

VPI Immingham OCGT Project

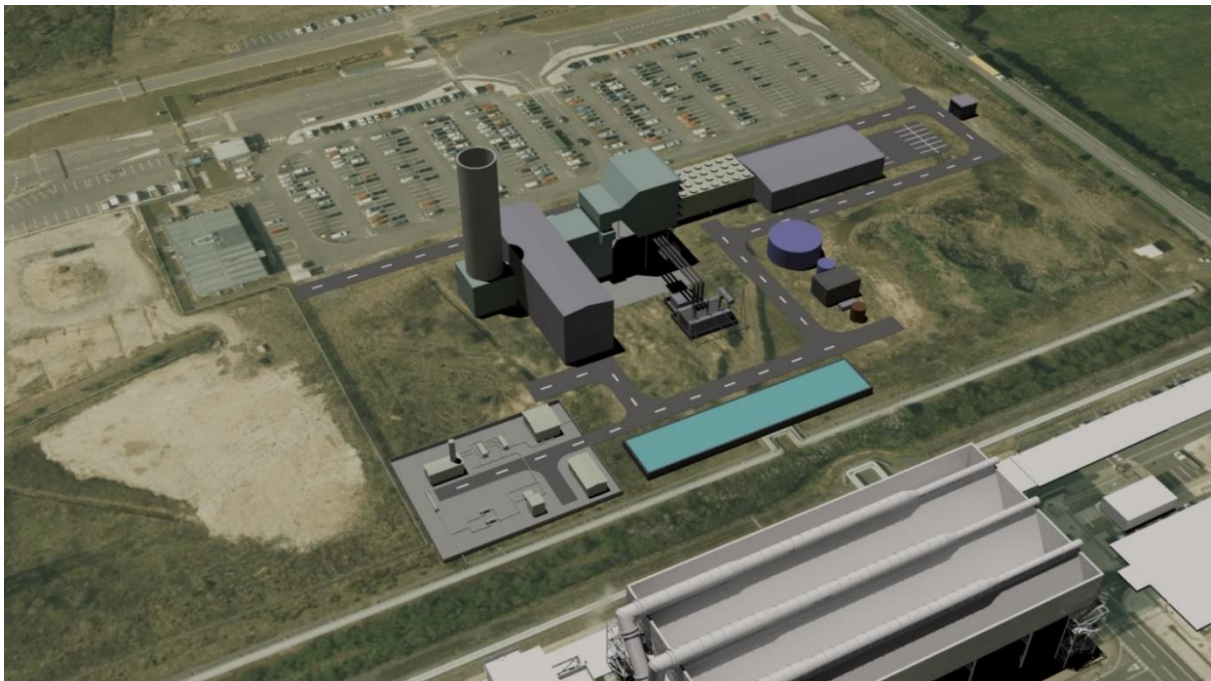
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The Immingham Open Cycle Gas Turbine Order

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

The Applicant's Response to the Written Representations

Examination Deadline 3



Applicant: VPI Immingham B Ltd

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GLOSSARY

Abbreviation	Description
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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.
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).
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.
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.
dB	decibel
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

Abbreviation	Description
	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.
EH	English Heritage – (now Historic England) – a non-departmental public body of the British Government responsible for heritage protection and management of a range of historic properties.
EHO	Environmental Health Officer – practitioners responsible for carrying out measures for protecting public health, including administering and enforcing legislation related to environmental health.
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 Site	The land required for Work No.5.
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.
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.
Flood Zone 3b	An area defined as the functional floodplain, that the area where water has to flow or be stored in the event of a flood. Land which would flood with a 1 in 20 (5%) annual probability or greater in any year, or is designed to flood in a 0.1% event should provide the starting point for designation of Flood Zone 3b.

Abbreviation	Description
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.
GCN	Great Crested Newts
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.
HE	Historic England – an executive non-departmental body of the British Government tasked with protecting the historical environment of England.
HRA	Habitats Regulations Assessment – the assessment of the impacts of implementing a plan or policy on a Natura 2000 site.
km	Kilometre – unit of distance.
Local Nature Reserve or LNR	A non-statutory site of local importance for wildlife, geology, education or public enjoyment.
LPA	Local Planning Authority
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
Lw	Sound Power Level
LWS	Local Wildlife Site
m	Metres – unit of distance.
MW	Megawatts – unit of energy.
NATA	New Approach to Appraisal
NEILDB	North East Lincolnshire Local Drainage Board
NELC	North East Lincolnshire Council
NG	National Grid
NGG	National Grid Gas plc
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 of Nationally Significant Infrastructure Projects in

Abbreviation	Description
	a particular sector such as energy and are the primary matter against which applications for NSIPs are determined.
NSER	No Significant Effects Report – for the Habitats Regulations Assessment (HRA).
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.
NTS	Non-Technical Summary – this document is a summary of the Environmental Statement written in non-technical language for ease of understanding.
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	Immingham Open Cycle Gas Turbine Order
Order land	The area over which powers of compulsory acquisition or temporary possession are sought in the DCO, shown on the Land Plans. The Order land is the same area as the Project Land.
Order limits	The area in which consent to carry out works is sought in the DCO, the area is split into different Work Numbers which are set out Schedule 1 to the DCO and shown on the Works Plans. The Order limits is the same area as the Site .
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').
PEA	Preliminary Ecological Appraisal (PEA Report – report establishing baseline conditions and evaluating the importance of any ecological features present.
PEI	Preliminary Environmental Information – an initial statement of the main environmental information available for the study area.
PEIR	Preliminary Environmental Information Report – a report outlining the preliminary environmental information and which is published during the pre-application consultation on a NSIP.
PHE	Public Health England – an executive agency, sponsored by the Department of Health, to protect and improve the nation's health and wellbeing and reduce health inequalities.
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

Abbreviation	Description
	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.
SHBSES	South Humber Bank Strategic Employment Site
SINC	Site of Nature Conservation Interest
Site	The land required for the Proposed Development, and which is the same as the 'Order limits' (in the DCO).
SoCC	Statement of Community Consultation
SoS	The Secretary of State – the decision maker for DCO applications and head of a Government department. In this case the SoS for the 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.
SSSI	Site of Specific Scientific Interest – nationally designated Sites of Special Scientific Interest, an area designated for protection under the Wildlife and Countryside Act 1981 (as amended), due to its value as a wildlife and/or geological site.
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.

Abbreviation	Description
TLOR	Total Lindsey Oil Refinery
UAEL	Unacceptable Observed Effect Level
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 EPA	VPI Energy Park A – the land proposed for the development of a 49.9 MW gas-fired power station that benefits from planning permission granted by NLC in 2018 (Reference: PA/2018/918).
VPI LLP	VPI Immingham LLP – the owner and operator of the Existing VPI CHP Plant.
WCA	The Wildlife and Countryside Act 1981 – legislation for the protection of animals, plants and certain habitats in the UK.
WHO	World Health Organisation
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 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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1.0 INTRODUCTION

1.1 Overview

- 1.1.1 This report has been prepared on behalf of VPI Immingham B Ltd ('VPIB' or the 'Applicant'). It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO') submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy under section 37 of the Planning Act 2008' (the 'PA 2008').
- 1.1.2 VPIB is seeking development consent for the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 megawatts ('MW'), including electrical and gas supply connections, and other associated development (the 'Proposed Development'). The Proposed Development is located primarily on land (the 'Site') to the north of the existing VPI Immingham Power Station, Rosper Road, South Killingholme, North Lincolnshire, DN40 3DZ.
- 1.1.3 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 15(2) of the PA 2008. The DCO, if made by the SoS, would be known as the 'The Immingham Open Cycle Gas Turbine 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.
- 1.3.4 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).
- 1.3.5 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.
- 1.3.6 A more detailed description of the Site is provided in Environmental Statement ('ES') Volume 1 Chapter 3 'Site Description' (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 'Site Description' (Application Document Refs: 6.2.1 and 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 report is to respond to the Written Representations received from Interested Parties. The Applicant's responses are set out in a tabulated format, with the original comments in one column and the Applicant's response in the next.
- 1.6.2 The remainder of this report is structured as follows:
- Chapter 2 – Air Products Limited
 - Chapter 3 – Cadent Gas Limited
 - Chapter 4 – Environment Agency
 - Chapter 5 – Hornsea 1
 - Chapter 6 – Hornsea 2
 - Chapter 7 – National Grid
 - Chapter 8 – Network Rail Infrastructure Limited
 - Chapter 9 – North East Lindsey Drainage Board
 - Chapter 10 – Phillips 66
 - Chapter 11 – TLOR

2.0 AIR PRODUCTS LIMITED

- 2.1.1 This section sets out the Applicant's response to comments received from Air Products Limited. See Table 2.1 on the following pages.

Table 2.1 – Applicant's responses to Air Products Limited

Air Products Limited Written Representation	Applicant's Response
<p>Introduction</p> <p>These representations are made on behalf of Air Products (BR) Limited ("APBR"), in response to the application for a Development Consent Order ("DCO Submission") submitted by VPI Immingham B Ltd ("Applicant") to the National Infrastructure Directorate on 15 April 2019 and pursuant to Directions issued by the Examining Authority on 15 August 2019.</p> <p>Reference is made to the Development Consent Order Pre-Application Consultation Response submitted by APBR on 30 November 2018 ("PCR") and also to the Initial Representations submitted by ABPR on 20 June 2019 ("IR").</p> <p>APBR has interests in and around the vicinity of the area proposed for a Development Consent Order ("DCO"). APBR (together with its parent, Air Products Plc) is a world-leading Industrial Gases company, providing atmospheric and process gases and related equipment and is also the world's leading supplier of liquefied natural gas process technology and equipment.</p> <p>In the area affected by the proposed Project, APBR is concerned with the supply of gas to local installations and forms a fundamental part of the local energy industry. APBR supplies Oxygen and Nitrogen, via pipelines, to refineries which are critical to their operation. In summary, APBR's</p>	<p>The Applicant notes the Written Representation submitted on behalf of APBR and responds to the specific concerns raised as follows (italics text is a summary of the APBR point being responded to).</p> <p><i>1. Compulsory acquisition of land compromising APBR apparatus and therefore its business. Appropriate protections to benefit APBR are required.</i></p> <p>APBR's interests fall within the Existing Gas Pipeline Site and as such, are not affected by any works authorised by the DCO. As detailed in the Statement of Reasons, (Document Ref: 3.2 – paragraph 6.3.1), the compulsory acquisition rights sought within the DCO (and affecting APBR's interests), relate solely to rights for the operation and maintenance of the Existing Gas Pipeline, in respect of the Proposed Development.</p> <p>As detailed at paragraph 2 of the Applicant's comments on APBR's Relevant Representations, (Document Ref: 7.3), notwithstanding the inclusion of compulsory purchase powers in the DCO, the Applicant's intention remains to secure all rights it requires by agreement. Although there will be no works authorised by the DCO which could impact upon APBR's apparatus, the Applicant has offered to enter into a crossing agreement with APBR which would (i) regulate future interactions between the APBR's apparatus and the Existing Gas Pipeline (to the extent that there are any) and (ii) contain a commitment by the Applicant not to exercise any compulsory acquisition powers in respect of APBR's interests. The Applicant is also willing to include a protective provision in the DCO restricting the exercise of compulsory acquisition powers in respect of APBR's property provided that this agreement has been entered into.</p>

Air Products Limited Written Representation	Applicant's Response
<p>interests within the area proposed for the DCO comprise of a 4-inch nitrogen pipeline, a 6-inch oxygen pipeline and an 8-inch (reducing to 6-inch) oxygen pipeline.</p> <p>As a consequence, APBR is a Category 1 statutory consultee as defined by Section 44 of the Planning Act 2008.</p> <p>The Applicant's proposals to permanently acquire land and rights has the potential for conflicting with and compromising the security of existing pipes and associated infrastructure owned and/or used by APBR in connection with its pre-existing business activities.</p> <p>It is therefore critical that, notwithstanding the Project, APBR can continue to use the pipelines in the manner in which it is accustomed to and which is vital to the local energy industry. Furthermore, to the extent that land is acquired compulsorily by the Applicant (or any associated entity) and/or is due to be granted a legal interest in land through which APBR's pipelines pass, APBR must be granted sufficient rights and interests to maintain its use which has been established. Appropriate protective provisions are required to maintain the consistency of supply, safe use and maintenance of the infrastructure.</p> <p>APBR's Concerns</p> <p>Paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 4.1, 4.2, 4.3, 4.4, 5.1, 5.2 and 5.3 are quoted verbatim from the PCR. The serious concerns raised in the PCR by APBR have not been properly addressed by the DCO Submission.</p>	<p>Given the fact that (a) no works are proposed (or consent for works sought) for the Existing Gas Pipeline under the DCO; (b) the Applicant's intention to avoid the use of compulsory purchase powers; and (c) the Applicant's proposals to enter into a Crossing Agreement and secure protective provisions in favour of APBR within the DCO, the Applicant is confident that the compulsory powers sought will not conflict with and/or compromise the security of APBR's existing apparatus and/or its ability to continue to use that apparatus as it currently does.</p> <p><i>2. The amendment to VPI's proposals reduce the extent of APBR's interests which are affected and previous concerns remain extant.</i></p> <p>The Applicant disagrees that its amendments to the Proposed Development (and made in direct response to APBR's consultation responses), do not in any way address the concerns raised by APBR. As detailed at paragraph 1 of the Applicant's comments on APBR's Relevant Representations, (Document Ref; 7.3), substantial amendments were made to the Proposed Development to avoid a direct interaction with APBR's apparatus and the authorised works under the DCO. Further response was provided in the Applicant's Comments on Relevant Representations (Document Ref: 7.3).</p> <p><i>3. The Applicant has failed to address the many issues raised by APBR in its consultation response.</i></p> <p>As confirmed at paragraph 4 of the Applicant's comments on APBR's Relevant Representations, (Document Ref: 7.3), the Applicant considers that it has satisfactorily addressed the issues raised by APBR in paragraphs 1, 2 and 3 of its comments on APBR's Relevant Representations and through the discussions which the Applicant has had directly with APBR. Whilst APBR does not agree that the issues raised in the PCR have been</p>

