

## VPI Immingham OCGT Project

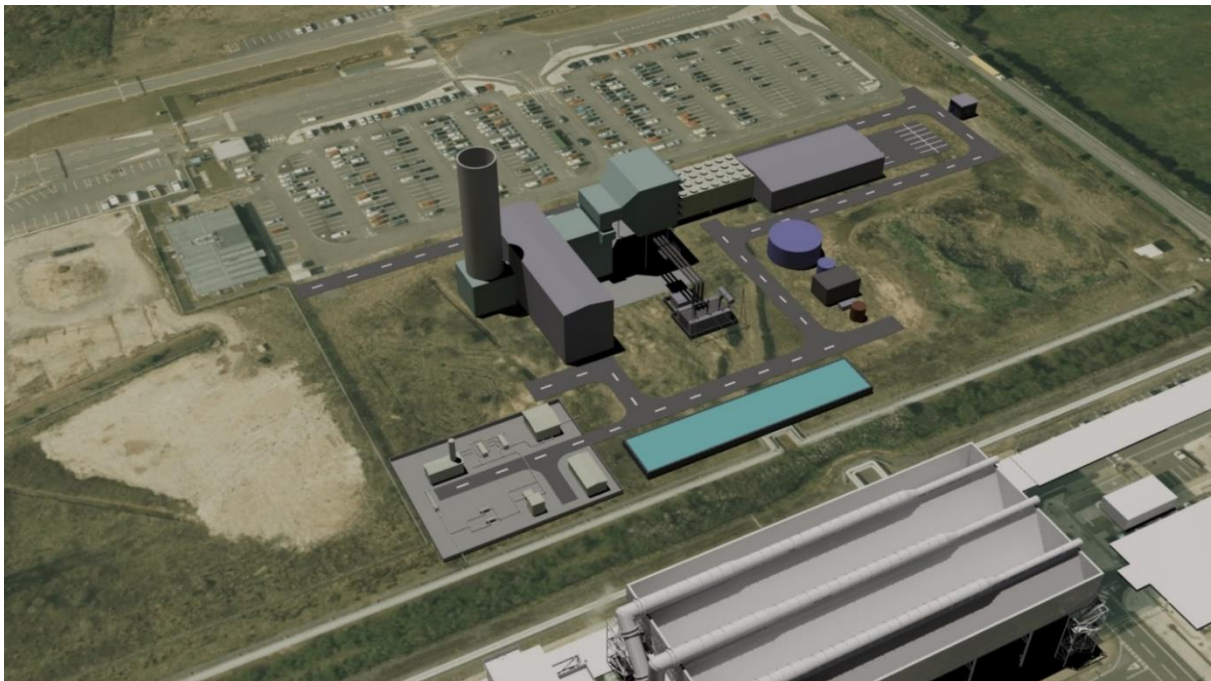
Document Ref: 2.2  
PINS Ref: EN010097

### 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

## Explanatory Memorandum

The Planning Act 2008



Applicant: VPI Immingham B Ltd  
Date: September 2019

## DOCUMENT HISTORY

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|                       |                    |             |                |
|-----------------------|--------------------|-------------|----------------|
| <b>Document Ref</b>   | <b>2.2</b>         |             |                |
| <b>Revision</b>       | 2                  |             |                |
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| <b>Signed</b>         | SS                 | <b>Date</b> | September 2019 |
| <b>Approved By</b>    | Nick McDonald      |             |                |
| <b>Signed</b>         | NM                 | <b>Date</b> | September 2019 |
| <b>Document Owner</b> | Pinsent Masons LLP |             |                |

## GLOSSARY

| <b>Abbreviation</b>    | <b>Description</b>  |
|------------------------|---|
| PA 2008                | The Planning Act 2008 which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.  |
| Access                 | Work No. 2 – access works comprising access to the OCGT Power Station Site and access to Work Nos. 3, 4, 5 and 6  |
| AGI                    | Above Ground Installation – installations used to support the safe and efficient operation of the pipeline; above ground installations are needed at the start and end of a gas pipeline and at intervals along the route.  |
| APFP Regulations       | The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Sets out detailed procedures that must be followed for submitting and publicising applications for Nationally Significant Infrastructure Projects.   |
| Applicant              | VPI Immingham B Ltd or VPIB   |
| Application            | The Application for a Development Consent Order made to the Secretary of State under Section 37 of the Planning Act 2008 in respect of the Proposed Development, required pursuant to Section 31 of the Planning Act 2008 because the Proposed Development is a Nationally Significant Infrastructure Project under Section 14(1)(a) and Section 15 of the Planning Act 2008 by virtue of being an onshore generating station in England of more than 50 Megawatts electrical capacity of more. |
| Associated Development | Defined under S.115(2) of The Planning Act 2008 as development which is associated with the principal development (the NSIP) and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development, or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.  |
| DCO                    | A Development Consent Order made by the relevant Secretary of State pursuant to the Planning Act 2008 to authorise a Nationally Significant Infrastructure Project. A DCO can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition.  |
| EIA                    | Environmental Impact Assessment – a term used for the assessment of environmental consequences (positive or negative) of a plan, policy, program or project prior to the decision to move forward with the proposed action.   |
| EIA Regulations        | The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the environmental assessment   |

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

| Abbreviation                            | Description   |
|---|---|
|   | DCO, the area is split into different Work Numbers which are set out Schedule 1 to the DCO and shown on the Works Plans. The Order limits is the same area as the Site  |
| PINS                                    | Planning Inspectorate – executive agency of the Ministry of Housing, Communities and Local Government of the United Kingdom Government. It is responsible for examining applications for NSIPs, and reporting to the Secretary of State who makes a final decision on such applications.  |
| Project Land                            | The land required for the Proposed Development (the Site) and the land comprising the Existing Gas Pipeline Site. The Project Land is the same as the 'Order land' (in the DCO).  |
| Proposed Development                    | The construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 MW, including electrical and gas supply connections, and other associated development.  |
| Requirements                            | The 'requirements' at Schedule 2 to the Order that, amongst other matters, are intended to control the final details of the Project as to be constructed and also to control its operation, amongst other matters to ensure that it accords with the EIA and does not result in unacceptable impacts.   |
| Site                                    | The land required for the Proposed Development, and which is the same as the 'Order limits' (in the DCO)  |
| SoS                                     | The Secretary of State. The decision maker for DCO applications and head of Government department. In this case the SoS for the Department for Business, Energy and Industrial Strategy   |
| Temporary Construction and Laydown      | Work No. 3 – temporary construction and laydown areas comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns. There are three construction and laydown areas included in the Application. |
| Temporary Construction and Laydown Site | Land Required for Work No. 3  |
| VPIB                                    | VPI Immingham B Ltd (the Applicant)   |
| VPI LLP                                 | VPI Immingham LLP – the owner and operator of the Existing VPI CHP Plant  |
| Work No.                                | Work number, a component of the Proposed Development, described at Schedule 1 to the Order  |
| Work No.1                               | An OCGT power station (the 'OCGT Power Station') with a gross capacity of up to 299MW.  |
| Work No.2                               | Access works (the 'Access Site'), comprising access to the Main OCGT Power Station Site and access to Work Nos. 3, 4, 5 and 6.  |
| Work No.3                               | Temporary construction and laydown area (the 'Temporary Construction and Laydown) comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns;   |
| Work No.4                               | An underground and overground gas pipeline (the 'Gas Connection) of up to 600 mm (nominal internal diameter) for the  |

| <b>Abbreviation</b> | <b>Description</b>  |
|---------------------|---|
|                     | transport of natural gas to Work No. 1.   |
| Work No.5           | An electrical connection (the 'Electrical Connection') of up to 400 kilovolts and control systems.                      |
| Work No.6           | Utilities and services connections (the 'Utilities and Services Connections').  |
| Works Plans         | Plans showing the Work Nos. referred to at Schedule 1 to the Order and which together make up the Proposed Development. |

