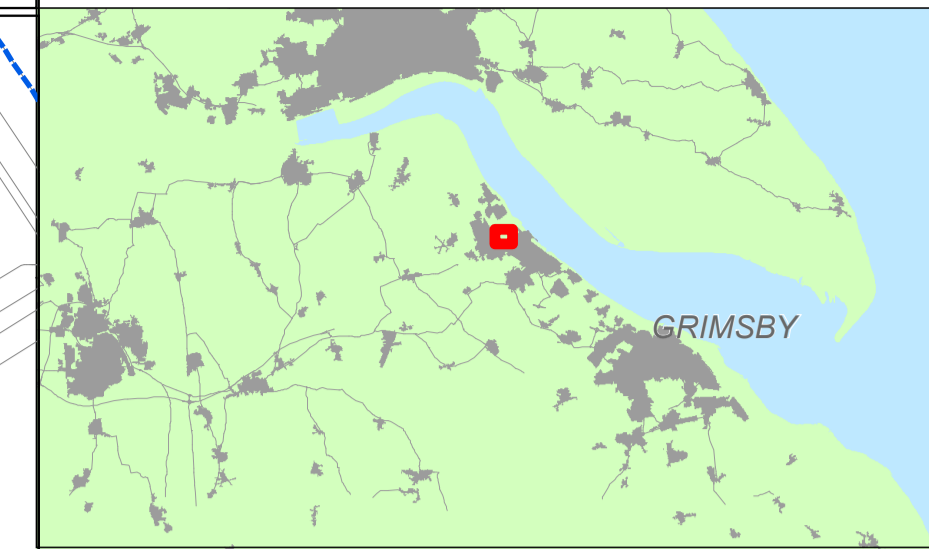
EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the construction and operation of a quay, associated onshore facilities and other development, to be situated on the south bank of the River Humber to the north east of Immingham, together with the creation of a compensatory environmental habitat on the north bank of the River Humber to the north east of the quay.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 55 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at the offices of Able Humber Ports Limited at Able House, Billingham Reach Industrial Estate, Billingham TS23 1PX.

APPENDIX 2: DCO INTERACTION PLAN



Key

- VPI IMMINGHAM OCGT PROJECT ORDER LIMITS
- - - ABLE MARINE ENERGY PARK DEVELOPMENT ORDER LIMITS
- LIMITS OVERLAP

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Client



Designer



Project

THE VPI IMMINGHAM OCGT PROJECT

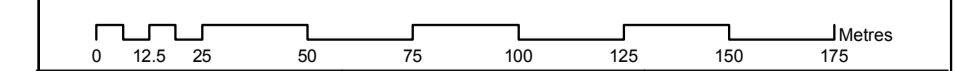
Drawing Title

VPI IMMINGHAM OCGT PROJECT-
OVERLAP WITH THE ABLE MARINE ENERGY PARK
DEVELOPMENT CONSENT ORDER 2014

Status
DRAFT

Revision 001
Date 03/04/2019

Scale 1:1,792 @ A1 Spatial Reference System British National Grid



Drawn By J.Simkute	Checked By L.Hartigan	Approved By L.Hartigan
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Drawing reference
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