Air Products Limited Written Representation	Applicant's Response
<p>Whilst it is the case that some amendment to the proposals has been made, such amendments do not in any way (or in any substantial way) satisfy APBR's concerns. All that the amendments to the proposals do is reduce the extent of APBR's interests in the area proposed for the DCO. However, APBR continue to have interests in (and around) the area proposed for the DCO and the concerns which APBR has raised previously continue to be extant.</p> <p>Accordingly, APBR formally objects to the DCO Submission both for the reasons set out previously and as set out below. The Applicant has failed to address the many issues raised by APBR in its PCR (APBR reserving its right to add to or otherwise amend this list of major concerns in due course):-</p> <p>The documentation provided by the Applicant fails to demonstrate that the DCO will be delivered in a way that supports the needs of the DCO whilst not compromising or risking the integrity and/or maintenance needs of APBR's own gas pipeline infrastructure and/or such infrastructure in respect of which it has rights (and which is vital to the local energy industry);</p> <p>The compulsory acquisition of land and rights in the terms proposed is not proportionate, or even necessary, and fails to properly account for the existence of the infrastructure belonging to and/or otherwise used by APBR and fails to ensure that APBR is granted sufficient rights and interest to maintain the use already established. It also fails to ensure that suitable protective provisions are provided to ensure that the</p>	<p>satisfactorily addressed, the Applicant is confident that the proposed Crossing Agreement would adequately regulate any future interactions between APBR's apparatus and the Existing Gas Pipeline and dispense with all outstanding issues APBR may have.</p> <p><i>4. The Application fails to demonstrate that the DCO will be delivered in a way that supports the needs of the DCO whilst not compromising the integrity of APBR's own gas pipeline infrastructure.</i></p> <p>As detailed at paragraph 1 of the Applicant's comments on APBR's Relevant Representations, (Document Ref: 7.3), the Applicant disagrees that the Application and documentation provided to APBR falls short of demonstrating how the integrity and/or maintenance of APBR's infrastructure will be protected. Schedule 1 (Authorised Development) of the DCO (Document Ref: 2.1) and the DCO Works Plans (Application Document Ref: 4.3) do not extend to the Existing Gas Pipeline, and therefore the DCO would not authorise any works within it. Accordingly, there would be no interaction between the Proposed Development and APBR's apparatus. On that basis, the Applicant disagrees that the Proposed Development would have a detrimental impact on APBR's undertaking.</p> <p><i>5. The compulsory acquisition proposed is not proportionate or necessary, and fails to properly account for the existence of APBR's infrastructure and its need to maintain the use already established. It also fails to ensure that suitable protective provisions are provided for.</i></p> <p>The Applicant disagrees with APBR that compulsory acquisition rights in the terms proposed in the draft DCO (Application Document Ref: 2.1) are not proportionate or necessary, and fail to properly take into account APBR's interests. The Applicant reiterates its position as set out at paragraph 2 of</p>

Air Products Limited Written Representation	Applicant's Response
<p>consistency of supply, safe use and maintenance of the infrastructure can be safeguarded.</p> <p>The construction process, disturbance and duration is not properly addressed in the DCO Submission. In the longer term, it is wholly unclear as to the impact that the DCO may have on the ability of APBR to continue its operations safely and economically (bearing in mind the stated intention that the underlying project would remain operational for at least 40 years).</p> <p>APBR are still awaiting responses to the technical questions raised in the PCR, in particular at paragraphs 4.2, 4.3 and 4.4. These include, but are not limited to, the extent of rights sought, the anticipated construction process, timing, the infrastructure proposed to be installed, the impact on APBR's existing infrastructure and the method by which suitable protections will be put in place. These issues have not been considered or responded to (whether adequately or at all). The only response that has been provided by the Applicant to APBR is that the Applicant has "entered into dialogue with APBR to explain the project, existing gas pipeline and new pipeline routes and potential asset crossings" (see Table 12.3 Document ref 5.1 of the Consultation Report). However, this statement is at best misguided. The dialogue exchanged between the Applicant/its legal representatives and APBR has been limited – all that the Applicant has said is that it proposes to alter the red line boundary so that the extent of APBR's interests within the area of land affected by the DCO is reduced. Yet APBR continues to have interests within the</p>	<p>its comments on APBR's Relevant Representations, with the rights over the Existing Gas Pipeline required in order to ensure delivery of fuel to the Proposed Development, without which it cannot operate:</p> <p><i>"The Statement of Reasons (Application Document Ref: 3.2) fully explains why it is necessary, proportionate and justifiable for the Applicant to seek powers of compulsory acquisition within the Order land and why there is a compelling case in the public interest for the Applicant to be granted these powers.</i></p> <p><i>Notwithstanding the inclusion of compulsory purchase powers in the DCO, the Applicant's intention remains to secure all rights it requires by agreement. Although there will be no works authorised by the DCO which could impact upon APBR's apparatus, the Applicant has offered to enter into a crossing agreement with APBR which would (i) regulate future interactions between the APBR's apparatus and the Existing Gas Pipeline (to the extent that there are any) and (ii) contain a commitment by the Applicant not to exercise any compulsory acquisition powers in respect of APBR's interests. The Applicant is also willing to include a protective provision in the DCO restricting the exercise of compulsory acquisition powers in respect of APBR's property provided that this agreement has been entered into. A draft of the crossing agreement was issued to APBR, and discussions in relation to it are ongoing. The Applicant anticipates that it will be possible to reach agreement with APBR on the terms of the agreement".</i></p> <p><i>6. The construction process, disturbance and duration is not properly addressed in the DCO Submission. The longer term impact is unclear including on the ability APBR to continue its operations safely and economically.</i></p>

Air Products Limited Written Representation	Applicant's Response
<p>affected land (albeit these are less than originally proposed) and so the concerns which it has set out previously remain and have not been addressed (either properly or at all).</p> <p>It is acknowledged that discussions are ongoing but these discussions have not yet satisfied APBR's concerns. In accordance with Sections 42, 47, 48 and 49 of the Planning Act 2008, the Applicant has a "duty to take account of responses to consultation and publicity" (Section 49). For the reasons set out above and previously, APBR contends that inadequate consultation has taken place and that, notwithstanding the inadequate consultation, the Applicant has failed (whether adequately or at all) to take account of responses (from APBR and possible others) to consultation and publicity.</p> <p>'Advice Note 9: Rochdale Envelope' published by Infrastructure Planning Commission February 2011 states "Clearly for consultation to be effective there will need to be a genuine possibility to influence the proposal and therefore a project should not be so fixed as to be unable to respond to comments from consultees. The importance of consultation during the pre-application phase cannot be overemphasised...such consultation needs to be appropriate (in terms of content, timing and clarity) and reported fully in the consultation report such that the response of the developer to the comments made in terms of the evolution of the proposals can be clearly understood".</p>	<p>The Applicant disagrees that the construction process, disturbance and duration is not properly addressed in the DCO Submission. The Applicant reiterates its position as set out at paragraph 3 of the Applicant's comments on APBR's Relevant Representations:</p> <p><i>"The Applicant notes APBR's concerns that construction matters are not properly addressed in the DCO, albeit these are general in nature and do not identify any specific matters. The Requirements in Schedule 2 of the DCO (Application Document Ref: 2.1) include satisfactory measures to regulate the construction of the authorised development and minimise disturbance within the locality of the Proposed Development. The Framework Construction Environmental Management Plan (Application Document Ref: 6.4.3), Framework Construction Traffic Management Plan (Application Document Ref: 6.4.7) and Framework Worker Travel Plan (Application Document Ref: 6.4.6) contain further information on how VPIB intends to mitigate the construction impacts of the Project. The proposed crossing agreement would also, as noted, regulate any future interactions between ABPR's apparatus and the Existing Gas Pipeline".</i></p> <p><i>7. APBR awaiting responses to the technical questions raised in the PCR, in particular at paragraphs 4.2, 4.3 and 4.4. The dialogue exchanged between the Applicant/its legal representatives and APBR has been limited.</i></p> <p>Questions 4.2, 4.3 and 4.4 of the PCR all relate to construction activities forming part of the authorised works under the DCO and their interaction with APBR's apparatus. As detailed in the Applicant's response at paragraph 2 above, following consultation and engagement with ABPR, the Applicant removed the option of constructing a new gas pipeline to the west of the Existing VPI CHP Plant, where APBR's apparatus is located. The only APBR interests affected by the DCO lie within the Existing Gas Pipeline</p>

Air Products Limited Written Representation	Applicant's Response
<p>Whilst the Rochdale Envelope is principally involved with environmental matters, it deals with principles which (in APBR's submissions) are relevant to the Applicant's approach to this matter.</p> <p>It is evident that APBR's concerns as raised in the PCR have not and area not being addressed within the DCO process. Further, the only response given (as set out above) appears to demonstrate an inflexibility on the part of the Applicant to adapt the proposals to properly take into account submissions made by APBR (acknowledging that some, limited, adaptations have been made). Where a party has participated in the pre application consultation (as APBR did) its submission on the project made at that stage should have been fully reflects in the Consultation Report submitted as part of the DCO application and addressed. Again APBR submits that this has not been done (whether adequately or at all).</p> <p>Accordingly, it therefore follows that Advice Note 9 has note been followed in the DCO process and the application now made.</p> <p>APBR submits that the unreasonable level of inflexibility the Applicant is displaying is in itself a reason for the DCO to be refused.</p> <p>APBR is rightly concerned that if terms cannot be agreed, the DCO in its present form (if approved) would enable the Applicant to acquire property and rights that may impact</p>	<p>Site within which no works are authorised by the DCO. On this basis the Applicant has not only responded to the questions at paragraphs 4.2, 4.3 and 4.4 of the PCR but has in fact amended its proposals to avoid any interaction between ABPR's apparatus and the construction of the Proposed Development.</p> <p><i>8. The Applicant has a duty to take account of responses to consultation and publicity (Section 49). APBR contends that inadequate consultation has taken place and the Applicant has failed to take account of responses to consultation. The unreasonable level of inflexibility the Applicant has displayed is in itself a reason for the DCO to be refused.</i></p> <p>The Applicant strongly disagrees with APBR that it has carried out inadequate consultation under the Planning Act 2008 and the advice notes published by the Planning Inspectorate. A summary of the consultation undertaken by the Applicant is set out at paragraph 4 of the Applicant's response to ABPR's Relevant Representation (Document Ref: 7.3).</p> <p>In discharging its duties under the Planning Act 2008, the Applicant has proactively engaged with APBR and others with apparatus potentially affected by the Proposed Development with a view to identifying issues of concern and addressing such matters in the preparation of its application.</p> <p>The Applicant consulted APBR as part of the Stage 1 and Stage 2 consultations, and has continued to engage with APBR since receipt of its consultation response dated 30 November 2018. As set out above, the Applicant has also made a substantial change to the Proposed Development, in part with a view to addressing APBR's concerns regarding potential interaction with its apparatus. The Applicant also strongly disagrees that it has been inflexible, evidenced (in part) by its amendment to</p>

Air Products Limited Written Representation	Applicant's Response
<p>APBR's business negatively and the case of this is not properly addressed.</p> <p>APBR is willing to engage in constructive dialogue with the Applicant for early agreement in respect of the DCO.</p> <p>However, until this process has been completed or negotiations have been exhausted, APBR (and its associated entities) objects to the DCO in its present form for the reasons set out and reserves its rights to provide further submissions (beyond those provided to date) during the course of the DCO examination process.</p> <p>APBR also claims and indemnity in respect of its costs, particularly given that APBR's opposition could have been avoided had proper consultation taken place and had the previous comments made by APBR been properly taken into account and actioned promptly.</p> <p>APBR wishes (unless APBR notifies the Planning Inspectorate to the contrary) to be represented at, and to appear and adduce evidence at the Specific Issues/Open Floor/Compulsory Acquisition Hearings and also requests an Accompanied Site Inspection (noting that an Accompanied Site Inspection is now scheduled to take place on 1 October 2019).</p>	<p>the Proposed Development to exclude ABPR's interests within the Site and by its ongoing efforts to reach agreement with ABPR, as detailed further below.</p> <p>The Applicant notes the Planning Act 2008: Guidance on the pre-application process (March 2015) and that its pre-application consultation was specifically designed to ensure compliance with this. The Applicant's approach to the potential development around APBR's apparatus is exactly that noted in the guidance, such as at paragraph 20 which describes how consultation should be carried out to be of most value.</p> <p>The Applicant also notes that APBR suggest that the alleged inflexibility is in itself a reason for the DCO to be refused. This fails to consider the terms of s104 of the Planning Act 2008 which sets out the basis on which, when there are NPS in force as here, the Secretary of State must determine the Application. The Applicant is strongly of the view that consideration of the Applicant's case pursuant to section 104 results in a conclusion that the DCO application should be granted.</p> <p>The Applicant is in the process of negotiating a crossing agreement with APBR and welcomes comments from ABPR that it is also willing to engage in constructive dialogue.</p> <p>The Applicant notes APBR's request for an indemnity to cover its costs. The Applicant has provided an undertaking for APBR's legal fees in relation to the crossing agreement, as is standard for such negotiations.</p>

3.0 CADENT GAS LIMITED

- 3.1.1 This section sets out the Applicant's response to comments received from Cadent Gas Limited. See Table 3.1 on the following pages.

Table 3.1 – Applicant's responses to Cadent Gas Limited

Cadent Gas Limited Written Representation	Applicant's Response
<p>2. Thornton Curtis</p> <p>2.1 The Promoter is seeking to acquire rights over Cadent's operational land at Thornton Curtis RPS, identified by Plots 107 and 111. The plan at appendix 1 shows the extent of the land which falls within the fence line at the operational Thornton Curtis RPS site over which the Promoter is seeking to acquire rights.</p> <p>2.2 The rights that the Promoter is seeking to acquire are:</p> <p>(a) to pass and repass on foot, with or without vehicles, plant and machinery; and</p> <p>(b) to retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground gas pipeline, control systems and cables and any other ancillary apparatus and any other works as necessary.</p> <p>2.3 Cadent is currently undertaking essential and costly security fence upgrades at this site. Due to operational and security concerns, Cadent strongly objects to the compulsory acquisition rights over land within its operational site.</p> <p>2.4 If these plots remain within the DCO then serious detriment to the carrying on of Cadent's undertaking would be caused in terms of security, health and safety, compliance, commercial issues and operational effects in respect of the apparatus at Thornton Curtis.</p>	<p>The Applicant confirms that Cadent's description of the rights sought over Plots 107 and 111 are correct.</p> <p>In relation to Cadent's concerns with the operational land (including its fence line) which sit within Plots 107 and 111, the Applicant and Cadent have been in discussions about the extent of Cadent's operational area and the extent of the Order land for a number of months. Following a meeting which took place between Cadent and the Applicant at the Thornton Curtis RPS site, in June 2019, Cadent commissioned a survey of the exact location of the Existing Gas Pipeline, in order to establish this relative to the new fence line. The survey results are awaited from Cadent. The Applicant will continue discussions with Cadent and update the Examining Authority once the survey results are available.</p>

Cadent Gas Limited Written Representation	Applicant's Response
<p>2.5 Additionally, Cadent requires a 3m restrictive zone around the fence line of its operational site for security reasons.</p> <p>2.6 Cadent requires that land within the fence line of its operational site, and a 3m restrictive zone around the fence line, (both as shown on the plan at appendix 1) be removed from the Land Plans.</p>	
<p>3. Regulatory Protection Framework</p> <p>3.1 Cadent require all Promoters carrying out works in the vicinity of their Apparatus to comply with:</p> <p>(a) GD/SP/SSW22 – Safe Working in the vicinity of Cadent High Pressure's Gas Pipelines and Associated Installations;</p> <p>(b) IGE (Institution of Gas Engineers) recommendations IGE/SR/18 Edition 2 Safe Working Practices to Ensure the Integrity of Gas Pipelines and Associated Installations, and</p> <p>(c) the HSE's guidance document HS(G)47 Avoiding Danger from Underground Services.</p> <p>3.2 The industry standards referred to above have the specific intention of protecting:</p> <p>(a) the integrity of the pipelines and thus the distribution of gas;</p> <p>(b) the safety of the area surrounding gas pipelines; and</p> <p>(c) the safety of personnel involved in working with gas pipelines.</p>	<p>The Existing Gas Pipeline (the only VPI infrastructure in the vicinity of Cadent's apparatus) has been operated in accordance with a comprehensive Safety Management System (SMS) which is conducted in accordance with the Pipeline Safety Regulations 1996 (PSR), and this would continue to be the case in the future. The Applicant is familiar with the matters referred to in Cadent's written representation, and confirm that these would be complied with as required.</p> <p>The Applicant has proposed that the parties enter into a crossing agreement, and that that be combined with a protective provision preventing the use of compulsory acquisition powers in respect of Cadent's land, without its consent. Cadent has requested inclusion of protective provisions within the DCO, and the Applicant is continuing to discuss these matters with Cadent. The Applicant notes that Cadent has the benefit of the 'general' protective provisions included in Part 1 of Schedule 9.</p>