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## 1. INTRODUCTION

### 1.1 Overview

- 1.1.1 This explanatory memorandum (Document Ref. 3.2) has been prepared on behalf of VPI Immingham B Limited ('VPIB' or the 'Applicant') to explain the purpose and effect of the provisions of the draft Immingham Open Cycle Gas Turbine Order 20[X] (the 'Order') in accordance with regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'Secretary of State') for Business, Energy and Industrial Strategy, under Section 37 of 'The Planning Act 2008' (the 'PA 2008').
- 1.1.2 VPIB is seeking development consent for the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 megawatts ('MW'), including electrical and gas supply connections and other associated development (the 'Proposed Development'). The Proposed Development is located is primarily located on land (the 'Site') to the north of the existing VPI Immingham Power Station, Rosper Road, South Killingholme, North Lincolnshire, DN40 3DZ.
- 1.1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under section 14(1)(a) and sections 15(1) and (2) of the PA 2008. The DCO, if made by the SoS, would be known as the 'Immingham Open Cycle Gas Turbine Order' (the 'Order')

### 1.2 VPI Immingham LLP and VPIB

- 1.1.4 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'.
- 1.1.5 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/>
- 1.1.6 VPIB has been formed as a separate entity for the purpose of developing and operating the Proposed Development.

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### 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;
  - Existing AGI Site;
  - Electrical Connection Site; and
  - Utilities and Services Connections Site.
- 1.3.4 The OCGT Power Station Site and the majority of the Temporary Construction and Laydown Site are within the control of VPIB. VPI LLP has a lease of the Existing VPI CHP Plant Site.
- 1.3.5 The Site is located entirely within the boundary of the administrative area of North Lincolnshire Council ('NLC'), a unitary authority. The different parts of the Site are illustrated in the Works Plans (Application Document Ref: 4.3).
- 1.3.6 The Site has been selected by the Applicant for the Proposed Development, as opposed to other potentially available sites, for the following reasons:
- it comprises primarily of previously developed or disturbed land, including land within the operational envelope of the Existing VPI CHP Plant Site;
  - it is situated in an industrial setting with few immediate receptors and is not particularly sensitive from an environmental perspective;
  - it is primarily located adjacent to the Existing VPI CHP Plant, which provides visual screening and synergies in terms of the existing workforce and services;
  - it benefits from excellent grid connections (gas and electricity) on the Existing VPI CHP Plant Site; and



- it benefits from existing highway accesses onto Rosper Road, with the latter providing a direct connection (via a short section of Humber Road) to the Strategic Highway Network (A160) a short distance to the south of the Site.

1.3.7 A more detailed description of the Site is provided in Environmental Statement ('ES') Volume 1 Chapter 3 'Description of the Site' (Application Document Ref: 6.2.3).

## **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 located to the west of South Killingholme.

1.4.2 A small part of the Existing Gas Pipeline lies within the administrative area of North East Lincolnshire District Council ('NELC'), the neighbouring local authority.

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. However, the Existing Gas Pipeline is included in the Application on the basis that the Applicant is seeking powers of compulsory acquisition over it, to use and maintain it to ensure that the Proposed Development can operate.

1.4.4 The Site and the Existing Gas Pipeline together comprise the Order land (or 'Project Land') for the DCO application. The area of land covered by the Existing Gas Pipeline, including a 13 m stand-off either side of it to provide for access and any future maintenance requirements, is hereafter referred to as the 'Existing Gas Pipeline Site'.

1.4.5 A more detailed description of the Site is provided in Environmental Statement ('ES') Volume I Chapter 3 'Description of the Site' (Application Document Ref: 6.2) and the extent of the Order land is shown on the Land Plans (Application Document Ref: 4.2).

## **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 299 megawatts;
- Work No. 2 – access works (the 'Access'), comprising access to the OCGT Power Station and access to Work Nos. 3, 4, 5 and 6;
- Work No. 3 – temporary construction and laydown area ('Temporary Construction and Laydown') comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking,

roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns;

- Work No. 4 – gas supply connection works (the ‘Gas Connection’) comprising an underground and/or overground gas pipeline of up to 600 millimetres (nominal internal diameter) and approximately 800 m in length for the transport of natural gas from the Existing Gas Pipeline to Work No. 1;
- Work No. 5 – an electrical connection (the ‘Electrical Connection’) of up to 400 kilovolts and controls systems; and
- Work No 6 – utilities and services connections (the ‘Utilities and Services Connections’).

1.5.2 The areas within which each of the main components (the Works Nos.) of the Proposed Development are to be built are shown by the coloured and hatched areas on the Works Plans (Application Document Ref: 4.3). The ‘associated development’, for the purposes of Section 115 of the PA 2008, comprises Work Nos. 2, 4, 5 and 6 of the Proposed Development.

1.5.3 It is anticipated that subject to the DCO having been made by the SoS and a final investment decision by VPIB, construction work on the Proposed Development would commence in early 2021. The overall construction programme is expected to last approximately 21 months and is anticipated to be completed in late 2022, with the Proposed Development entering commercial operation later that year or early the following year. It is envisaged that the Proposed Development would have a design and operational life of at least 40 years.

1.5.4 A more detailed description of the Proposed Development is provided at Schedule 1 ‘Authorised Development’ of the draft DCO (Application Document Ref: 2.1) and ES Volume I, Chapter 4 ‘The Proposed Development’ (Application Document Ref: 6.2).

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

1.6.1 This explanatory memorandum should be read alongside the Order (Application Document Ref 2.1) and the various documents submitted in respect of the Application. It explains the effect and purpose of the provisions in the Order, and is provided as required by Regulation 5(2)(c) of the APFP Regulations.

1.6.2 The explanation in the following section follows the structure of the Order, first explaining the articles in the Order and then the Schedules to it.

## 2. THE PROVISIONS OF THE ORDER

### 2.1 Introduction

2.1.1 The Order consists of 43 operative provisions, each referred to as articles, and 13 Schedules.

### 2.2 Parts 1 (Preliminary) and 2 (Principal Powers)

2.2.1 Articles 1 (Citation and Commencement) and 2 (Interpretation) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.

2.2.2 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development.