Cadent Gas Limited Written Representation	Applicant's Response
<p>3.3 Cadent requires specific protective provisions in place for an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works in the vicinity of Cadent's Apparatus.</p>	
<p>4. Cadent Apparatus</p> <p>4.1 Cadent's Apparatus is affected by the Draft Order. The Promoter is seeking to acquire rights over Plots 78,79,80,86,107,108,109,110,111. The rights are the same as those noted at paragraph 2.2 above.</p> <p>4.2 Cadent is not satisfied that the acquisition of rights over land, within which Cadent has an interest, can be undertaken without there being serious detriment to Cadent's undertaking. Appropriately worded protective provisions for the benefit of Cadent will secure this and prevent serious detriment to Cadent's undertaking.</p> <p>4.3 In respect of all Cadent infrastructure located within the Order limits, or in close proximity to the proposed project and associated works, Cadent will therefore require protective provisions to be put in place to ensure that:</p> <p>(a) all of Cadent's interests and rights of access are unaffected by the power of compulsory acquisition;</p> <p>(b) appropriate protection for the Apparatus is put in place. This includes compliance with all relevant standards on safety as set out in paragraph 3 above.</p> <p>4.4 Cadent maintain that the exercise of unfettered compulsory powers in respect of tis Apparatus the following consequences will arise:</p>	<p>See above</p>

Cadent Gas Limited Written Representation	Applicant's Response
<p>(a) failure to comply with industry safety standards, legal requirements and Health and Safety Executive standards create a health and safety risk;</p> <p>(b) any damage to Apparatus has potentially serious hazardous consequences for individuals/property located in the vicinity of the pipeline/apparatus if it were to fail; and</p> <p>(c) potentially significant consequences arising from lack of continuity of supply.</p> <p>4.5 Cadent has sought to engage with the Promoter since April 2019. The purpose of Cadent's engagement has been to seek to agree the form of protective provisions in respect of its Apparatus. Cadent provided the Promoter with its standard form protective provisions on 24 May 2019. The Promoter is taking the stance that a crossing agreement, rather than protective provisions, be provided. A crossing agreement would require Cadent to accept new obligations, potentially including giving indemnities. This is wholly inappropriate given that it is the Promoter who is seeking to acquire land rights from Cadent. The Promoter is entitled to apply for a DCO which includes powers to compulsorily acquire Cadent's land and rights, and Cadent is not objecting (other than part of plot 107 and 111) subject to the inclusion of protective provisions to protect its undertaking. The Promoter cannot compel, through the DCO, Cadent to accept new obligations through a crossing agreement, and Cadent is not minded to accept new obligations. Market practice is that protective provisions are entered into to protect undertakers, and Cadent considers that this is entirely appropriate in these circumstances. The Promoter has to date not provided comments on Cadent's standard protective provisions.</p>	

Cadent Gas Limited Written Representation	Applicant's Response
<p>4.6 As such, the Draft Order does not yet contain agreed protective provisions expressed to be for the protection of Cadent to Cadent's satisfaction, making it currently deficient from Cadent's perspective.</p> <p>4.7 Cadent contend that it is essential that these issues are addressed to its satisfaction to ensure adequate protection for their Apparatus and that protective provisions on its standard terms are provided.</p> <p>4.8 Should this not be possible and attendance at a Compulsory Acquisition Hearing or Issue Specific Hearing is necessary then Cadent reserve the right to provide further written information in advance in support of any detailed issues remaining in dispute between the parties at that stage once they have received a substantive response from the Promoter.</p>	

4.0 ENVIRONMENT AGENCY

- 4.1.1 This section sets out the Applicant's response to comments received from the Environment Agency. See Table 4.1 on the following pages.

Table 4.1 – Applicant's responses to the Environment Agency

Environment Agency Written Representation	Applicant's Response
<p>Summary</p> <p>The Environment Agency made a Relevant Representation to the proposal by VPI Immingham B Ltd to construct, operate and maintain a new Open Cycle Gas Turbine (OCGT) power station with a capacity of 299 megawatts (MW) gross output and other associated works.</p> <p>We have continued to work with the Applicant in respect of the issues of concern raised in our Relevant Representation dated 20 June 2019. The purpose of these Written Representations is to provide an update on our Relevant Representation and provide further information where appropriate.</p> <p>We can advise that the issues/concern relating to foul water disposal have now been resolved. We are satisfied that all issues that fall within our remit have been adequately assessed, and/or appropriate mitigation has been secured through requirements in the draft Development Consent Order.</p> <p>There are no outstanding areas of concern and the Environment Agency has no objection to the proposal.</p>	<p>The Applicant acknowledges the response from the Environment Agency and notes that there are no outstanding areas of concern.</p>
<p>1.0 Introduction</p> <p>1.1 The Environment Agency is an executive non-departmental public body established under the Environment Act 1995. It is an adviser to Government with principal aims to protect and improve the environment, and to promote sustainable development. It plays a</p>	<p>Not Applicable</p>

Environment Agency Written Representation	Applicant's Response
<p>central role in delivering the environmental priorities of central government through its functions and roles. It is also an adviser to local decision makers in its role as a statutory consultee in respect of particular types of development, as listed in Schedule 4 of the Development Management Procedure Order 2015. For the purposes of this Development Consent Order (DCO) application, it is a statutory consultee and an interested party.</p> <p>1.2 The Environment Agency takes action to conserve and secure proper use of water resources, preserve and improve the quality of rivers, estuaries and coastal waters and groundwaters through pollution control powers and regulating discharge consents. We have regulatory powers in respect of waste management and remediation of contaminated land designated as special sites. We also encourage remediation of land contamination through the planning process.</p> <p>1.3 The Environment Agency is the principal flood risk management operating authority. It has the power (but not a legal obligation) to manage flood risk from designated main rivers and the sea). The Environment Agency is also responsible for increasing public awareness of flood risk, flood forecasting and warning and has a general supervisory duty for flood risk management. As of 2008 the Environment Agency also has a strategic overview role for all flood and coastal erosion risk management.</p> <p>1.4 The Environment Agency is the competent authority for England for the purposes of the Water Framework Directive, in conjunction with (as necessary) the Secretary of State (for DEFRA). Regulation 3(1) of The Water Environment (Water Framework</p>	

Environment Agency Written Representation	Applicant's Response
<p>Directive)(England and Wales) Regulations 2003 requires that the Secretary of State and the Environment Agency must exercise their relevant functions so as to secure compliance with the requirements of the Directive.</p> <p>1.5 The Environment Agency also has statutory duties under the Environment Act 1995 (s6) to generally promote the conservation of fauna which are dependent on an aquatic environment to the extent it considers desirable and to 'maintain, improve and develop' salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries in England.</p> <p>1.6 We also issue Environmental Permits under the Environmental Permits under the Environmental Permitting (England and Wales) Regulations 2016, which covers water discharge consenting, groundwater authorisations, radioactive substances regulation authorisations and waste permitting activities.</p> <p>1.7 On 20 June 2019 the Environment Agency (the EA) made a Relevant Representation to the proposal by VPI Immingham B Ltd (the Applicant) to construct, operate and maintain a new Open Cycle Gas Turbine (OCGT) power station with a capacity of 299 megawatts (MW) gross output and other associated works on land to the west of Rosper Road, South Killingholme, Lincolnshire. The purpose of these Written Representations is to provide an update on the summaries contained in our Relevant Representation.</p>	
<p>2.0 Foul water drainage</p>	<p>The Applicant acknowledges the response from the Environment Agency, and notes that the Environment Agency considers this issue resolved.</p>

Environment Agency Written Representation	Applicant's Response
<p>2.1 We have continued to advise the Applicant in respect of the information we require to be satisfied as to whether or not it is feasible for the development to connect to a foul water drainage system operated by the public sewerage undertaker, Anglian Water Services.</p> <p>2.2 The Applicant has agreed to include the amendment requested to Requirement 10 in the Development Consent Order (DCO) to secure the submission of this information prior to the main development commencing; the agreed wording is included in the Statement of Common Ground (Paragraph 4.2.9) between the EA and the Applicant and included below for information: Requirement: Foul water drainage</p> <p>(1) No part of the authorised development may commence, save for the permitted preliminary works, until full details of a scheme, for the connection, conveyance, treatment and disposal of foul water drainage on and off site has been submitted to, and after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority.</p> <p>(2) If it is demonstrated as part of the information submitted pursuant to sub-paragraph (1) that it is not practicable or reasonable to connect to a mains system, an alternative strategy for the provision and implementation of wastewater treatment shall be submitted to and, after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority. Any non-mains drainage proposal must include a management and maintenance plan to ensure that it will not cause pollution to the water environment.</p>	<p>Furthermore, the Applicant can confirm agreement to the inclusion and wording of Requirement 10 in the DCO as presented by the Environment Agency.</p>

Environment Agency Written Representation	Applicant's Response
<p>(3) The schemes approved pursuant to sub-paragraph (2) and (where relevant) sub-paragraph (2) must be implemented and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.</p> <p>2.3 The inclusion of this Requirement will ensure that the most sustainable method of foul drainage is incorporated into the development; subject to its inclusion, we consider that this issue is now resolved.</p>	
<p>3.0 Land contamination</p> <p>3.1 As advised in our Relevant Representation, Chapter 11, and Appendices 11A-11D contains sufficient information in respect of the assessment of risk for controlled waters and the inclusion of Requirement 12 of the DCO is satisfactory for protecting these during development.</p> <p>3.2 We note that in the Examiner's Written Questions (Q1.3.18) the issue of piling and penetrative foundation design has been raised (in respect of Requirement 20). You will note that the EA is a consultee to Requirement 20. This is a Requirement that the EA requested following consultation under Section 42 of the Planning Act 2008 (on the Preliminary Environmental Information Report (PEIR)).</p> <p>3.3 The Applicant has advised us that, until the detailed design is undertaken, they cannot rule out the possibility of needing to use penetrative piling methods during construction. Piling using</p>	<p>The Applicant acknowledges the response from the Environment Agency and notes that the information provided in the Environmental Statement represents a sufficient assessment of the risk to controlled waters.</p> <p>The Applicant also notes that the Environment Agency considers that the inclusion of Requirement 10 as presented in the draft DCO are satisfactory for the purposes of controlling the risk to controlled waters; and that the inclusion of Requirement 20 as presented in the draft DCO is sufficient to control the risk to groundwater resources from piling activities (if required).</p>

Environment Agency Written Representation	Applicant's Response
<p>penetrative methods can result in risks to potable water supplies from, for example pollution/turbidity, risk of mobilising contamination, drilling through different aquifers and creating preferential pathways.</p> <p>3.4 It is, therefore, our view that the inclusion of Requirement 20 is necessary to ensure that if piling is required then an adequate risk assessment will be undertaken. We will then be able to advised on appropriate methods to be used to ensure the works will not impact groundwater resources, and to ensure compliance with section 5.15 (Water Quality and Resources) of the Overarching National Policy Statement for Energy (EN-1).</p>	
<p>4.0 Flood Risk</p> <p>4.1 As confirmed in our Relevant Representation, the issue of potential tidal and fluvial flood risk, to and from the development, has been adequately assessed and an appropriate Requirement (no.11) has been included to secure mitigation.</p> <p>4.2 However, we would point out that our Relevant Representation contained two typos in paragraph 5.4, in our references to Requirement 12 – this should have read Requirement 11. Accordingly, I confirm that we wish to be removed as a consultee to Requirement 11(6).</p>	<p>The Applicant acknowledges the response from the Environment Agency, and notes that the Environment Agency considers that the risk of flooding has been adequately assessment and that the inclusion of Requirement 10 as presented in the draft DCO is appropriate to secure mitigation.</p>
<p>5.0 Environmental Permit</p> <p>5.1 We can advise that an application for a permit, under Schedule 1.1 Part A (1)(a) of the Environmental Permitting Regulations 2016, to</p>	<p>The Applicant acknowledges the response from the Environment Agency, and notes their intention to issue a decision on the Environmental Permit Application in October 2019.</p>

Environment Agency Written Representation	Applicant's Response
<p>operate the proposed facility was received by the Environment Agency and 'duly made' on 25 April 2019.</p> <p>5.2 The information contained in the application has been reviewed, including the air quality assessment, and is considered satisfactory. The application was published for public consultation on 21 August 2019 on our website. The Appendix 11 (Habitats Regulation Assessment) document has also been sent to Natural England for consultation. The deadline for receipt of consultation comments is 19 September 2019.</p> <p>5.3 Following consideration of any consultation responses received, we are aiming to issue a decision on the permit application during October.</p> <p>We reserve the right to add to these representations; including requests for DCO Requirements should further information be forthcoming or any amendments to the proposal occur during the course of the examination, on issues within our remit.</p>	

5.0 HORNSEA 1

- 5.1.1 This section sets out the Applicant's response to comments received from Hornsea 1. See Table 5.1 on the following pages.

Table 5.1 – Applicant's responses to Hornsea 1

Hornsea 1 Written Representation	Applicant's Response
<p>1.0 Introduction</p> <p>1.1 This Written Representation ("WR") is submitted by Hornsea 1 Limited ("Hornsea 1") in pursuance of Rule 10 of the Infrastructure Planning (Examination Procedure) Rules 2010 in relation to an application under the Planning Act 2008 for a Development Consent Order ("DC") for the VPI Immingham OCGT submitted by VPI Immingham B Ltd ("the Applicant").</p> <p>1.2 Hornsea 1 submitted representations to the Planning Inspectorate on 20 June 2019.</p>	<p>Noted.</p>
<p>2.0 About Hornsea 1</p> <p>2.1 Hornsea 1 holds a generation licence under Section 6 of the Electricity Act 1989 and is a statutory undertaker. Hornsea 1 is the developer of the Hornsea One Offshore Windfarm and its associated onshore transmission infrastructure ("HOW01W). Following completion of construction, Hornsea 1 will have to divest its interest in the transmission infrastructure to an Offshore Transmission Owner ("OFTO") who will be appointed through the statutory process contained within the Electricity (Competitive Tender for Offshore Transmission Licences) Regulations 2015. The chosen OFTO will hold a transmission licence under Section 6 of the Electricity Act 1989 and will also be a statutory undertaker.</p>	<p>The Applicant agrees that Hornsea 1 is a statutory undertaker by virtue of holding a generation licence under section 6 of the Electricity Act 1989 and that following divesting of its interests in the transmission infrastructure to the HOW01 to an OFTO, that OFTO will also be a statutory undertaker pursuant to section 6 of the Electricity Act 1989.</p>

Hornsea 1 Written Representation	Applicant's Response
<p>3.0 About Hornsea Project One (HOW01)</p> <p>3.1 The Secretary of State, having been satisfied that there is a need for the Hornsea One Offshore Windfarm ("HOW01") and that the form of the Order proposed would be consistent with relevant Government policy objectives, decided to grant the Hornsea One Offshore Wind Farm Order 2014 on 10 December 2014.</p> <p>3.2 In particular HOW01 will play a key part in achieving the UK's renewable energy targets, helping in the development of a low carbon economy. It has, and will continue, to create jobs and local business opportunities and is an important part of the development of the UK renewables sector.</p> <p>3.3 The project is now operational and is entering the final stages of its construction phase. It is intended that HOW01 will be completed and fully operational in Q2 2020.</p>	<p>The Applicant agrees that the Hornsea One Offshore Wind Farm Order 2014 was granted on 10 December 2014.</p>
<p>4.0 Hornsea 1's Interests</p> <p>4.1 The majority of construction works have been completed under option agreements with landowners along the approximately 40km onshore cable route. In addition the options with landowners and occupiers have now been exercised and Hornsea 1 is in the process of completing these.</p> <p>4.2 As acknowledged in the VPI Book of Reference HOW01 has procured property interests in the below proposed VPI DCO plots:</p>	<p>The Applicant confirms that Hornsea 1 has beneficial interests in various parcels of land across the Existing Gas Pipeline and relating to a proposed underground electrical cable – these interests affect plots 59 to 64, 68 to 70, 72 to 83 and 90 to 92 as detailed within the Book of Reference (Updated Version 3 Submitted at Deadline 3, Document Ref: 3.4).</p> <p>The Applicant also agrees that Hornsea 1 has development, access and compulsory acquisition rights within certain of these plots pursuant to the Hornsea One Offshore Wind Farm Order 2014.</p>

Hornsea 1 Written Representation	Applicant's Response
<p>59,60,61,62,63,64,68,69,70,72,73,74,75,76,77,78,79,80,81,82,83,90,91, and 92.</p> <p>4.3 In addition, within certain plots listed above, Hornsea 1 has installed and is now operating infrastructure including underground cables and associated apparatus. HOW01 also has development, access and compulsory acquisition rights within certain of these plots pursuant to the Hornsea One Offshore Wind Farm Order 2014.</p>	
<p>5.0 Hornsea 1's Principal Concerns</p> <p>5.1 HOW01 is a Nationally Significant Infrastructure Project, authorised by the Hornsea One Offshore Wind Farm Order 2014 (as amended). Hornsea 1 is an undertaker authorised under that Order. A variety of other consents and commercial/property agreements and right have also been obtained to deliver HOW01. Construction of the HOW01 onshore transmission infrastructure has commenced and is in the final stages.</p> <p>5.2 If the VPI DCO is granted in its current form there will be a number of areas of interface between the VPI Immingham OCGT Project and HOW01.</p> <p>5.3 In terms of property rights there is the potential for the compulsory acquisition powers sought by the Applicant within the VPI DCO to extinguish, override or otherwise interfere with rights and powers necessary for the construction, operation and maintenance of HOW01.</p> <p>5.4 In the event that the Applicant's exercise of powers to use and in particular maintain the existing pipeline is not controlled, there is also the potential for damage to HOW01 apparatus and/or restricted access for</p>	<p>Hornsea 1's interests all fall within the Existing Gas Pipeline Site and as such, are not affected by any works authorised by the DCO. As detailed in the Statement of Reasons, (Document Ref: 3.2 – paragraph 6.3.1), the compulsory acquisition rights sought within the DCO (and affecting Hornsea 1's interests), relate solely to rights for the operation and maintenance of the Existing Gas Pipeline, in relation to the Proposed Development.</p> <p>Notwithstanding the inclusion of compulsory acquisition powers in the DCO, the Applicant's intention remains to secure all rights it requires by agreement. Although there will be no works authorised by the DCO which could impact upon Hornsea 1's interests/apparatus, the Applicant has offered to enter into a crossing agreement with Hornsea 1 which would (i) regulate future interactions between the Hornsea 1's apparatus and the Existing Gas Pipeline (to the extent that there are any) and (ii) contain a commitment by the Applicant not to exercise any compulsory acquisition powers in respect of Hornsea 1's interests. The Applicant is also willing to include a protective provision in the DCO restricting the exercise of compulsory</p>

Hornsea 1 Written Representation	Applicant's Response
<p>construction and necessary maintenance/repairs. This puts in jeopardy the delivery and safe operation of HOW02.</p> <p>5.5 Hornsea 1 requires protections within the VPI Order, or some other form of suitable protection, to ensure that they and any future OFTO/transmission company can deliver and thereafter properly maintain/operate the transmission infrastructure necessary for HOW01. We would submit that such protections must include obligations on the Applicant (and successors) not to interfere with HOW01 property and development rights and powers and to ensure HOW01 assets are not damaged.</p>	<p>acquisition powers in respect of Hornsea 1's property provided that this agreement has been entered into. The Applicant is confident that the proposed Crossing Agreement and protective provision within the DCO will address all of Hornsea 1's concerns in relation to the delivery and safe operation of HOW01.</p>
<p>6.0 Ongoing Discussions</p> <p>6.1 Hornsea 1 has had constructive discussions with the Applicant in advance of and following submission of the VPI DCO application. These discussions are ongoing and Hornsea 1 is happy to continue discussions with the Applicant to seek to agree the form and content of protective provisions in the DCO or other appropriate restrictions and protections that are necessary to protect HOW01 and would allow this objection to be withdrawn.</p>	<p>The Applicant welcomes Hornsea 1's confirmation of the constructive discussions to date and is confident that agreement can be reached on the form and content of protective provisions and/or appropriate protections; and consequential withdrawal of Hornsea 1's objection.</p>
<p>7.0 Next Steps</p> <p>7.1 As noted above, Hornsea 1 hopes to reach agreement with the Applicant. In the event that this has not proven possible in advance of Examination hearings, Hornsea 1 has intimated a request to take part in the Issue Specific Hearing on the draft Development Consent Order and Compulsory Acquisition Hearing due to be held on 2 October 2019.</p>	<p>Noted.</p>

Hornsea 1 Written Representation	Applicant's Response

6.0 HORNSEA 2

- 6.1.1 This section sets out the Applicant's response to comments received from Hornsea 2. See Table 6.1 on the following pages.

Table 6.1 – Applicant's responses to Hornsea 2

Hornsea 2 Written Representation	Applicant's Response
<p>1.0 Introduction</p> <p>1.1 This Written Representation ("WR") is submitted by Optimus Wind Limited, Breesea Limited, Sonningmay Wind Limited and Soundmark Wind Limited (together the "Hornsea 2 Companies" in pursuance of Rule 10 of the Infrastructure Planning (Examination Procedure) Rules 2010 in relation to an application under the Planning Act 2008 for a Development Consent Order ("DCO") for the VPI Immingham OCGT submitted by VPI Immingham B Ltd ("the Applicant").</p> <p>1.2 The Hornsea 2 Companies submitted representations to the Planning Inspectorate on 20 June 2019. These representations are further expanded and explained in this WR.</p>	<p>The Applicant agrees that the Hornsea 2 Companies submitted a representation to the Planning Inspectorate on 20 June 2019.</p>
<p>2.0 About the Hornsea 2 Companies</p> <p>2.1 The Hornsea 2 Companies hold generation licences under Section 6 of the Electricity Act 1989 and are statutory undertakers. The Hornsea 2 Companies are the developers of the Hornsea Two Offshore Windfarm and its associated onshore transmission infrastructure ("HOW02"). Following completion of construction, the Hornsea 2 Companies will have to divest their interest in the transmission infrastructure to an Offshore Transmission Owner ("OFTO") who will be appointed through the statutory process contained within the Electricity (Competitive Tender for Offshore Transmission Licences) Regulations 2015. The chosen OFTO will hold a transmission licence under Section 6 of the Electricity Act 1989 and will also be a statutory undertaker.</p>	<p>The Applicant agrees that the Hornsea 2 Companies are statutory undertakers by virtue of holding generation licences under section 6 of the Electricity Act 1989 and that following divesting of their interests in the transmission infrastructure in the HOW02 Windfarm to an OFTO, that OFTO will also be a statutory undertaker pursuant to section 6 of the Electricity Act 1989.</p>

<p>3.0 About Hornsea Project Two (HOW02)</p> <p>3.1 The Secretary of State, having been satisfied that there is a need for the Hornsea Two Offshore Windfarm (HOW02) and that the form of the Order proposed would be consistent with relevant Government policy objectives, decided to grant the Hornsea Two Offshore Wind Farm Order 2016 on 16 August 2016.</p> <p>3.2 In particular HOW02 will play a key part in achieving the UK's renewable energy targets, helping in the development of a low carbon economy. It has, and will continue, to create jobs and local business opportunities and is an important part of the development of the UK renewables sector.</p> <p>3.3 The project is now in the construction phase. It is intended that HOW02 will be completed and operational by 2022.</p>	<p>The Applicant agrees that the Hornsea Two Offshore Wind Farm Order 2016 was granted on 16 August 2016.</p>
<p>4.0 The Hornsea 23 Companies' Interests</p> <p>4.1 Construction works have commenced under option agreements with landowners along the approximately 40km onshore cable route. In addition the options with landowners and occupiers have now been exercised and HOW02 is in the process of completing these.</p> <p>4.2 As acknowledged in the VPI Book of Reference HOW02 has procured property interests in the below proposed VPI DCO plots:</p> <p>59,60,61,62,63,64,68,69,70,72,73,74,75,76,77,78,79,80,81,82,83,90,91, and 92.</p> <p>4.3 HOW02 also has development, access and compulsory acquisition rights within certain of these plots pursuant to the Hornsea Two Offshore Wind Farm Order 2016.</p>	<p>The Applicant agrees that the Hornsea 2 Companies have beneficial interests in various parcels of land across the Existing Gas Pipeline and relating to a proposed underground electrical cable – these interests affect plots 59 to 64, 68 to 70, 72 to 83 and 90 to 92 as detailed within the Book of Reference (Application Document Ref: 3.4).</p> <p>The Applicant also agrees that the Hornsea 2 Companies have access and compulsory acquisition rights within certain of these plots pursuant to the Hornsea Two Offshore Wind Farm Order 2016.</p>

<p>5.0 The Hornsea 2 Companies' Principal Concerns</p> <p>5.1 HOW02 is a Nationally Significant Infrastructure Project, authorised by the Hornsea Two Offshore Wind Farm Order 2016 (as amended). The Hornsea 2 Companies are undertakers authorised under that Order. A variety of other consents and commercial/property agreements and right have also been obtained to deliver HOW02. Construction of the HOW02 onshore transmission infrastructure has commenced and works are in progress.</p> <p>5.2 If the VPI DCO is granted in its current form there will be a number of areas of interface between the VPI Immingham OCGT Project and HOW02.</p> <p>5.3 In terms of property rights there is the potential for the compulsory acquisition powers sought by the Applicant within the VPI DCO to extinguish, override or otherwise interfere with rights and powers necessary for the construction, operation and maintenance of HOW02.</p> <p>5.4 In the event that the Applicant's exercise of powers to use and in particular maintain the existing pipeline is not controlled, there is also the potential for damage to HOW02 apparatus and/or restricted access for construction and necessary maintenance/repairs. This puts in jeopardy the delivery and safe operation of HOW02.</p> <p>5.5 The Hornsea 2 Companies require protections within the VPI Order, or some other form of suitable protection, to ensure that they and any future OFTO/transmission company can deliver and thereafter properly maintain/operate the transmission infrastructure necessary for HOW02. We would submit that such protections must include obligations on the Applicant (and successors) not to interfere with</p>	<p>The Hornsea 2 Companies' interests all fall within the Existing Gas Pipeline Site and as such, are not affected by any works authorised by the DCO. As detailed in the Statement of Reasons, (Document Ref: 3.2 – paragraph 6.3.1), the compulsory acquisition rights sought within the DCO (and affecting the Hornsea 2 Companies' interests), relate solely to rights for the operation and maintenance of the Existing Gas Pipeline, in respect of the Proposed Development.</p> <p>Notwithstanding the inclusion of compulsory purchase powers in the DCO, the Applicant's intention remains to secure all rights it requires by agreement. Although there will be no works authorised by the DCO which could impact upon the Hornsea 2 Companies' interests/apparatus, the Applicant has offered to enter into a crossing agreement with the Hornsea 2 Companies which would (i) regulate future interactions between the Hornsea 2 Companies' apparatus/interests and the Existing Gas Pipeline (to the extent that there are any) and (ii) contain a commitment by the Applicant not to exercise any compulsory acquisition powers in respect of the Hornsea 2 Companies' interests. The Applicant is also willing to include a protective provision in the DCO restricting the exercise of compulsory acquisition powers in respect of the Hornsea 2 Companies' property provided that this agreement has been entered into. The Applicant is confident that the proposed Crossing Agreement and protective provision within the DCO will address all of the Hornsea 2 Companies' concerns in relation to the delivery and safe operation of HOW02.</p>
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<p>HOW02 property and development rights and powers and to ensure HOW02 assets are not damaged.</p>	
<p>6.0 Ongoing Discussions</p> <p>6.1 The Hornsea 2 Companies have had constructive discussions with the Applicant in advance of and following submission of the VPI DCO application. These discussions are ongoing and the Hornsea 2 Companies are happy to continue discussions with the Applicant to seek to agree the form and content of protective provisions in the DCO or other appropriate restrictions and protections that are necessary to protect HOW02 and would allow this objection to be withdrawn.</p>	<p>The Applicant welcomes the Hornsea 2 Companies' confirmation of the constructive discussions to date and is confident that agreement can be reached on the form and content of protective provisions and/or appropriate protections; and consequential withdrawal of the Hornsea 2 Companies' objection.</p>
<p>7.0 Next Steps</p> <p>7.1 As noted above, the Hornsea 2 Companies hope to reach agreement with the Applicant. In the event that this has not proven possible in advance of Examination hearings, the Hornsea Two Companies have intimated a request to take part in the Issue Specific Hearing on the draft Development Consent Order and Compulsory Acquisition Hearing due to be held on 2 October 2019.</p>	<p>Noted.</p>

7.0 NATIONAL GRID

- 7.1.1 This section sets out the Applicant's response to comments received from National Grid. See Table 7.1 on the following pages.