2.2.3 Article 2 defines 'apparatus' as having the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include electricity cables and telecommunications equipment, and to include aerial markers, cathodic protection test posts and field boundary markers, transformer rectification kiosks and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which VPIB may need to carry out. This wording has precedent in the Eggborough Gas Fired Generating Station Order 2018.

2.2.4 Article 2 defines 'commencement' and separately also defines the 'permitted preliminary works'. Where appropriate the requirements (in Schedule 2, see further below) are drafted so that these works can be carried out without discharging certain requirements. The works identified in the 'permitted preliminary works' are considered appropriate as to the nature of these works, and the ES has assessed the Proposed Development on the basis that the permitted preliminary works may be carried out prior to certain requirements being discharged or triggered. A similar structure and wording has precedent in the Eggborough Gas Fired Generating Station Order 2018 which defined "permitted preliminary works" as follows:-

"permitted preliminary works" means works within the areas of Work Nos. 1, 2, 3, 4, 5, 6, 7, 9 and 10 to the extent that those are within the area of the existing coal-fired power station, consisting of environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

2.2.5 Article 2 includes a definition of 'limits of deviation' which operates by reference to the Works Plans which has precedent in the Progress Power (Gas Fired Power Station) Order 2015, and it defines 'Order limits' as the limits shown on the Works

Plans, to tie these concepts into the Order and ensure works can only be carried out in the relevant areas.

- 2.2.6 Article 2 defines 'Order land' as land required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference. The Order land covers a greater area than the Order limits, since consent is only sought for works (the 'authorised development' in Schedule 1 to the Order) within the Order limits, but powers of compulsory acquisition are also sought over the Existing Gas Pipeline Corridor, to ensure that VPIB has the necessary land and rights to be able to operate the Proposed Development. The Order land therefore extends to include the Existing Gas Pipeline Corridor. The Statement of Reasons (Application Document Ref. 3.2) provides more information on the need for and justification of powers of compulsory acquisition in the Order.
- 2.2.7 Article 2 defines 'undertaker' as VPI Immingham B Limited who has the benefit of the provisions of the Order, subject to the provisions of articles 6 and 7 (see below).
- 2.2.8 Article 2, Sub-paragraph (2) has been included to reflect that "rights over land" (including new rights which are created or acquired) include any trusts, incidents and restrictive covenants which has precedent in the Eggborough Gas Fired Generating Station Order 2018.
- 2.2.9 Article 2, Sub-paragraphs (3) to (7) of Article 2 have been added to provide clarity in relation to (respectively) that all distances, directions and lengths are approximate; all areas described in square meters in the book of reference are approximate; references to numbered works are as described in Schedule 1 and shown on the Works Plans; how the word 'includes' is to be construed; and that references to "plot" are to those shown on the Land Plans (Application Document Ref. 4.2) and described in the Book of Reference (Application Document Ref. 3.1).
- 2.2.10 Article 3 (Development consent etc. granted by the Order) – Article 3(1) grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into numbered works, each of which represents a different part of the authorised development. Article 3(2) requires that the works authorised by the Order are situated within the areas shown on the Works Plans (Document Reference 2.6). This is to provide certainty as to what has been consented by the Order and has precedent in the Eggborough Gas Fired Generating Station Order 2018.
- 2.2.11 Article 4 (Maintenance of authorised development) provides a power to maintain the authorised development. Article 4(1) closely reflects the terms of the model provisions. Article 4(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised which has precedent in the Eggborough Gas Fired Generating Station Order 2018. A definition of "maintain" has been included so that it is clear what the term involves, and the activities are limited by reference to the effects considered in the Environmental Statement (Application Document Ref. 6.1 to 6.4). The Environmental Statement has assessed the maintenance of the Proposed Development, as that is permitted by the Order.
- 2.2.12 Article 5 (Operation of authorised development) permits the operation and use of the generating station comprised in the authorised development and is included

pursuant to section 140 of the Planning Act 2008. Article 5(2) specifically preserves the need for any other operational consent that may be needed for the authorised development in addition to the Order. The wording of this Article has precedent in Article 5 of the Eggborough Gas Fired Generating Station Order 2018.

- 2.2.13 Article 6(1) (Benefit of the Order) makes clear that (subject to sub-paragraph (2)) it is only VPIB who may take the benefit of the Order. Article 6(2) provides that for Work No. 5 (the Electrical Connection) the benefit of the Order is for VPIB and National Grid (as National Grid may potentially carry out all or part of those works). A similar approach regarding the benefit of parts of the Order being given to more than one person has been taken in various previous DCOs, including in Article 6 of the Meaford Gas Fired Generating Station Order 2016 and Article 6 of the Progress Power (Gas Fired Power Station) Order 2015 which respectively state:-

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to—

(a) numbered work 2A(i) and numbered work 2A(ii) for which consent is granted by this Order for the benefit of the undertaker and National Grid; and

(b) numbered work 3 for which consent is granted by this Order for the benefit of the undertaker and WPD.

6.—(1) Section 156(1) of the 2008 Act applies to the grant of development consent by this Order.

(2) Without prejudice to paragraph (1), in relation to numbered works 3 and 5 consent is granted by this Order for the benefit of the undertaker and National Grid; and

(3) *Without prejudice to paragraph (1), in relation to numbered work 7 consent is granted by this Order for the benefit of the undertaker and the highway authority.*

- 2.2.14 These precedents are relevant as they relate to similar works and projects i.e. a gas generating station with an electrical connection.

- 2.2.15 Article 7 (Consent to transfer benefit of the Order) makes detailed provision for the transfer of the benefit of the Order and supplements Article 6(1). Under Article 7(4) the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order. The undertaker must notify National Grid on seeking the consent of the Secretary of State. Such consent is not required where (i) the transferee or lessee is (a) the holder of a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986; or (b) in relation to the transfer of a lease of any works within a highway, a highway authority responsible for the highways within the Order Land or (ii) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant. The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to VPIB, or there are no outstanding actual or potential compulsory acquisition compensation claims. This has precedent in Article 7 of the Millbrook Gas Fired Generating Station Order 2019 with the amendments shown underlined below (which themselves have

precedent in Article 7 of the Eggborough Gas Fired Generating Station Order 2018):-

*(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—*

~~(a)~~*(ii) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc) of the Electricity Act 1989(a) or section 7 (licensing of public gas transporters) of the Gas Act 1986(b); or*

*(ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order land; or*

*(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—*

*(i) no such claims have been made;*

*(ii) any such claims that have been made have all been compromised or withdrawn;*

*(iii) compensation has been paid in final settlement of all such claims;*

*(iv) payment of compensation into court in lieu of settlement of all such claims has taken place;*

*or*

*(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.*

2.2.16 Article 7(5) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State and National Grid in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 7(6) to (8) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the Millbrook Gas Fired Generating Station Order 2019.

## **2.3 Part 3 (Streets)**

2.3.1 Article 8 (Power to alter layout etc. of streets) allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 3. Article 8(2) allows for the alteration of the layout of any street within the Order limits for the purposes of construction, operation or maintenance, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority. This is based on Article 8 of the Millbrook Gas Fired Generating Station Order 2019.