Table 7.1 – Applicant's responses to National Grid

National Grid Written Representation	Applicant's Response
<p>1. Introduction</p> <p>1.1 National Grid Plc have made a relevant representation in this matter on 6th June 2019 in order to protect apparatus owned by National Grid Electricity Transmission Plc ("NGET") and National Grid Gas Plc ("NGG"). National Grid Plc does not object in principle to the development proposed by the Promoter.</p> <p>1.2 National Grid does however, object to the Authorised Works being carried out in close proximity to their apparatus in the area unless and until suitable protective provisions and related agreements have been secured to their satisfaction, to which see further at paragraph 6. They also object to any compulsory acquisition powers for land or rights or other related powers to acquire land temporarily, override or otherwise interfere with easements or rights or stop up public or private rights of access being invoked which would affect their land interests, rights, apparatus, or right to access and maintain their apparatus. This is unless and until suitable protective provisions and any necessary related amendments to the wording of the DCO have been agreed and included in the order.</p> <p>1.3 NGET own and operate the electricity transmission network in England and Wales, with day-to-day responsibility for balancing supply and demand. NGET operate but do not own the Scottish networks. NGET is required to comply with the terms of its Electricity Transmission Licence</p>	<p>The Applicant notes the written representation from National Grid, and welcomes the confirmation that it does not object to the principle of the Proposed Development.</p> <p>The Applicant also notes the objection to the compulsory acquisition powers and works within the vicinity of National Grid's apparatus, and has proposed protective provisions to address these matters. The Applicant and National Grid are also in discussions in relation to a proposed side agreement, as noted.</p>

National Grid Written Representation	Applicant's Response
<p>in the delivery of its statutory responsibility. Under Section 9 of the Electricity Act 1989, NGET have a statutory duty to maintain 'an efficient, co-ordinated and economical' system of electricity transmission.</p> <p>1.4 NGG owns, manages and operates the national gas transmission infrastructure in Great Britain. NGG has a statutory duty (under Section 9 of the Gas Act 1986) to develop, maintain, and operate economic and efficient networks and to facilitate competition in the supply of gas in Britain.</p>	
<p>2. NGET and NGG ASSETS</p> <p>2.1 NGET has high voltage electricity overhead transmission lines within the Order or in very close proximity to the authorised development. Details of these assets are as follows;</p> <ul style="list-style-type: none"> (a) Humber Refinery 400Kv Electricity Sub Station. The Substation sits outside the Order limits but immediately adjoining the Order Land (b) 2AD and 2AJ (400kV) Overhead Line Routes and associated above and below ground apparatus, as shown on the plan at Appendix 1. <p>2.2 The sub-station and overhead lines form an essential part of the electricity transmission network in England and Wales.</p>	<p>The Applicant notes and agrees with the summary of the National Grid assets within or close to the Proposed Development, other than the reference to "Order limits" in relation to NGG's assets. These are solely within or close to the Existing Gas Pipeline Site, and therefore the NGG assets are within or close to the Order land but are not within the Order limits.</p> <p>The Applicant notes National Grid's requirements for 24 hour access to its apparatus. This is a matter addressed in the protections under discussion between the parties.</p>

National Grid Written Representation	Applicant's Response
<p>2.3 NGG has an Above Ground Installation (AGI) and high pressure gas transmission pipeline located within close proximity to the Order Limits with offtake apparatus with the Order Limits as follows:</p> <ul style="list-style-type: none"> (a) Thornton Curtis "A" AGI and offtake apparatus (the latter of which falls within the Order Limits), and (b) Feeder Main 9 (Paull to Hatton and associated apparatus). <p>2.4 In respect of all NGET and NGG infrastructure located within the DCO boundary, or in close proximity to the proposed project and associated works, NGET will require protective provisions to be put in place to ensure (i) that all NGET interests and rights including rights of access both to their sub-station and Overhead Power Lines and other apparatus are unaffected by the power of compulsory acquisition, grant and extinguishment of rights and temporary use powers and (ii) to ensure that appropriate protection for the retained apparatus is maintained during after construction of the project in accordance with the Protective Provisions and the relevant safety standards as set out in paragraph 3 and 4.</p> <p>2.5 National Grid also require 24 hour access to all assets listed at 2.1 and 2.3 throughout the construction and operation of the Authorized Development and will liaise with the Promoter to ensure this is maintained.</p>	
<p>3. NGET Regulatory Protection Framework</p> <p>3.1 NGET have issued guidance in respect of standards and protocols for working near to Electricity Transmission equipment in the form of:</p>	<p>The Applicant notes the NGET regulatory protection framework, matters which are addressed in the proposed protections under discussion between the parties.</p>

National Grid Written Representation	Applicant's Response
<p>3.1.1 Third Party Working near National Grid Electricity Transmission equipment – Technical Guidance Note 287. This document gives guidance and information to third parties working close to National Grid Electricity Transmission assets. This cross refers to statutory electrical safety clearances which as used as the basis for ENA (TA) 43-8, which must be observed to ensure safe distance is kept between exposed conductors and those working in the vicinity of electrical assets, and</p> <p>3.1.2 Energy Network Associations Development near Overhead Lines ENA (TS) 43-8. This sets out the derivation and applicability of safe clearance distances in various circumstances including crossing of OHL and working in close proximity.</p> <p>3.1.3 Additionally HSE's guidance note 6 "Avoidance of Danger of Overhead Lines", summarises advice to minimise risk to life/personal injury and provide guidance to those planning and engaging in construction activity in close proximity to Overhead Lines.</p> <p>3.2 National Grid requires specific protective provisions in place to provide for an appropriate level of control and protection for retained assets and assurance that industry standards will be complied with in connection work works to and in the vicinity of their electricity assets.</p>	

National Grid Written Representation	Applicant's Response
<p>4. NGG – Regulatory Protection Framework</p> <p>4.1 Relevant guidance in respect of standards and protocols for working in the vicinity of high pressure gas pipelines applies in the form:</p> <p>4.1.1 National Grid Guidance for Safe Working in the vicinity of High Pressure Pipelines T/SP/SSW/22 which is aimed at parties carrying out work in the vicinity of high pressure gas pipelines and associated installations and is provided to ensure that those planning and undertaking work take appropriate measures to prevent damage.</p> <p>4.1.2 The requirements in T/SP/SSW/22 are also in line with the IGE (Institution of Gas Engineers) recommendations in IGE/SE/18 Edition 2 – Safe Working Practices to Ensure the Integrity of Gas Pipelines and associated Installations and HSE's guidance document HS (G) 47 Avoiding Danger from Underground Services.</p> <p>4.2 National Grid requires specific protective provision in place to provide for an appropriate level of control and protection for retained assets and assurance that industry standards will be complied with in connection with works to and in the vicinity of their Gas Assets.</p>	<p>The Applicant notes the NGG regulatory protection framework, matters which are addressed in the proposed protections under discussion between the parties.</p>
<p>5. Property Issues</p> <p>5.1 NGET assert that maintaining appropriate property rights to support their assets and protecting these from Compulsory Acquisition and related powers in the DCO is a fundamental safety issue. Insufficient property rights would have the following safety implications:</p>	<p>As noted above the Applicant and National Grid are discussing the terms of protections for the benefit of the latter, and which would address National Grid's requirements for property rights to be maintained.</p>

National Grid Written Representation	Applicant's Response
<p>5.1.1 Inability for qualified personnel to access apparatus for its maintenance, repair and inspection.</p> <p>5.1.2 Risk of strike to be buried assets/cable/overhead lines if development occurs within the easement zone which seeks to protect the cable/overhead lines from development.</p> <p>5.1.3 Risk of inappropriate development within the vicinity of the assets increasing the risk of damage to the asset and integrity of the system.</p>	
<p>6. Protective Provisions</p> <p>6.1 National Grid seeks to protect its statutory undertaking, and insists that in respect of connections and work in close proximity to their Apparatus as part of the authorised development the following procedures are complied with by the Applicant:</p> <ul style="list-style-type: none"> (a) National Grid is in control of the plans, methodology and specification for works within 15 metres of any retained Apparatus; and (b) DCO works in the vicinity of NGET apparatus are not authorised or commenced unless protective provisions are in place preventing compulsory acquisition of National Grid's land or rights or the overriding or interference of the same. 	<p>The Applicant agrees that the parties are discussing the terms of appropriate protections for National Grid, and welcomes the confirmation that good progress is being made. The Applicant notes National Grid's position in respect of an indemnity, and considers that the position expressed in the Eggborough Gas Fired Generating Station Order 2018 decision related, in significant part, to the Canal and River Trust's status as a charitable organisation. That is not a factor which applies to National Grid. The Applicant considers that the potential liability to National Grid is identifiable, and that a cap on the indemnity is reasonable. The Applicant remains in discussions with National Grid however, with a view to reaching agreement on all matters relating to protective provisions.</p>

National Grid Written Representation	Applicant's Response
<p>Any acquisition of rights must be subject to NGET's existing interest and rights and not contradict with or cut across such rights; and</p> <p>(c) Appropriate surety and insurance provisions are in place to back up an uncapped indemnity to protect National Grid from any damage, losses or claims arising from the Authorised Development.</p> <p>6.2 The proposed Order does not yet contain fully agreed protective provisions expressed to be for the protection of National Grid to National Grid's satisfaction, making it currently deficient from National Grid's perspective. However, the Promoter has made good progress with National Grid in agreeing an acceptable form of protective provisions for inclusion in the draft Development Consent Order in the near future. This is save in respect of the Indemnity provisions to be given to National Grid in the Protective provisions. The promoter would like to cap their liability to National Grid under the Indemnity. National Grid does not see why it is reasonable for the Promoter to expect National Grid to accept liability for any damage or claims arising from the promoter's scheme beyond the level of any cap. Furthermore, National Grid could be criticised by Ofgem for incurring such costs/liability on behalf of a third party developer. The Decision of the Secretary of State at paragraph 7.5 in the Eggborough Development Consent Order, held in similar circumstances that the Canal and Rivers Trust (a statutory undertaker) should not be subject to a cap on the promoters indemnity "because... the Applicant's suggested wording would place an</p>	

National Grid Written Representation	Applicant's Response
<p>unreasonable and unjustified burden on CRT< which would face a risk of potential costs and losses through no fault of its own". This is addressed in more detail in paragraphs 8.5.23 to 8.5.36 of the Recommendation Report of the examining authority in that case.</p> <p>6.3 Should it not be possible to reach agreement with the promoter, National Grid reserve the right to attend a Compulsory Acquisition Hearing or Issue Specific Hearing to address the required format of the Protective Provisions and any necessary amendments to the draft Development Consent Order. If this is necessary National Grid reserve the right to provide further written information in advance of any detailed issues remaining in dispute between the parties at that stage.</p>	

8.0 NETWORK RAIL INFRASTRUCTURE LIMITED

- 8.1.1 This section sets out the Applicant's response to comments received from Network Rail Infrastructure Limited. See Table 8.1 on the following pages.

Table 8.1 – Applicant's responses to Network Rail Infrastructure Limited

Network Rail Infrastructure Limited Written Representation	Applicant's Response
<p>1. Introduction</p> <p>1.1 This written representation (Written Representation) is submitted on behalf of Network Rail Infrastructure Limited (Network Rail) in response to the application by VPI Immingham B Limited (Applicant) for the Immingham Open Cycle Gas Turbine order 20[x] (DCO). The Applicant seeks development consent for the authorised development to be carried out within the Order limits as described in Schedule 1 to the DCO and shown on the works plans (Proposed Development) as well as compulsory acquisition powers in relation to a wider area of land which is define in the DCO as the Order land.</p> <p>1.2 The Statement of Reasons [1.2] states that: "The Existing Gas Pipeline runs from the Existing AGI Site (within the Existing VPI CHP Plant) to an existing tie-in to the National Grid GAS ('NGG') Feeder 9 located to the west of South Killingholme. The Existing Gas Pipeline passes through a variety of areas and uses, including the Phillips 66 Limited refinery, under the A160 (twice), under the public railway (twice) and through a number of agricultural fields. The Applicant is seeking rights to use and maintain this pipeline and it is therefore included within the DCO Order land."</p> <p>1.3 Network Rail submitted a section 56 representation [RR-020] on 25 June 2019.</p>	<p>The Applicant notes the written representation from Network Rail, and welcomes the confirmation that it does not object in principle to the Proposed Development or DCO.</p>

Network Rail Infrastructure Limited Written Representation	Applicant's Response
<p>1.4 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993 (Network Licence).</p> <p>1.5 The Applicant is seeking to compulsorily acquire permanent rights over land owned by Network Rail, which compromises operational railway land that forms part of the Barton Line.</p> <p>1.6 Network Rail does not object in principle to the DCO. However, Network Rail objects to the compulsory acquisition and extinguishment of its rights in operational land on which it relies for the carrying out of its statutory undertaking.</p> <p>1.7 Network Rail does not agree to compulsory powers being granted or executed in relation to its operational railway land and asks that the attached protective provisions for the benefit of Network Rail (Network Rail Protective Provisions) are included in the DCO. Network Rail is willing to enter into an agreement or agreements with the Applicant to ensure that its interests are protected.</p>	
<p>2. Impact of the Proposed Development on the Railway</p> <p><u>Network Rail's property interest in the DCO and the rights sought by the Applicant in relation to it</u></p>	<p>The Applicant agrees with Network Rail's summary of the position in relation to land ownership, compulsory acquisition powers sought and the existing deed of easement between Network Rail and VPI Immingham LLP.</p>

Network Rail Infrastructure Limited Written Representation	Applicant's Response
<p>2.1 Network Rail has a freehold interest in, and is the occupier of Plots 41, 104, 105 and 106 identified in the DCO Book of Reference (Plots).</p> <p>2.2 It is understood that the Proposed Development will not take place on Network Rail's land or affect its apparatus. It is the proposed compulsory acquisition powers in relation to the Plots that will directly affect Network Rail.</p> <p>2.3 The Applicant seeks compulsory powers to acquire and extinguish the following rights in relation the Plots: "new rights to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights: 1) Rights to pass and repass on foot, with or without vehicles, plant and machinery; and 2) Rights to retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground gas pipeline, control systems and cables and any other ancillary apparatus any other works as necessary" (Compulsory Powers)</p> <p>2.4 Rights for the existing gas pipeline beneath Network Rail's railway were granted to Immingham CHP LLP (now VPI Immingham LLP) pursuant to a Deed of Easement dated 16 January 2002 (as varied by a Deed of Variation dated 24 April 2003).</p>	

Network Rail Infrastructure Limited Written Representation	Applicant's Response
<p>2.5 The Applicant is seeking rights from Network Rail to use and maintain the existing gas pipeline on the same terms as the existing Deed of Easement.</p>	
<p><u>Network Rail's objection to the DCO</u></p> <p>2.6 The Plots are operational railway land and Network Rail does not consent to property rights in relation to such land being compulsorily purchased.</p> <p>2.7 Network Rail is willing to enter into private agreements to agree the extent and scope of the rights to be granted to the Applicant. Without this/these agreements(s) being in place, Network Rail considers that the Compulsory Powers, if used in relation to the Plot, will have a detrimental impact on the operation of the railway and will prevent Network Rail from operating the railway safely and efficiently in accordance with its network licence. Until such agreement(s) are in place Network Rail is unable to withdraw its objection to the DCO.</p> <p>2.8 Unless the Network Rail Protective Provisions are included in the Order, and in the absence of private agreements with the Applicant, Network Rail's interests, including the safety of the operational railway, will not be protected.</p>	<p>The Applicant welcomes the confirmation from Network Rail that it is willing to enter into private agreements to provide the rights necessary for the Proposed Development, and that matches the position discussed directly between the parties.</p> <p>The Applicant notes the request for protective provisions to be included in the DCO, and confirms it is continuing to discuss the agreements and necessary protections directly with Network Rail.</p> <p>The Applicant is awaiting feedback from Network Rail on its proposed approach to the agreements, and expects to be able to reach agreement with Network Rail on the terms of the necessary agreements before the end of the examination.</p>
<p><u>Network Rail's statutory duties</u></p>	<p>See above.</p>

Network Rail Infrastructure Limited Written Representation	Applicant's Response
<p>2.9 Network Rail, as noted above, owns operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993.</p> <p>2.10 Network Rail considers that there is no compelling case in the public interest for the compulsory acquisition of rights over the Plots as the Applicant and Network Rail should negotiate matters by private agreement to grant to the Applicant the necessary rights. The Network Rail Protective Provisions provide Network Rail with the necessary protection by providing, at paragraph 67, that compulsory powers must not be exercised in respect of railway property without Network Rail's consent.</p>	
<p><u>How the parties can address Network Rail's concerns</u></p> <p>2.11 In order to avoid the compulsory acquisition of rights over the Plots, Network Rail and the Applicant have begun discussions in relation to entry into an Option for an Easement with regard to the existing gas pipeline with the aim that such Option be agreed before the close of the Examination. Network Rail has yet to see a copy of the proposed Option and, accordingly, reserves its right to require entry into such further private agreements as it considers necessary.</p> <p>2.12 In addition, Network Rail will seek to agree with the Applicant the Network Rail Protective Provisions to be included at Part 9 of Schedule 9 to the DCO.</p>	<p>See above.</p>

Network Rail Infrastructure Limited Written Representation	Applicant's Response
<p>3. Conclusions</p> <p>3.1 Network Rail does not object in principle to the Proposed Development. However, it strongly objects to the compulsory acquisition of rights over operational land and asks that the Network Rail Protective Provisions are included in the DCO.</p> <p>3.2 Network Rail considers that the Secretary of State cannot allow the DCO to be granted without amendment as the test in section 127 of the Planning Act 2008 cannot be satisfied. The granting of compulsory acquisition powers to the Applicant in relation to Network Rail's land would result in serious detriment to Network Rail's undertaking and Network Rail does not have any other land available to it which could be used to avoid such detriment.</p> <p>3.3 If Network Rail and the Applicant are able to agree the property agreement[s] referred to in this Written Representation and appropriate protective provisions, Network Rail will be able to withdraw its objection to the DCO.</p> <p>Network Rail is hopeful that the outstanding matters can be resolved before the close of the Examination.</p>	<p>See above.</p>

9.0 NORTH EAST LINDSEY DRAINAGE BOARD

- 9.1.1 This section sets out the Applicant's response to comments received from North East Lindsey Drainage Board. See Table 9.1 on the following pages.

Table 9.1 – Applicant's responses to North East Lindsey Drainage Board

North East Lindsey Drainage Board Written Representation	Applicant's Response
<p>The site is within the North East Lindsey Drainage Board area.</p> <p>The Board has no objection to the proposed development provided it is constructed in accordance with the submitted details and Drainage Strategy. It is noted the proposed surface water discharge from the site is to be attenuated to 10.8l/s. However should anything change in relation to the method of surface water disposal and/or in relation to the flood risk assessment etc then this Board would wish to be reconsulted.</p> <p>The Board would support the use of SuDS.</p> <p>The applicant is reminded that under the terms of the Land Drainage Act. 1991 the prior written consent of the Board is required for any proposed temporary or permanent works or structures within any watercourse including infilling or a diversion. The Applicant is aware of this and consulted the Board directly.</p>	<p>The Applicant notes that the Board has no objection to the proposed development provided it is constructed in accordance with the submitted details and Drainage Strategy.</p>

10.0 PHILLIPS 66

1.1.4 Please see **Appendix 1.0**.

11.0 TLOR

- 11.1.1 This section sets out the Applicant's response to comments received from TLOR. See Table 11.1 on the following pages.

Table 11.1 – Applicant's responses to TLOR

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
<p>1.1 Total Lindsey Oil Refinery Limited (TLOR) makes a significant contribution to the energy security and economic prosperity of the UK. As a major industrial facility, the safety of our staff, contractors and neighbours is and shall always be our primary concern. Our priority is to ensure any risk to the integrity of our assets and operations are suitable mitigated or managed.</p> <p>1.2 As one of the six oil refineries operating in the UK, we currently treat approximately 7 million tonnes of crude oil and other feedstocks per annum to produce gasoline, diesel, heating oil, jet fuel and bitumen. Our production represents in the region of 1/7th of the UK indigenous production for inland sales.</p> <p>1.3 Our site covers approximately 500 acres in North Killingholme, Immingham. The site is bounded by Eastfield Road to the west, Chase Hill Road to the north, Rosper Road to the East and the Immingham Docks rail line and the applicant's main site to the South.</p> <p>1.4 Our site is designated as an upper tier COMAH site under the Control of Major Accident Hazards Regulations 2015 (COMAH 15) and we have a statutory obligation to take all measure necessary to prevent major accidents and to limit their consequences for human health and the environment.</p> <p>1.5 We also own or operate various overland and sub-surface hydrocarbon pipelines that are in the vicinity of the proposed development. As statutory</p>	<p>The Applicant agrees that TLOR operates the refinery in North Killingholme, that it is designated as an upper tier COMAH site and that it also operates various hydrocarbon pipelines in the vicinity of the Proposed Development.</p>

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
operator of these pipelines we have a legal obligation to comply with The Pipeline Safety Regulations 1996 (PSR).	
<p>2 Option to Lease Agreement with Applicant</p> <p>2.1 TLOR entered into an “Option to Lease” agreement with VPI Immingham B Limited in December 2017.</p> <p>2.2 The agreement provides the applicant with the option to lease up to 49,420m² of property where TLOR is the freeholder on which to develop and operate the proposed OCGT facility.</p> <p>2.3 The agreement allows for the entire property or portions thereof to be leased to the applicant, if the applicant opts only to lease portions of the property, the agreement provide examples of “reasonable” and “unreasonable” plots defined thus...</p> <p>2.3.1 Reasonable plots shall mean plots which together comprise all of the property or where they do not comprise all of the property, the remaining part(s) of the property could still be utilised by the Landlord for its beneficial occupation and use.</p> <p>2.3.2 Unreasonable plots shall mean plots which leave remaining part(s) of the property which cannot be utilised by the Landlord for its beneficial occupation and use.</p>	<p>The Applicant agrees with TLOR's description of parts of the Option Agreement, and (as stated at 2.5) that the Option Agreement already provides for when the Applicant must re-locate TLOR's canteen which is currently adjacent to the TLOR car park site / Order limits.</p>

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
<p>2.4 The agreements contains example plot plans which are deemed unreasonable due to...</p> <p>2.4.1 Plots not being continuous sequential sections so that intermediate land is made unsuitable for development.</p> <p>2.4.2 Plots where unleased portions of the property become land locked from the remainder of the Landlords retained land.</p> <p>2.4.3 Plots where the options taken do not make efficient use of the land but reasonable more a patchwork approach.</p> <p>2.5 The agreement also includes a clause to the effect that if the applicants opts to exercise a portion of the property the is currently occupied by the Landlord's canteen and car park, the agreement requires the applicant to relocate at their cost to an equivalent specification said canteen and carpark.</p>	
<p>3 Current Land Plans & Impact on Continued Use of TLOR's Canteen</p> <p>3.1 The current land plans published on the planning inspectorate website (4.2- Land plans (Key Plan and Sheets 1 -4) for the VPI Immingham OCGT Project) shows the canteen building to be almost surrounded by temporary laydown and construction areas or access routes to these areas.</p> <p>3.2 The proposed layout creates an island of unleased land on which TLOR's canteen is currently located, such a layout would place significant limitations on</p>	<p>The Applicant has set out its response to matters of safety in its Applicant's Comments on the Relevant Representations (Document Ref. 7.3, see page 21 onwards).</p>

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
<p>vehicular and pedestrian access to the canteen to the extent that it would be detrimental to TLOR's beneficial occupation and use of this portion of its land during the construction phase of the OCGT project.</p> <p>3.3 The same plans show the north-west corner of the land to be used as the site for the proposed OCGT facility would be adjacent to the south-east corner of the land on which TLOR's canteen is sited.</p> <p>3.4 Under section 10(2)(d) of the COMAH15 regulations we have a statutory duty to assess modifications to our establishment that may increase hazard or risk following a trigger event, we believe the siting of the OCGT in close proximity to our canteen would qualify as a trigger event under these regulations.</p> <p>3.5 We are concerned that proximity of the OCGT facility to our canteen would make the occupied building vulnerable in the event of a major incident at the OCGT facility.</p>	
<p>4 Current Plans & Impact on Continued Use of TLOR's Pipelines</p> <p>4.1 The applicant proposes the construction and use of a New Natural Gas Pipeline from the existing VPI site to the OCGT site. This pipeline will transverse our existing hydrocarbon pipeline between TLOR and the South Killingholme Jetty/Immingham Gas Jetty.</p> <p>4.2 The applicant is seeking rights to use and maintain the Existing Gas Pipeline between the National Grid Feeder No.9 pipeline located to the west of South Killingholme and the existing VPI CHP Plant site. Our hydrocarbon pipeline between Immingham and Hemel Hempstead (Finaline) The finaline runs in,</p>	<p>The Applicant agrees that TLOR operates the two pipelines referred to, and that one will be crossed by the Proposed Gas Connection (where that passes between the OCGT Main Site and the Existing VPI CHP Plant Site). The Finaline runs alongside, across or in close proximity to the Existing Gas Pipeline, where no works are proposed.</p> <p>In respect of the works to construct the Proposed Gas Connection, the Applicant acknowledges the bridge</p>

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
<p>alongside or in close proximity to the Existing Gas Pipeline between plot number 39 and plot number 52.</p> <p>4.3 Under the PSR regulations we have a statutory duty to ensure the safe operation and maintenance of our pipelines.</p> <p>4.4 We are concerned that the construction, use and maintenance of the proposed New Natural Gas Pipeline and Existing Gas Pipeline by the applicant could result in detrimental impacts on the safe operation of our pipeline and / or impact our ability to carry out maintenance on our pipelines in accordance with PSR regulations</p>	<p>crossing will span a number TLOR pipelines. The length of the span and the loadings on the bridge are not uncommon, are well within modern design capabilities and it will be designed to provide full access to existing pipelines. VPI LLP has two existing bridges of a similar construction in the vicinity and which both cross a range of infrastructure belonging to third parties (including P66 pipelines, TLOR pipelines and railway lines).</p> <p>Construction of the bridge would be carefully planned to minimise risk associated with working above and adjacent existing pipelines. This would likely be facilitated by sectional construction whereby the (vertical) towers are installed first at either end, and the horizontal deck is lifted as a single piece into place onto the towers. This would minimise any work directly above the pipelines, and protective covers would be temporarily placed over the existing pipelines to prevent any impact, if required.</p> <p>There are no high pressure/high volume water pipes on the bridge (a concern raised by other parties with pipelines in this area), and the major infrastructure would comprise a gas pipe of up to 600mm bore and an electricity connection of up to 400kv. Gas pipes of this size are common within the gas transport and power generation industries and there are numerous well</p>

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
	<p>developed and stringent design standards and codes. These include IGE/TD/1 'Steel Pipelines for High Pressure Gas Transmission' published by the Institution of Gas Engineers. This details design specifications, pressure ratings, material types and factors of safety, and provides guidance on design and safety distances with regard to adjacent population density.</p> <p>The design of gas infrastructure is well governed and controlled by numerous bodies including the HSE, and the pipework will be designed to minimise the risk of complete failure or leaks by design stress analysis, material selection, and reducing flanges and flexible connections by welded joints wherever practicable.</p> <p>In respect of TLOR's pipelines and the operation of both the Existing Gas Pipeline and the Proposed Gas Connection, these are / will be operated and maintained under a comprehensive Safety Management System (SMS) which is conducted in accordance with the Pipeline Safety Regulations 1996 (PSR).</p> <p>The SMS describes the management structure, procedures and organisation to ensure safe operation of the 18" and 24" high pressure pipeline which supply</p>

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
	<p>natural gas from the National Grid offtake at Thornton Curtis to the VPI CHP Plant, including through the areas within the HOR. Pipeline operating parameters, pipeline operation and safety systems are addressed within the SMS which also addresses emergency procedures for un-controlled releases of gas.</p> <p>The policy to ensure integrity of the pipeline and offtake design and construction has been to conduct these activities in accordance with the following key reference standards:</p> <ul style="list-style-type: none"> • IGE/TD/1: Edition 4 – Steel Pipelines for High Pressure Gas Transmission (design and hydrostatic pressure testing) • IGE/TD/9: 1986 – Offtakes and Pressure Regulating Installations for inlet pressures between 7 and 100 bar • IGE/TD/12: 1985 – Pipework Stress Analysis for Gas Industry Plant • P10 – General Pipelining Designed to Operate at Pressures Greater than 7 bar (complementary to BS 8010) • ANSI Class 600 – Flange Ratings • API 1104 – Welding • BS2910 – Radiography • VPI LLP is accredited to:

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
	<ul style="list-style-type: none"> • ISO 14001:2015– environmental management system that provides an accreditation and assurance to company [] • ISO 45001:2018– environmental management system that provides an accreditation and assurance to company [] <p>Compliance with the PSR is a legal requirement for any pipeline operator and the Applicant will be legally obliged to operate and maintain all pipelines it operates in accordance with the PSR.</p>
<p>5 Wording for Planning Condition</p> <p>5.1 As a result of the issues raised above, TLOR respectively request that the following conditions be attached to the Development Consent Order. These conditions will ensure TLOR's concerns will be resolved prior to the commencement of the development of the proposed OCGT facility and will mitigate the risks to our own on-going operations.</p> <p>Condition X: Prior to the commencement of development, the Total Lindsey Oil Refinery Limited canteen currently located at the south-west end of the Rosper Road car park must be relocated at the cost to VPI Immingham B Limited (or its successor in title) to a location to be determined by Total Lindsey Oil Refinery Limited and approved by the competent Authority as defined in the COMAH15 regulations.</p>	<p>As reported at the hearings on 1 October 2019, the Applicant has been engaging with TLOR in relation to the conditions requested.</p> <p>In relation to each:</p> <ul style="list-style-type: none"> • The Applicant does not consider that the canteen re-location is a matter which needs or should be addressed in the requirements in the DCO. It is a private matter between the parties, and does not meet the tests identified in NPS EN-1 (paragraph 4.1.7), as in particular it is not necessary and nor is it relevant to planning. As identified by TLOR above at section 2 the Option Agreement already secures what it is seeking as a 'planning condition', and the Applicant has offered on 24th September 2019 to discuss the drafting of that clause in the

Total Lindsey Oil Refinery Limited – Written Representations	Applicant's Response
<p>Condition X: Prior to the commencement of development, a proposed method of construction, operational use and maintenance of...</p> <ul style="list-style-type: none"> • The 700 mm diameter natural gas pipeline from the existing VPI site to the OCGT site; and • The Existing Gas Pipeline between in the vicinity of the Finaeline. <p>must be submitted to and approved by Total Lindsey Oil Refinery Limited according to the PSR regulations.</p>	<p>Option Agreement with TLOR to address any concerns that TLOR may have with it. To date TLOR has not responded to identify concerns with the clause nor on the Applicant's suggested approach.</p> <ul style="list-style-type: none"> • The Applicant also does not consider that the requirements are the appropriate place to deal with an approval by TLOR for matters relating to the design of the Proposed Gas Connection. The requirements are planning matters, to be approved by the 'relevant planning authority'. The Applicant has provided draft protective provisions to TLOR (also on 24th September 2019) which cover the same matters as sought by TLOR in the written representation, and has included them in the Draft DCO submitted at Deadline 3 (Document Ref: 2.7). To date TLOR has not responded on these. <p>The Applicant is confident that these matters are satisfactorily addressed, enabling TLOR to withdraw its representation.</p>