2.3.2 Article 9 (Street works) is a model provision intended to permit in certain streets (as specified in Schedule 3) the carrying out of street works for the purposes of the authorised development. Article 9(3) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to Article 9(1). This provides protection for the street authority for the street in question. This is based on Article 9 of the Millbrook Gas Fired Generating Station Order 2019 but the reference in Millbrook to "as is within the Order limits" at the end of Article 9(1) has been removed given that the streets set out in Schedule 3 are within the Order limits in any event.

2.3.3 Article 10 (Construction and maintenance of new or altered means of access) provides that new or altered means of access are to be constructed to the reasonable satisfaction of the highway authority, unless otherwise agreed by the highways authority, and maintained at the expense of the undertaker for a year.

This Article has precedent in Article 10 of the Millbrook Gas Fired Generating Station Order 2019 and Article 10 of the Eggborough Gas Fired Generating Station Order 2018. Any part of the new or altered means of access which are proposed to be public highway (as set out on the Access and Rights of Way Plan, Document Reference 4.3) will then be maintained by the highway authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private accesses which the undertaker is altering or creating and as also set out in the Access and Rights of Way Plan) will then be maintained by the relevant street authority. Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic.

- 2.3.4 Article 11 (Temporary prohibition or restriction of use of streets) is slightly refined from the model provision and provides for the temporary alteration, diversion and prohibition or restriction on the use of streets for the purposes of carrying out the authorised development. Reference to temporary prohibition or restriction of use is a reference to the temporary control of how traffic and non-motorised users (including pedestrians) may use and pass along the streets in question. As per the model provision, this applies generally, and also applies specifically to certain streets which are set out in Schedule 5 to the Order.
- 2.3.5 Article 11(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 11, to use such a street as a temporary working site. There are consultation requirements before this power can be exercised, and in the case of any streets not specified in Schedule 5 the undertaker would need to secure the consent of the street authority prior to prohibiting or restricting use. Compensation may be payable in respect of the loss or suspension of any private rights of way. This Article has precedent in Article 11 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.3.6 Article 12 (Access to works) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Schedule 3. Other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the relevant planning authority in consultation with the highway authority.
- 2.3.7 Article 13 (Agreements with street authorities) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders. Similar wording has been used in other made Orders, including the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
- 2.3.8 Article 14 (Traffic regulation) allows, with the consent of the traffic authority, the undertaker to regulate traffic on roads (defined as a public highway maintained by and at the expense of the traffic authority) to the extent that it is necessary for the purposes of or in connection with the construction of the authorised development. The Article gives effect to any prohibition, restriction or other provision made by the undertaker as if it was made by the traffic authority or local authority in whose area the road is situated. The Article is not in the general model provisions but there is a

precedent for it in the Wrexham Gas Fired Generating Station Order 2017 (Article 14) - the reference in Wrexham to "prior to when the authorised development first becomes operational" in Article 14(1) has been replaced with "prior to the date of final commissioning" so as to utilise the appropriate defined term in this case. This Article is considered necessary to ensure that the authorised development can be constructed without unnecessary delay. Article 38 (procedure in relation to certain approvals) applies to this Article, see further below.

## **2.4 Part 4 (Supplemental Powers)**

2.4.1 Article 15 (Discharge of water) is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead. This Article has precedent in Article 16 of the Millbrook Gas Fired Generating Station Order 2019.

2.4.2 Article 16 (Authority to survey and investigate the land) is based on the model provision which allows the undertaker to survey and/or investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation. The power extends to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development (for example noise monitoring at residential receptors). The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development. This Article has precedent in Article 17 of the Millbrook Gas Fired Generating Station Order 2019.

2.4.3 Article 17 (Removal of human remains) is a model provision which provides for the removal of human remains from the Order land and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This article has been included as VPIB has not been able to rule out the presence of any human remains within the Order land and is considered necessary so that there is no delay in the implementation of the authorised development. This Article has precedent in Article 16 of the Eggborough Gas Fired Generating Station Order 2018.

## **2.5 Part 5 (Powers of Acquisition)**

2.5.1 Article 18 (Compulsory acquisition of land) provides for the compulsory acquisition of such land as is required for the authorised development or which is required to facilitate the authorised development or is incidental to the authorised development. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as



this is dealt with in Article 22 (Private rights). This approach has precedent in Article 18 of the Millbrook Gas Fired Generating Station Order 2019.

- 2.5.2 Article 19 (Power to override easements and other rights) provides that by virtue of section 158 of the 2008 Act in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the 2008 Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in Article 19 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.3 Article 20 (Time limit for exercise of authority to acquire land compulsorily) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition. The date of the making of the Order has been used to align with the date from which the undertaker may exercise any powers of compulsory purchase that may be contained within the Order. VPIB considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 2 of Schedule 2 of the Order, and has precedent in the majority of Orders made to date for example in Article 19 of the Eggborough Gas Fired Generating Station Order 2018.
- 2.5.4 Article 21 (Compulsory acquisition of rights) is based on a model provision and entitles the undertaker to acquire rights over land which may be compulsorily acquired, including rights already in existence, or to create new rights or impose restrictions. The word "existing" has been deleted from the model provision wording in paragraph (3) in order to ensure that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the authorised development is implemented.
- 2.5.5 The Article also introduces Schedule 7, which amends existing compensation legislation in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. Schedule 7 does not affect the entitlement to compensation, but generally ensures that the compensation code applies to the compulsory acquisition by the creation of new rights and the imposition of restrictive covenants. The Article also provides for the transfer of the power to acquire new rights to a statutory undertaker with the consent of the Secretary of State. This is to allow for the creation of easements in favour of statutory undertakers in respect of their apparatus which would not otherwise be possible as the undertaker does not own the 'dominant tenement'. Wording has been included at paragraph (6) to make clear that legislation governing the compensation for the compulsory purchase of land is to apply in relation to the creation of new rights and the imposition of restrictions.
- 2.5.6 This Article has precedent, for example, in Article 21 of the Millbrook Gas Fired Generating Station Order 2019. The approach to setting the purposes for which new rights may be acquired (as per Article 21(2) and Schedule 6) has precedent in the Millbrook Gas Fired Generating Station Order 2019.

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- 2.5.7 Article 22 (Private rights) is based on a model provision and has the effect of extinguishing private rights and restrictions over land where: (1) land is compulsorily acquired; (2) where notified by the undertaker, the private right is inconsistent with a right being compulsorily acquired; and (3) land is owned or leased by the undertaker. The Article also suspends private rights where the private right is inconsistent with a right being compulsorily acquired by the undertaker and also suspends private rights for as long as the undertaker is in temporary possession of land under the Order. The Article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation of the Project. The Article follows the approach in Article 24 of the Wrexham Gas Fired Generating Station Order 2017. Paragraph (4) limits the scope of the suspension of existing rights where temporary possession of land is taken pursuant to the Order.
- 2.5.8 Article 23 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order and is a model provision. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in the High Speed Rail (London – West Midlands) Act 2017, the Wrexham Gas Fired Generating Station Order 2017 and the Silvertown Tunnel Order 2018.
- 2.5.9 Article 24 (Acquisition of subsoil only) permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required, and it could permit the undertaker to compulsorily acquire only the 'smaller' interest, reducing the impact on the land owner. This is based on the model provision with amendments which have precedent in Article 24 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.10 Article 25 (Modification of Part 1 of the Compulsory Purchase Act 1965) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under this Order. These modifications have precedent in Article 25 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.11 Article 26 (Rights under or over streets) is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in Article 27 of the Progress Power (Gas Fired Power Station) Order 2015.