APPENDIX 1: APPLICANTS RESPONSE TO THE P66 WRITTEN REPRESENTATION

Applicant's Response to the P66 Written Representation

1. INTRODUCTION

- 1.1 Phillips 66 Limited (**P66**) has provided a written representation (**WR**) objecting to the inclusion of powers of compulsory acquisition of rights over its land at and close to the Humber Oil Refinery (**HOR**), under the proposed DCO. This is the Applicant's response to the WR.
- 1.2 At the outset, the Applicant (i.e. VPI Immingham B Ltd) wishes to make clear that it strongly disagrees with P66 that the inclusion of powers of compulsory acquisition over P66's interests (or any other interest included with the Order Land) "*...will not meet the statutory test under s.122 of the Planning Act [2008] for a compelling case in the public interest*".
- 1.3 The Applicant has demonstrated that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition and the Proposed Development will outweigh the private loss that would be suffered by those whose land may be acquired. The Applicant has fully justified the need for the Proposed Development, having regard to NPS EN1 and NPS EN2, in Section 7 of the Statement of Reasons (**SOR**) and in the Planning Statement. The Proposed Development meets an urgent need for new energy infrastructure, with the urgent need for flexible gas-fired generating capacity established in NPS EN-1. That policy also sets out at paragraph 3.6.8 that fossil fuel generating stations will be required to provide back-up for when generation from intermittent renewables sources is low, and to help with the transition to a low carbon electricity generation.
- 1.4 The Applicant acknowledges that its proposals, whilst bringing forward substantial public benefits, also have the potential to cause private loss in relation to land acquired using compulsory acquisition powers. The Applicant has sought to minimise the loss and disruption to affected landowners by minimising the extent of freehold land sought, using temporary possession powers or seeking rights over land wherever practicable. No private dwellings are proposed to be acquired, and the Applicant has secured a number of voluntary agreements to reduce the reliance on compulsory acquisition. Compensation will be payable to affected landowners in accordance with the Compensation Code.
- 1.5 For the reasons set out above, the Applicant considers that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the Proposed Development. The Secretary of State must be satisfied that there is a compelling case in the public interest for the compulsory acquisition. It is the Applicant's case that that exists for the whole of the Order land, including land owned by P66.
- 1.6 Before considering the specific matters raised in P66's objection, the Applicant notes that the following are not contested. P66:
- 1.6.1 do not object to the principle of the Proposed Development;
 - 1.6.2 do not contend that there is no need for the Proposed Development, nor that the urgent need for new electricity generation identified in NPS EN-1 is no longer correct;
 - 1.6.3 do not suggest that the Applicant has sought land which falls outside the tests in section 122(2) of the Planning Act 2008;
 - 1.6.4 do not identify that the Site is unsuitable for the Proposed Development; and

1.6.5 do not suggest that a gas pipeline owned and operated by a third party cannot co-exist with an oil refinery through which it passes.

1.7 The Applicant's full response to the matters raised in the WR is set out below. The heading numbering follows the numbering in the WR.

2. **PHILLIPS 66 AND THE HUMBER OIL REFINERY**

2.1 P66 have summarised its operations at the HOR and provided details of the contribution that the HOR makes to the economy at both regional and national level.

2.2 The Applicant makes no comment on P66's submissions other than to acknowledge and confirm the accuracy of the statement at paragraph 2.5 of the WR regarding the passage of the Existing Gas Pipeline across the HOR.

2.3 To assist the ExA, the Applicant notes the following additional background on the interaction between the HOR and the Existing Gas Pipeline:

2.3.1 The route of the Existing Gas Pipeline runs from a connection point at an above ground installation within the Existing VPI CHP Plant Site, through a variety of areas, including the HOR, to a tie in point at the existing National Grid Feeder No.9 located to the west of South Killingholme.

2.3.2 The Existing Gas Pipeline was consented under planning permissions granted by North Lincolnshire Council (Reference: 2000/1284) and North East Lincolnshire Council (Reference: DC/893/00/IMM) in 2001.

2.3.3 The Existing Gas Pipeline was constructed by P66 around 2003 in order to provide fuel to the Existing VPI CHP Plant (which was then owned by P66). It has been operated by VPI LLP (the Applicant's sister company) since it acquired the Existing VPI CHP Plant in 2013.

2.3.4 P66 is the freehold owner of a substantial part of the Existing Gas Pipeline Site. VPI LLP has used and maintained the Existing Gas Pipeline, and in doing so has managed the protection of the interests of all landowners along its route (including P66) under various lease agreements since it acquired it (see Part 4 for details).

2.3.5 VPI LLP has a long-standing commercial relationship with P66 having provided power, steam and other services, and received process condensate and refinery off-gas through a bi-lateral Energy Supply Agreement (**ESA**).

3. **THE APPLICANT'S PROPOSAL**

3.1 In this section P66 seek to identify and compare the public benefit arising from each of the HOR and the Proposed Development, stating that the "*...disparity between the competing public interests is of several orders of magnitude*".

3.2 The Applicant has two principal points in response – one concerning the public benefit arising from the Proposed Development, and the second regarding the Applicant's proposals to provide protection for HOR. The first is dealt with in the following paragraphs, and the second in the sections further below.

3.3 Together these points result in a position in which the Secretary of State can be convinced that the public benefits are very significant, and that they need not undertake the weighing up exercise which P66 suggest. The proposals for the protection of P66's land and business appropriately mitigate the potential impacts

arising from the existence and use of compulsory acquisition powers, and make a weighing up of relative public interest redundant.

3.4 The need for the Proposed Development

3.5 The need for the Proposed Development is set out at Section 7 of the SoR.

3.6 It is needed to support a transition to a low carbon economy, help the UK meet its new 2050 net-zero CO2 target, whilst ensuring continuity and security of supply via reliable and readily dispatched generation. As renewable power generation (particularly wind and solar) are intermittent in nature, it is imperative that there is infrastructure in place that is able to respond to fluctuations in demand and supply. OCGT generating stations are well suited to this, having the capability to start up rapidly, run for extended periods or shut down quickly, and thus being very responsive to peaks in electricity demand and fluctuations in supply.

3.7 The National Grid system does not operate solely on the basis of meeting current electricity demand - there are other crucial factors which must be assessed and balanced to ensure the system operates smoothly. OCGTs of the proposed capacity provide essential ancillary services to the National Grid system such as frequency response and reactive power, and can operate for prolonged periods to help maintain a stable electricity transmission network. In addition, automatic start-up is a key feature of OCGTs whereby monitoring systems detect transmission network system frequency changes and automatically start the OCGT to provide essential back-up in the event of a failure of other power generators.

3.8 This essential infrastructure is required in order to avoid sudden loss of power to the grid associated with intermittent energy sources, such as windfarms. OCGTs serve to reduce the risk of "blackout events" such as that recently experienced in the UK on 9 August 2019 where the sudden shutdown of an offshore windfarm and a Combined Cycle Gas Turbine (**CCGT**) resulted in a rapid frequency drop and power having to be lost (by automatic load shedding) to over a million homes as well as a range of other buildings and infrastructure.

3.9 As the UK must continue to increase the deployment of renewable electricity sources such as windfarms and solar¹, in order to hit the interim emissions targets and then the final 2050 net zero target, there will also be a continued need for flexible power stations such as the Proposed Development to ensure that the necessary renewable energy sources can be accommodated within the National Grid system.

3.10 Since the SoR was submitted, the Committee on Climate Change has recommended that the Government adopt a net zero CO2 target for 2050, which was then legislated for in July this year. The Committee's report (2 May 2019, as per footnote 1) noted the continued need for gas-fired generation through to 2050 and beyond.

3.11 P66's assessment of the Proposed Development's contribution to electricity demand on a pure mathematical basis is therefore overly simplistic and significantly under-represents the benefits that arise.

3.12 P66 state that the 0.51% figure (the Proposed Development's contribution to the new generation NPS EN-1 identifies as required) is "*not a true analysis...[as] the OCGT will be run on an intermittent and short-term nature*". It is right that an OCGT power station will not be operated for significant periods of time, but that does not indicate a reduction in its public benefit – the times at which it is most likely to operate are when demand is highest and/or when intermittent sources (such as renewables) are not generating electricity, which may well coincide. It is the electricity demand during

¹ See 'Net Zero – the UK's contribution to stopping climate change', 2 May 2019, the Committee on Climate Change

these periods which the National Grid must be capable of meeting (with contingency headroom) to avoid blackouts and when power stations such as that proposed are likely to be generating electricity.

- 3.13 An OCGT generating station at the Site would make a significant positive contribution towards the security of the national energy supply, provide much needed back-up to the UK's existing generation fleet and help the UK meet its climate change obligations.
- 3.14 The Applicant notes that at the compulsory acquisition hearing on 2 October 2019, P66 confirmed that it did not disagree with the Applicant's summary of the above position on the need for the Proposed Development.

4. **EXISTING ARRANGEMENTS AND THE NEW RIGHTS SOUGHT**

- 4.1 In this part of the WR P66 have set out the "**Existing Arrangements**" between P66 and VPI LLP. P66 indicates how it treats the Applicant in the remainder of the WR:

"Strictly, it is a group company of the Applicant (Immingham CHP LLP, since renamed VPI Immingham LLP) which benefits from the Existing Arrangements, rather than the Applicant VPI Immingham B Ltd. For ease of reference however, the company benefiting from the Existing Arrangements is also referred to as the Applicant in this WR."

- 4.2 The remainder of this section of the Applicant's response clarifies the Existing Arrangements. The Applicant has also set out the proposed arrangements that are currently the subject of negotiations between the Applicant and P66. This summary provides essential context to P66's assertions around the alleged impacts of the Proposed Development on the HOR.
- 4.3 First, the Applicant and VPI LLP are of course distinct legal entities that do not benefit from the same property rights over the Existing Gas Pipeline Site. Specifically the three property agreements that P66 lists at paragraph 4.3 benefit solely VPI LLP. Under the terms of the Existing Arrangements VPI LLP is not permitted to:

- 4.3.1 assign the benefit of the Existing Arrangements to the Applicant; or

- 4.3.2 share the use of the Existing Gas Pipeline with the Applicant;

in either case without the consent of P66.

- 4.4 There are also other terms within the Existing Arrangements which mean that the Proposed Development could not be delivered by the Applicant. In particular:

- 4.4.1 the Existing Arrangements do not cater for the new pipeline, electricity connection and other apparatus which will be constructed within the Existing VPI CHP Plant Site - the acquisition of these rights is an essential component of the Proposed Development;

- 4.4.2 both leases granted by P66 in respect of the Existing Gas Pipeline Site terminate automatically if the lease from P66 of the Existing VPI CHP Plant Site terminates - the possibility of property rights to the pipeline serving the Proposed Development being lost due to an issue in respect of the Existing VPI CHP Plant Site is a risk which is unacceptable to the Applicant and very likely also any funder of the Proposed Development.

- 4.5 For the reasons above, it is not within the gift of the Applicant to occupy or use the Existing Gas Pipeline Site (or indeed any part of the Existing VPI CHP Plant Site) on the same terms as VPI LLP. It follows that the Applicant is unable to unilaterally put in

place corresponding arrangements for the safe and effective operation and maintenance of the infrastructure.

- 4.6 In order to address this matter, the Applicant and P66 are currently negotiating option agreements (the "**Proposed Arrangements**") which would allow the Applicant to vary the Existing Arrangements where required and put in place additional rights to allow the construction and operation of the new infrastructure.
- 4.7 The Applicant recognises that it may not be possible for it to reach agreement with P66 on the Proposed Arrangements, and that P66 are seeking the removal of powers of compulsory acquisition over HOR (and indeed other land). Such a position would put the delivery of the Proposed Development in the hands of P66, with the Applicant unable to bring it (and its significant benefits) forward unless it met P66's demands (technical, commercial or otherwise).
- 4.8 The Applicant's proposal is that, in the event that the parties cannot agree the Proposed Arrangements, a protection agreement is put in place which provides for how the Applicant would be able to maintain and use the Existing Gas Pipeline (a Proposed Protection Agreement, or "**PPA**"). Since P66 identifies in the WR that the Existing Arrangements provide the necessary protections, the Applicant has based the PPA very substantially on the terms of the Existing Arrangements, making changes only where necessary to adapt the clauses or defined terms to the current position. The PPA also includes a requirement to put in place financial security to ensure P66 is in no worse position than at present.
- 4.9 The Applicant has also included protective provisions in Schedule 9 of the draft DCO which prohibit the Applicant from carrying out work that would have an effect on the operation, maintenance or abandonment of the pipelines operated by P66 without first securing approval from P66 of the plans and sections of the proposed works. The Applicant notes that P66 is seeking further protective provisions, and the Applicant has recently provided a limited mark-up of those to P66².
- 4.10 Both the Proposed Arrangements and the alternative PPA carry forward the terms of the Existing Arrangements (where appropriate), ensuring that all of the substantive protections are captured and would remain in place, even if the Applicant had to rely on powers of compulsory acquisition in order to obtain the rights required for the Proposed Development.

5. **ALTERNATIVES**

- 5.1 P66 state that the Applicant has "*entirely failed*" to comply with paragraph 8 (alternatives) of the DCLG Guidance on compulsory acquisition³. P66 allege that this failure stems from the Applicant's decision not to give consideration to alternative sites, either for the OCGT Power Station or the Existing Gas Pipeline. P66 further allege that the Applicant has "*...promoted the scheme which is most beneficial to the Applicant (i.e. minimises its costs and thereby maximises its profits)*".
- 5.2 The Applicant strongly disagrees with these assertions.
- 5.3 Turning first to the issue of compliance with paragraph 8 (alternatives) of the DCLG Guidance, the Applicant's response broadly relates to the following two points:
- 5.3.1 **Site Selection:** P66's interpretation of paragraph 8 fails to take into account that the Applicant has secured an option agreement in relation to the OCGT

² Part 9 of Schedule 9 of the draft DCO submitted at Deadline 3 incorporates P66's proposed protective provisions with the Applicant's proposed amendments.

³ Guidance related to procedures for the compulsory acquisition of land, DCLG, September 2013

Power Station Site and the Applicant does not therefore anticipate having to rely on compulsory acquisition powers in order to use that area for the Proposed Development, and that the selected site has a range of advantages which mean that it is very well suited for the type of development proposed. One of those advantages relates to the existence of the Existing Gas Pipeline which is close to the OCGT Power Station Site, and the use of this existing route to transport fuel avoids a number of disadvantages which would arise from seeking to construct a new gas pipeline from the National Transmission System.

- 5.3.2 **The meaning of "reasonable alternatives"**: the Applicant's duties under paragraph 8 of the DCLG Guidance do not solely relate to site selection. Identifying an alternative project location is simply one of many "reasonable alternatives" that may (or may not) be available to an applicant when taking steps to avoid compulsory acquisition. The Applicant has set out the various steps below that it has taken (and will continue to take) in order to avoid having to rely on powers of compulsory acquisition in respect of the Order Land. The assertion at paragraph 5.2 of the WR (that the Applicant has "entirely failed" to consider alternatives) is therefore incorrect.