- 2.5.12 Article 27 (Temporary use of land for carrying out the authorised development) allows the land specified in Schedule 8 to be temporarily used for the carrying out of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, and provisions requiring that at least 14 days' notice is given and for the restoration of the land following the temporary works.
- 2.5.13 Wording has been added to paragraph 1(a)(ii) in order to allow Article 27 to apply to land which may later be the subject of compulsory acquisition. New wording has also been added to paragraphs (3) and (4) to take in to account that VPIB may, pursuant to Article 27(1)(a)(ii), temporarily use land that it may compulsorily acquire. Wording has also been deleted in paragraph (8) to dovetail with the new drafting in paragraph (1). This Article has precedent in Article 26 of the Wrexham Gas Fired Generating Station Order 2017.
- 2.5.14 Wording has been added at paragraph (9) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights of any part of the Order land. The wording in this Article has precedent in Article 27 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.15 Sub-paragraph 13 dis-applies the provisions of the Neighbourhood Planning Act 2017 that relate to temporary possession. VPIB's rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and the Regulations required to provide more detail on the operation of that regime are also not yet in place. VPIB is of the view that it is not currently possible to understand or reflect accurately the temporary possession provisions as intended by Government in respect of DCOs. As such, it is considered appropriate to apply the temporary possession regime which has been included in numerous DCOs and orders made under the Transport and Works Act 1992 to date. This approach has been adopted in DCOs including the Silvertown Tunnel Order 2018, the Eggborough Gas Fired Generating Station Order 2018 and Article 28 of the Millbrook Gas Fired Generating Station Order 2019. The underlined wording below has been included in paragraph 13 which is additional to that included in Millbrook. This is required given the authorised development is limited to the Order limits, however, temporary possession may be required over the Order land (which a wider area than that contained in the Order limits):
- The provisions of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development or works necessary for the authorised development within the Order land.*
- 2.5.16 Article 28 (Temporary use of land for maintaining the authorised development) provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days' notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land. The maintenance period has been adapted from the model provision to apply to the period of 1 year beginning with the date of final commissioning, as opposed to the date on which the project is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders for gas fired generating stations, including in Article 28 of the Millbrook Gas Fired Generating Station Order 2019; however Article 28(11)

has been amended as follows as a different maintenance period is not required for landscaping:-

*In this article “the maintenance period” means the period of ~~5 years~~ 1 year beginning with the date of final commissioning ~~except where the authorised development is landscaping where “the maintenance period” means such period as set out in the landscape and ecological mitigation and management strategy which is approved by Central Bedfordshire Council pursuant to Requirement 3 beginning with the date on which that part of the landscaping is completed provided that such period shall not exceed 10 years~~*

- 2.5.17 Article 29 (Statutory undertakers) provides for the acquisition of land belonging to statutory undertakers within the Order land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Order) rather than just extinguishment. This power is required over the whole of the Order land and has precedent in made Orders for gas fired generating stations, including in Article 28 of the Wrexham Gas Fired Generating Station Order 2017.
- 2.5.18 Article 30 (Apparatus and rights of statutory undertakers in streets) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are altered or diverted or where use is temporarily prohibited or restricted under Articles 10 or 11. It is a model provision but has been amended in that paragraph (2) onwards has been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 9 of the Order. This has precedent in Article 31 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.19 Article 29 (Statutory undertakers) provides that persons who have to create a new connection following the exercise of powers under Article 31 may recover the costs of new connections from the undertaker. It is a model provision and has precedent in Article 31 of the Millbrook Gas Fired Generating Station Order 2019.

## **2.6 Part 6 (Operations)**

- 2.6.1 Article 32 (Felling or lopping of trees) provides that the undertaker may fell or lop or cut back the roots of any tree or shrub within the Order land to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for loss or damage if caused. It is a model provision.
- 2.6.2 Article 33 (Protective works to buildings) is a model provision which allows the undertaker to carry out protective works to buildings within the Order limits, subject to a number of conditions including the service of 14 days' notice (except in the case of emergency) and the payment of compensation. The model provision has been updated to refer to the period following the date of final commissioning, as the phrase in the model provisions (when it is 'open for use'), is not appropriate for a generating station project. Article 32 of the Eggborough Gas Fired Generating Station Order 2018 made a similar amendment, although used “commercial use” as the relevant defined term.

## **2.7 Part 7 (Miscellaneous and General)**

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- 2.7.1 Article 34 (Application of landlord and tenant law) is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development, or the right to operate the same, or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.
- 2.7.2 Article 35 (Operational land for the purposes of the 1990 Act) is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act. A similar provision has been included in other made orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
- 2.7.3 Article 36 (Defence to proceedings in respect of statutory nuisance) is a model provision that provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance of the authorised development and for which noise has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974, or which cannot be reasonably avoided as a consequence of the authorised development. This Article has precedent in Article 37 of the Eggborough Gas Fired Generating Station Order 2018.
- 2.7.4 Article 37 (Protective provisions) provides for Schedule 9, which protects the interests of certain statutory undertakers and other third parties potentially affected by the authorised development.
- 2.7.5 Article 38 (Procedure in relation to certain approvals) provides a procedure in relation to consents and approvals required pursuant to the Order. It applies to all such consents etc, bar those under requirements in Schedule 2, where a separate more detailed procedure is provided for in Schedule 10. Schedule 10 has been used in various draft development consent orders and can be seen in a similar form in the Wrexham Gas Fired Generating Station Order 2017. The article also provides that the procedures set out in Schedule 10 apply to any consent, agreement or refusal which needs to be obtained under the requirements set out in Schedule 2 to the Order. Article 38 provides the procedure which applies in respect of other consents, including by making clear that the appeals process set out in Schedule 10 applies. This Article has precedent in Article 38 of the Millbrook Gas Fired Generating Station Order 2019, and is considered appropriate and justified in order to ensure that the Proposed Development can proceed in a reasonable timescale, and so that there is a consistent approach to consents etc that must be sought by the undertaker pursuant to the Order.
- 2.7.6 Article 39 (Certification of plans etc.) is a model provision which provides for the submission of the book of reference, plans and other documents referred to in the Order to the Secretary of State in order that they may be certified as being true copies.

- 2.7.7 Article 40 (Service of notices) deals with the service of notices pursuant to the Order. These provisions have precedent in Article 39 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.7.8 Article 41 (Amendment and modification of statutory provisions) provides for Schedule 13 which sets out modifications and amendments to the Able Marine Energy Park Development Consent Order 2014. The modifications are made pursuant to the power contained in section 120(5) of the Planning Act 2008, which permit in certain circumstances the amendment of “statutory provisions”, defined in section 120(6) as including an instrument made under an Act. The Able Marine Energy Park Development Consent Order 2014 is such a statutory instrument, and the amendments fall within the circumstances within which amendments are permitted. They are amendments of provisions which relate to matters for which provision may be made in the order or which it is necessary or expedient to make in connection with this Order, being the means by which conflicts between the works and powers contained within the two development consent orders are to be avoided. The interactions between the respective projects are explained in the Planning Statement (Application Document Ref. 5.3), and the relevant provisions are explained further below (see Schedule 13).
- 2.7.9 Article 42 (Arbitration) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is based on a model provision but has been amended to provide for an arbitrator to be appointed by the Centre of Effective Dispute Resolution in the event that the Secretary of State fails to appoint an arbitrator. This is to prevent any delay to the resolution of any disputes, but does not apply to disputes between any person and the Secretary of State.
- 2.7.10 Article 43 (Funding) provides for a guarantee or other form of security for the payment of compensation to be put in place prior to exercising the compulsory acquisition powers granted by the Order. The article is based on Article 39 of the Wrexham Gas Fired Generating Station Order 2017.

## 2.8 Schedules

- 2.8.1 **Schedule 1 (authorised development)** specifies the authorised development:-
- 2.8.2 An ‘OCGT Plant’ (Work No. 1) - an OCGT plant of up to 299 MW gross capacity, comprising (but not limited to) gas turbine, turbine buildings, emissions stacks, administration/control buildings and ancillary buildings, enclosures, plant, equipment and infrastructure connections and works;
- 2.8.3 Access (Work No. 2) – access to Work Nos 1, 3, 4, 5 and 6 from Rosper Road;
- 2.8.4 Temporary construction and laydown (Work No. 3) – comprising (but not limited to) hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities;
- 2.8.5 A ‘Gas Supply Connection’ (Work No. 4) – for the transport of natural gas to Work No. 1 comprising underground and overground gas pipeline up to 600 millimetres nominal internal diameter and other works including (but not limited to) control systems and cables and marker posts; and

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- 2.8.6 An 'Electrical Connection' (Work No. 5) - an electrical connection up to 400 kilovolt and controls systems; and
- 2.8.7 Utilities and services connections (Work No. 6) – comprising (but not limited to) water pipes, telecommunications cables and equipment and control systems and cables.
- 2.8.8 **Schedule 2 (Requirements)** sets out the requirements which apply to the carrying out and operation of the authorised development. They broadly follow those set out in the model provisions, where relevant, and where they have been amended this has been done following discussions with the relevant planning authority and other statutory consultees. The Order limits fall within the administrative area of North Lincolnshire Council, and it is therefore the planning authority in respect of the requirements.
- 2.8.9 The requirements closely relate to the mitigation set out in the Environmental Statement (Document Reference 6.1).
- 2.8.10 Requirement 1 defines various and bodies which are referred to in the remainder of Schedule 2.
- 2.8.11 Requirement 2 (Commencement of the authorised development) - requires that the authorised development is commenced within five years from the Order coming into force. This broadly follows the model provision;
- 2.8.12 Requirement 3 (Notice of commencement and completion of commissioning) - This is not a model provision. It requires the undertaker to give notice to the relevant planning authority of commencement of the authorised development, and of the intended start and completion of commissioning. These are all points in the construction programme at which certain requirements are triggered, and it is therefore appropriate for the relevant planning authority to be notified of when they occur.
- 2.8.13 Requirement 4 (Notice of commencement of commercial use) - This is not a model provision. It requires the undertaker to notify the planning authority of the intended start of commercial use of the authorised development prior to such start and in any event within 7 days from the date that commissioning is started. This is required for the same reason as requirement 3.
- 2.8.14 Requirement 5 (Detailed design) - This is based on a model provision. It requires the specific design details for each Work Number, to be submitted to and approved by the relevant planning authority before commencement, save for the permitted preliminary works. In respect of Work No. 1, the submitted details must comply with the parameters set out in Schedule 12 – those match the parameters used in the Environmental Statement (Document Reference No. 6.2) to assess the Proposed Development. The authorised development must be constructed in accordance with the approved details.
- 2.8.15 Requirement 6 (Biodiversity enhancement and management plan) - This is based on a landscaping model provision, however has been modified to make provision instead for biodiversity protection management and enhancement. It has been split into two plans, one relating to the construction period and the second relating to the operational period.

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- 2.8.16 It requires the undertaker to submit a biodiversity protection plan to the relevant planning authority prior to commencing the authorised development of that part the plan relates to. The plan must set out measures to protect existing tree and shrub planting and avoid impacts on biodiversity and habitats, and must be implemented as approved during the construction period.
- 2.8.17 Sub-paragraph (4) requires the undertaker to submit a further biodiversity management and enhancement plan, prior to the commissioning of the authorised development, to be in accordance with the principles of the framework biodiversity enhancement and management plan. This plan must include specific details as specified in sub-paragraph (5) and must be implemented as approved during operation of the authorised development.
- 2.8.18 This approach of splitting out the requirement into two plans provides appropriate protection for the landscaping and biodiversity elements during construction, whilst providing the undertaker with the ability to commence construction without having to have provided full details of all the final landscaping and biodiversity proposals. It has precedent in the Eggborough Gas Fired Generating Station Order 2018.
- 2.8.19 Requirement 7 (External lighting) - This is based upon a model provision and requires the undertaker to submit details of all external lighting to be installed during construction to the planning authority for approval before the authorised development may commence, save for the permitted preliminary works. Sub-paragraph (2) contains an equivalent provision for the operation of the authorised development which requires the scheme to be submitted prior to commissioning.
- 2.8.20 Requirement 8 (Highway accesses) - This is a modified model provision. It provides that no part of the authorised development, save for the permitted preliminary works, may commence until details of any new, modified or temporary means of access to the 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 for that part have been submitted to and approved by the relevant planning authorities. Consultation is required with the highway authority and the highway accesses must be constructed in accordance with the approved details.
- 2.8.21 Requirement 9 (Means of enclosure) - This is based on a model provision. It requires that no part of the authorised development may commence, save for the permitted preliminary works until details of all temporary means of enclosure have for that part been submitted to and approved by the planning authority, including a programme for the removal of such temporary means of enclosure. It also requires that the authorised development may not be brought into commercial use until the permanent means of enclosure have been approved and completed.
- 2.8.22 Requirement 10 (Surface water drainage) - This is based on a model provision. It provides that no part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface water drainage systems for that part, in accordance with the flood risk assessment (appendix 12A of the Environmental Statement) and Chapter 12 of the Environmental Statement have been submitted to and approved by the relevant planning authorities (in consultation with the lead local flood authority, Anglian Water and North East Lindsey Internal Drainage Board and the Environment Agency). The systems must be constructed in accordance with the approved details. The undertaker must then also obtain the approval of the relevant planning authorities (following consultation
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with the same bodies) of the equivalent permanent systems, which must occur prior to the start of construction of any part of those systems.

- 2.8.23 Requirement 11 (Flood risk mitigation) - This is not a model provision. It provides that no part of the authorised development may commence, save for the permitted preliminary works until a scheme for the mitigation of flood risk during construction has, for that part, been submitted to and approved by the planning authority. The scheme must be in accordance with the principles set out in the flood risk assessment (appendix 12A of the Environmental Statement) and Chapter 12 of the Environmental Statement. A further scheme in relation to the operational stage must subsequently be submitted by the undertaker following consultation with the Environment Agency and North East Lindsey Internal Drainage Board. The schemes must be approved, respectively (i) prior to the construction of the authorised development and (ii) prior to commissioning of the authorised development, and must be implemented throughout the construction and operation periods as applicable.
- 2.8.24 Requirement 12 (Contaminated land and groundwater) - This is a modified model provision. It provides that no parts of the authorised development may commence save for investigations to assess ground conditions until a scheme (to include a risk assessment and, if necessary, a site investigation) to deal with the contamination of land has, for that part, been submitted to and approved by the relevant planning authorities following consultation with the Environment Agency. It requires that the submitted scheme must be in accordance with the principles set out in the flood risk assessment (appendix 12A of the Environmental Statement) and Chapter 12 of the Environmental Statement.
- 2.8.25 Requirement 13 (Archaeology) - This is a modified model provision. It provides that no part of the authorised development may commence until a scheme of archaeological investigation for that part has been submitted to and approved by the relevant planning authorities after consultation with Historic England. The scheme submitted and approved must be in accordance with the principles set out in Chapter 11 the Environmental Statement. Furthermore, any archaeological investigations must be carried out in accordance with the approved scheme and by a suitably qualified person or organisation approved by the planning authority.
- 2.8.26 Requirement 14 (Construction environmental management plan) - This is a modified version of the model provision on 'Code of Construction Practice'. It requires a Construction Environmental Management Plan, in accordance with the framework construction environmental management plan (appendix 4A of the Environmental Statement) has been submitted to and approved by the relevant planning authorities before commencement of the authorised development. The plan should include all of the details set out in sub-paragraph (2). All construction works associated with the authorised development must be carried out in accordance with the approved Construction and Environmental Management Plan.
- 2.8.27 Requirement 15 (Protection of highway surfaces) - This is not a model provision. It requires details of the condition surveys (including any post-construction surveys) which are to be carried out on the public highways to be used during construction to be approved by the relevant planning authority prior to commencement of the authorised development, save for the permitted preliminary works. The surveys must then be carried out in accordance with the approved details, as well as any necessary repairs.

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- 2.8.28 Requirement 16 (Construction traffic management plan) - This is a modified model provision. It requires a construction traffic management plan to be submitted to and approved by the relevant planning authority, following consultation with North East Lincolnshire Council, Highways England and the highway authority, before commencement, save for permitted preliminary works. It also requires notices to be erected and maintained throughout the construction period at every entrance to and exit from the construction site, indicating the approved routes for traffic entering and leaving the site.
- 2.8.29 Requirement 17 (Construction workers travel plan) - This is a modified model provision. It requires a travel plan for construction workers to be submitted to the relevant planning authorities following consultation with North East Lincolnshire Council, Highways England and the highway authority prior to commencement, save for the permitted preliminary works. The plan must include measures to encourage sustainable transport; details of the responsibility for and timetable for implementation of those measures; details of parking for construction personnel, and a monitoring and review regime. The approved plan must be implemented prior to commencement of the authorised development, save for the permitted preliminary works.
- 2.8.30 Requirement 18 (Construction hours) - This is a modified model provision. It specifies the hours in the day within which all construction work associated with the authorised development must be carried out. The restrictions do not apply to work that does not exceed a specified noise limit, is approved in advance by the planning authority or is associated with an emergency. The requirement also permits a 30 minute start-up and shut-down period at the beginning and the end of the construction hours.
- 2.8.31 Requirement 19 (Control of noise – operation) - This requires that no part of the authorised development must be brought in to commercial use until a scheme for the management and monitoring of noise during operation has been submitted to and approved by the relevant planning authorities. The scheme must be implemented as approved.
- 2.8.32 Requirement 20 (Piling and penetrative foundation design) - This is not a model provision. It requires that no part of Work No. 1 must commence, save for the permitted preliminary works, until a piling and penetrative foundation design method statement, informed by a risk assessment for that part, has been submitted to and approved with by the planning authority following consultation with the Environment Agency. All piling and penetrative foundation works must be carried out in accordance with the approved method statement.
- 2.8.33 Requirement 21 (Waste management on site - construction wastes) - This is not a model provision. It requires that no part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and approved by the relevant planning authority. The plan must be in accordance with the framework construction environmental management plan (appendix 4A of the Environmental Statement) and must be implemented as approved.
- 2.8.34 Requirement 22 (Restoration of land used temporarily for construction) - This is modified model provision. It prevents the authorised development being brought into commercial use until the scheme for the restoration of any land within the Order

limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority. It stipulates that the land must be restored within three years of the authorised development being brought into commercial use (or such other period as may be approved by the planning authority), in accordance with the approved restoration scheme.

- 2.8.35 Requirement 23 (Employment, skills and training plan) - This is not a model provision, and has been included to secure an employment, skills and training plan, particularly in relation to local people. A similar requirement was included in the Knottingley Power Plant Order 2015 (at requirement 36).
- 2.8.36 Requirement 24 (Decommissioning) - This is not a model provision. It requires the undertaker to submit a decommissioning environmental management plan, in accordance with the Environmental Statement, to the relevant planning authorities within 12 months of it deciding to decommission the authorised development. The relevant planning authorities must approve the scheme before any decommissioning works are carried out and the scheme must be implemented as approved.
- 2.8.37 Requirement 25 (Foul water drainage) – This is not a model provision. It requires the undertaker to submit a scheme detailing how foul water drainage is to be dealt with for approval. Paragraph (2) sets out the circumstances in which foul drainage may be via a method other than to mains sewers. Paragraph (3) secures the implementation and maintenance of the approved scheme.
- 2.8.38 Requirement 26 (Requirement for written approval) - This is based on a model provision and confirms that the relevant planning authority's approval or agreement must be given in writing.
- 2.8.39 Requirement 27 (Approved details and amendments to them) - This is not a model provision. It requires that all details submitted to the relevant planning authority for approval must be in accordance with the parameters in the Environmental Statement and reflect the principles of the documents submitted for certification (in accordance with article 39). It expressly states that "approved details" includes any amendments which may be subsequently approved by the relevant planning authorities.
- 2.8.40 Requirement 28 (Amendments agreed by the relevant planning authority) - This is a modified model provision. This clarifies that where the phrase "unless otherwise agreed" appears in requirements, it does not permit changes which could give rise to any materially new or materially different environmental effects than those assessed in the Environmental Statement. It also makes clear that where the requirement requires consultation with another body, then any approval or agreement to any amendments must not be given without the relevant planning authority having first consulted with that body.
- 2.8.41 **Schedule 3 (Streets subject to street works)** sets out the streets that would be subject to street works (including reference to the relevant plan and the specific street).
- 2.8.42 **Schedule 4 (Access)** sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) which are referred to in Article 10 of the Order.

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- 2.8.43 **Schedule 5 (Temporary prohibition or restriction of the use of streets)** sets out the streets that may be subject to a temporary prohibition or restriction on the use of that street, including reference to the relevant plan, the location and the extent of the temporary prohibition or restriction on use.
- 2.8.44 **Schedule 6 (Land in which only new rights etc. may be acquired)** is split into two tables. The first that set outs different classes of new rights and restrictions which may be acquired by the undertaker and the second table sets out which of these classes of rights can be acquired in relation to particular plots. The plot numbers in column 1 of the second table correlate with the relevant plot numbers shaded blue on the Land Plans.
- 2.8.45 Schedule 7 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965, in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. This Schedule has precedent in Schedule 8 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.8.46 **Schedule 8 (Land of which temporary possession may be taken)** sets out the land temporary possession of which may be taken pursuant to Article 27. It also makes clear the purpose for which such temporary possession may be taken.
- 2.8.47 **Schedule 9 (Protective provisions)** includes protective provisions for statutory undertakers and others who have apparatus or infrastructure within the Order limits. Part 1 of Schedule 9 protects electricity licence holders, gas transporters and sewerage undertakers. Part 2 protects operators of electronic communications code networks. The remaining Parts provide protective provisions for the specific named bodies.
- 2.8.48 Protective provisions are included at Part 8 for Able Humber Ports Limited, linked to the fact that the Order and the Able Marine Energy Park Development Consent Order 2014 would have overlapping works. These protective provisions are similar in form to those proposed to protect VPIB and which are proposed to be inserted into the Able Marine Energy Park Development Consent Order 2014 (see further on Schedule 13 below).
- 2.8.49 **Schedule 10 (Procedure for discharge of requirements)** provides a clear procedure for the discharge of requirements by the relevant planning authority. It sets out a time limit for decisions to be made within, with the ability to extend this period by agreement between the relevant planning authority and the undertaker. Deemed consent provisions come into effect when decisions are not made during this time. This process, including the time periods and deemed consent, is considered to be appropriate in order to ensure that the delivery of the authorised development is not delayed. This Schedule has precedent in Schedule 11 of the Eggborough Gas Fired Generating Station Order 2018.
- 2.8.50 **Schedule 11 (Documents and plans to be certified)** sets out in a Table all the documents and plans referred to in the Order and which need to be certified by the Secretary of State. The table identifies the relevant revision number and date of the document and plan.
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- 2.8.51 **Schedule 12 (Design Parameters)** sets out the relevant parameters for Work No. 1, which tie-in to the maximum form of development that has been assessed in the Environmental Statement (and which is set out in Chapter 4 of Volume 1, Application Document Ref. 6.2).
- 2.8.52 **Schedule 13 (Modifications to the Able Marine Energy Park Development Consent Order 2014)** comprises the insertion of a new part 16 into Schedule 9 (Protective Provisions) of the Able Marine Energy Park Development Consent Order 2014. This is accompanied by the insertion of protective provisions for the protection of Able Humber Ports Limited into Part 8 of Schedule 9 to the Order to govern the interaction between the authorised development and the development authorised by the Able Marine Energy Park Development Consent Order 2014.
- 2.8.53 As a matter of law it is possible for a DCO to include a provision that changes, or changes the effect of, certain other legislation. Section 120(5) PA 2008 provides that a DCO may:
- “(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order; [and]*
- (b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order...”*
- 2.8.54 The term ‘statutory provision’ is wide enough to encompass the Able Marine Energy Park Development Consent Order 2014, as that term is defined in section 120(6) as being “*a provision of an Act or of an instrument made under an Act*”. The Able Marine Energy Park Development Consent Order 2014 is itself a statutory instrument made under an Act (the Planning Act 2008) and its provisions (i.e. its articles and schedules) are, therefore, ‘statutory provisions’ for the purposes of section 120(5)(a) and section 120(5)(b).
- 2.8.55 The meaning of the word ‘modify’ is wide and encompasses both ‘textual amendments’ and ‘non-textual modifications’ (see paragraph 6.9 of the Office of Parliamentary Counsel Drafting Guidance (July 2018)).
- 2.8.56 In the same way that the Able Marine Energy Park Development Consent Order 2014 contains protective provisions for the benefit of statutory undertakers, VPIB proposes to modify the Able Marine Energy Park Development Consent Order 2014 to protect VPIB as a prospective statutory undertaker.
- 2.8.57 The effect of Schedule 13 is to insert a new Part 16 into Schedule 9 to the Able Marine Energy Park Development Consent Order 2014 for the protection of VPIB. The newly inserted protective provisions in Part 16 of Schedule 9 to the Able Marine Energy Park Development Consent Order 2014 modify the effect of the substantive provisions in the Able Marine Energy Park Development Consent Order 2014 and do so for the protection of VPIB. Accordingly, Schedule 13 of the Order makes both ‘textual amendments’ and ‘non-textual modifications’. These protective provisions would broadly do the following.
- 2.8.58 Paragraph 123 regulates the operation of the powers in the Able Marine Energy Park Development Consent Order 2014 and the Order in respect of Rosper Road.

Its effect is to restrict the application of Able Humber Ports Limited's ('Able') powers over this land such as to permit VPI to use and maintain work number 2 (being the access from Rosper Road to Work Numbers 1, 3, 4, 5 and 6) and the relevant part of Work Number 6 (being a connection to the water main within Rosper Road). This is a clear modification of those powers, which are not themselves amended, but subject to a 'non-textual modification' for the protection of VPIB.

- 2.8.59 Paragraph 124 provides that Able shall not exercise its powers under articles 15, 16, 17, 22, 30, 31, 34, 35, 39, 40, 41 and 42 of the Able Marine Energy Park Development Consent Order 2014 over the "OCGT Order land" (which is defined in paragraph 122) without the prior written consent of VPIB. The restrictions on the use of the statutory powers in the Able Marine Energy Park Development Consent Order 2014 proposed by Schedule 13 will therefore apply to those parts of the Order land which cross over with the Order limits of the Able Marine Energy Park Development Consent Order 2014. This is a clear modification of those powers, which are not themselves amended, but subject to a 'non-textual modification' for the protection of VPIB.
- 2.8.60 Paragraph 125 requires Able to exercise its powers in such a way as to co-operate with VPIB and use its reasonable endeavours to avoid any conflict between the carrying out of the two projects. This is again a clear modification of Able's powers, which are not themselves amended, but subject to a 'non-textual modification' for the protection of VPIB.
- 2.8.61 Paragraph 126 provides that any dispute under the provisions in Part 16 of Schedule 9 is to be dealt with by way of arbitration.