Site Selection

- 5.4 Part 5 of the WR ignores the fact that utilising the Order Land carries substantial advantages in terms of maximising the prospect of the Proposed Development being delivered and minimising the likelihood of reliance on compulsory acquisition powers.
- 5.5 The Applicant benefits from an Option for Lease of the OCGT Power Station Site, the use and term of which support a long-term power generation project. With this in place, selecting the OCGT Power Station Site avoids the need for the Applicant to exercise powers of compulsory acquisition over a substantial part of the Order Land where delivery of the key element of the Proposed Development is located, and the only part where freehold acquisition is sought.
- 5.6 The Site also has the following significant advantages:
- 5.6.1 the OCGT Power Station Site comprises primarily of previously developed / disturbed land, and the majority of the infrastructure connection corridors are within previously developed land (within the operational envelope of the Existing VPI CHP Plant Site);
 - 5.6.2 the Site is situated in an industrial setting with few immediate receptors and is not particularly sensitive from an environmental perspective;
 - 5.6.3 the Site is located adjacent to the Existing VPI CHP Plant, which provides visual screening and synergies in terms of the existing workforce, service connections and there are excellent transport and infrastructure connections;
 - 5.6.4 the Site benefits from excellent gas and electricity grid infrastructure - immediately adjacent on the Existing VPI CHP Plant Site – both of which have capacity to support additional power generation projects;
 - 5.6.5 the North Lincolnshire Core Strategy key diagram shows the Site as lying within the 'South Humber Bank Strategic Employment Site' (**SES**);
 - 5.6.6 the Site is remote from major conurbations, located in an established industrial area of low sensitivity; and

- 5.6.7 the OCGT Power Station Site is currently vacant and is situated in an area immediately surrounded by major industry and power generation.
- 5.7 In relation to the Existing Gas Pipeline in particular, its use is inherently sustainable and logical, involving the intensification of use of existing infrastructure.
- 5.8 That compares very well with the alternative of constructing a new gas pipeline to bring fuel to the OCGT Power Station Site - the distance 'as the crow flies' between that and the National Transmission System is around 3.8km – any new gas pipeline would of course not be able to take a direct route and would need to avoid or be threaded through or around developed areas and environmentally sensitive areas, and would need to safely accommodate existing infrastructure. The length of the existing gas pipeline – at around 7km – demonstrates the potential length of a new gas pipeline.
- 5.9 Use of the Existing Gas Pipeline compared to constructing a new gas pipeline has three principal benefits:
- 5.9.1 The first is in environmental terms – the Applicant's proposed approach ensures that new adverse effects on the environment associated with the construction of a new gas pipeline are avoided. These effects would be most likely during the construction phase of any new gas pipeline, and could include those associated with ground conditions, hydrogeology, noise and vibration, traffic, ecology, landscape and visual impact. Such construction stage effects are avoided by the use of the Existing Gas Pipeline;
- 5.9.2 The utilisation of existing infrastructure ensures efficiency in the use of resources. The Applicant's approach therefore contributes towards the Government's wider objectives for the planning system to contribute to sustainable development, a matter which is included in both the NPS⁴ and NPPF⁵. The NPS policy on good design⁶ notes that sustainability is an important part of design, and that "applying "good design" to energy projects should produce sustainable infrastructure..., efficient in the use of natural resources and energy used in their construction"; and
- 5.9.3 The Existing Gas Pipeline also reduces the amount of land that is required for the Proposed Development which is not already used for the same purpose. Whilst it does not reduce the Order land (since rights are sought over the Existing Gas Pipeline), it is highly relevant that the Applicant is seeking rights which are the same as those already enjoyed by VPI Immingham LLP in the Existing Gas Pipeline Site. It is also highly relevant that the Applicant would need to obtain the necessary rights to construct and operate any new gas pipeline to the NTS, and that given the linear nature of the infrastructure it is likely that compulsory acquisition would also be required in that scenario. A new gas pipeline does not therefore avoid compulsory acquisition.
- 5.10 Together the reasons above provide a compelling case for selecting the Order Land for the Proposed Development, and it is clear that consideration of the alternative – a new gas pipeline – would necessarily involve similar requirements for the Order land, and a range of impacts and disadvantages which are avoided through the Applicant's approach to obtaining fuel for operating the generating station.

⁴ NPS-EN1 paragraph 2.2.27

⁵ NPPF (February 2019) paragraph 7

⁶ NPS EN1 paragraph 4.5.1

- 5.11 P66 has ignored these matters, and instead argues that the Applicant was solely driven by "cost savings" that are "not a public benefit". The Applicant makes two further points in response to this:
- 5.11.1 First P66 appears to have assumed that sound commercial reasons for selecting a particular site cannot legitimately sit alongside other reasons for selecting a site that have a public benefit (including the objective of minimising reliance on powers of compulsory acquisition). Such matters are not mutually inconsistent, and it is not a requirement of compulsory acquisition tests or Guidance that a promoter ignores cost in selecting an option for its project; and
- 5.11.2 P66's apparent assumption that the commercial benefits of the scheme carry no public benefit also fails take into account that the Applicant intends to deliver the Proposed Development via a contract awarded through the UK Government's Capacity Market auction. The auction incentivises construction of the most cost-effective, reliable power generation to ensure security of supply at optimal cost to the consumer. The synergies and advantages the Site offers can have a direct cost saving for the Proposed Development compared to an alternative site that could require new, more extensive gas or electricity connections or construction of additional infrastructure. The overall effect is a competitive project that provides reliable power generation at a cost effective price for the consumer, who will ultimately pay for the capital investment for the Proposed Development via the price awarded through the Capacity Market auction.

Exploring "all reasonable alternatives"

- 5.12 Paragraph 8 of the DCLG Guidance requires that an applicant must, once it has settled on a project location, take all reasonable steps to acquire land interests other than by the exercise of compulsory acquisition.
- 5.13 Having selected the Order Land for the reasons set out above, the Applicant necessarily requires the acquisition of land and rights in order to construct, operate and maintain the Proposed Development. In discharging its duties under paragraph 8 of the DCLG Guidance, the Applicant has explored (and will continue to explore) the following alternatives with a view to avoiding compulsory acquisition:
- 5.13.1 Securing the necessary land interests by agreement (including the property agreements in respect of P66's freehold interests);
- 5.13.2 Entering into associated agreements in order to secure the protection of third party infrastructure (including entering into the PPA in respect of P66's interests); and
- 5.13.3 Providing protective provisions in the proposed DCO including with respect to the interests of statutory undertakers and others with apparatus.

6. SAFETY AND THE CONTROL OF MAJOR ACCIDENTS AND DISASTERS

- 6.1 P66 note that HOR is an upper tier site under the Control of Major Accident Hazards Regulations 2015 (**the COMAH Regulations**). P66 submit that, if the Applicant is granted the powers to acquire unfettered rights over land and to own and operate the Existing Gas Pipeline within the HOR, P66 would not be able to determine the risk as required as part of the COMAH Report and that "*...the absence of appropriate controls on the repair of the Existing Gas Pipeline, and unfettered access to it...will significantly affect its risk profile*".

- 6.2 The Applicant disagrees that the construction and operation of the Proposed Development would make any material difference to the risk profile of the HOR under the COMAH Regulations.
- 6.3 The Existing Gas Pipeline is operated and maintained by VPI LLP under a comprehensive Safety Management System (**SMS**) which is conducted in accordance with the Pipeline Safety Regulations 1996 (**PSR**).
- 6.4 The SMS describes the management structure, procedures and organisation to ensure safe operation of the high pressure pipeline, including through the areas within the HOR. Pipeline operating parameters, pipeline operation and safety systems are addressed within the SMS which also addresses emergency procedures.
- 6.5 The policy to ensure integrity of the pipeline and offtake design and construction has been to conduct these activities in accordance with the following key industry reference standards:
- 6.5.1 IGE/TD/1: Edition 4 – Steel Pipelines for High Pressure Gas Transmission (design and hydrostatic pressure testing)
 - 6.5.2 IGE/TD/9: 1986 – Offtakes and Pressure Regulating Installations for inlet pressures between 7 and 100 bar
 - 6.5.3 IGE/TD/12: 1985 – Pipework Stress Analysis for Gas Industry Plant
 - 6.5.4 P10 – General Pipelining Designed to Operate at Pressures Greater than 7 bar (complementary to BS 8010)
 - 6.5.5 ANSI Class 600 – Flange Ratings
 - 6.5.6 API 1104 – Welding
 - 6.5.7 BS2910 – Radiography
 - 6.5.8 VPI LLP is accredited to:
 - (a) ISO 14001:2015– environmental management system that provides a process and accreditation for company managers, staff, internal and external stakeholders to ensure reducing environmental impacts, improving resource efficiency and reducing waste are integral to the business.
 - (b) ISO 45001:2018– health and safety management system that provides a process and accreditation to ensure health, safety and welfare of its workforce and associates is integral to the business.
- 6.6 Compliance with the PSR is a legal requirement for any pipeline operator and as such in the event that the Applicant operates the Existing Gas Pipeline, it will be legally obliged to operate and maintain it in accordance with the PSR.
- 6.7 In addition, as already noted, the Applicant proposes protections for P66 which it considers will put P66 in a similar position to that which exists now, and which has existed for some years without detriment to the safety of the HOR. As noted by the Applicant at the compulsory acquisition hearing on 2 October 2019, the Applicant is not aware that P66 has identified (to VPI LLP or the Applicant) that any part of the Existing Arrangements is insufficient, and may cause P66 an issue under the COMAH Regulations. Given the ongoing duties under those regulations which P66 identifies in the WR, it is reasonable to assume therefore that there are no deficiencies. As noted

above, the Applicant has proposed mechanisms to carry forward the same protections.

7. EXISTING HYDROCARBON PIPELINES AND PROTECTIVE PROVISIONS

- 7.1 P66 highlight that between the Existing VPI CHP Plant Site and the site of the proposed OCGT Power Station there are three hydrocarbon pipelines under its ownership, and that the Applicant proposes to acquire rights to cross these pipelines with gas and electricity infrastructure for the new OCGT Power Station. P66 welcome the inclusion of protective provisions in Part 4 of the DCO and suggested additional protections in Appendix 5 of the WR.
- 7.2 The Applicant agrees that the proposed gas pipeline will need to cross a number of P66 pipelines which lie in between the OCGT Power Station Site and the Existing VPI CHP Plant Site. The Applicant proposes, and has informed P66, that the indicative bridge design is likely to be some distance (in height and horizontal distance) from the nearest of P66's pipelines. The length of the span and the loadings on the bridge are not uncommon, are well within modern design capabilities and will be designed to provide full access to existing pipelines. VPI LLP has two existing bridges of a similar construction in the vicinity and which both cross a range of infrastructure belonging to third parties (including P66 pipelines, TLOR pipelines and railway lines).
- 7.3 Construction of the bridge would be carefully planned to minimise risk associated with working above and adjacent to existing pipelines. This would likely be facilitated by sectional construction whereby the (vertical) towers are installed first at either end, and the horizontal deck is lifted as a single piece into place onto the towers. This would minimise any work directly above the pipelines, and protective covers would be temporarily placed over the existing pipelines to prevent any impact, if required.
- 7.4 There are no high pressure/high volume water pipes on the bridge (a concern raised by other parties with pipelines in this area), and the major infrastructure would comprise a gas pipe of up to 600mm bore and an electricity connection of up to 400kv. Gas pipes of this size are common within the gas transport and power generation industries and there are numerous well developed and stringent design standards and codes. These include IGE/TD/1 'Steel Pipelines for High Pressure Gas Transmission' published by the Institution of Gas Engineers. This details design specifications, pressure ratings, material types and factors of safety, and provides guidance on design and safety distances with regard to adjacent population density.
- 7.5 The design of gas infrastructure is well governed and controlled by numerous bodies including the HSE, and the pipework will be designed to minimise the risk of failure or leaks by design stress analysis, material selection, and reducing flanges and flexible connections by welded joints wherever practicable.
- 7.6 The Applicant has considered the protective provisions included at Appendix 5 of the WR. The Applicant's preference remains for protective measures to be secured under the Proposed Arrangements. This would ensure continuity in respect of the ongoing protection arrangements associated with the HOR infrastructure and Existing Gas Pipeline (which have ensured the safe and effective operation of the parties' infrastructure for a significant period). However if the parties are unable to reach agreement on the Proposed Arrangements, the Applicant is willing to incorporate the suggested protective provisions subject to certain amendments. The Applicant's comments on the draft protective provisions were sent to Burges Salmon on 27 September 2019⁷.

⁷ Part 9 of Schedule 9 of the draft DCO submitted at Deadline 3 incorporates P66's proposed protective provisions with the Applicant's proposed amendments.

8. IMPACT OF NEW RIGHTS

- 8.1 P66 have set out six impacts that it alleges the new rights sought by the Applicant could have on the HOR or P66's business operations. For the reasons set out below, the Applicant disagrees that the new rights would have any such impacts.
- 8.2 The Applicant remains committed to ensure that the protections under the Existing Arrangements are captured in the Proposed Arrangements such that P66 would benefit from identical safeguarding provisions as are currently secured under the lease with VPI LLP. To the extent that the Proposed Arrangements cannot be agreed between the parties, the Applicant is willing to include protective provisions in the DCO and the PPA that will ensure that the P66's infrastructure is fully protected.
- 8.3 The Applicant also notes that P66 state that the new infrastructure and associated rights within the Existing VPI CHP Plant Site will compromise its redevelopment of that land. The Applicant removed a proposed new Above Ground Installation (AGI) which, during the Applicant's Stage 2 consultation, was proposed to sit outside the Existing VPI CHP Plant Site on land owned and occupied by P66, illustrating the Applicant's approach to an iterative design process and comprehensive consultation.
- 8.4 In relation to the Existing VPI CHP Plant Site, it is of course not possible for P66 to redevelop that site until it either negotiates to buy out VPI Immingham LLP's lease or until that lease comes to an end. There is no right in the lease for P66 to terminate the lease early if it wants to redevelop that land. The lease runs until 2027, and is extendable at VPI LLP's request up to 2047. Any impact on potential redevelopment by P66 is therefore long term. In addition, and removing any remaining impact in this regard, the Applicant has confirmed to P66 that it would agree to terms requiring it to move the Proposed Gas Pipeline in the event that VPI Immingham LLP gave up possession of the Existing VPI CHP Plant Site (i.e. it would divert it to a new route, such as one around the edge of the site).

9. EXTINGUISHMENT OF EASEMENTS AND RIGHTS

Easements/wayleaves where P66 is the freehold owner

- 9.1 P66 has queried why it has been identified as having the benefit of an "easement/wayleave" in respect of a number of land plots in Part 3 of the Book of Reference (**BOR**) where it is the freehold owner.
- 9.2 The inclusion of P66 as the owner of an easement in land which it owns arose due to the interpretation by the Applicant's land referencers of the request for information form filled in by P66, who were then included in the BoR on a precautionary basis. The Applicant has submitted an updated BoR at Deadline 3 with these entries removed, as is suggested by P66.

Plot 8 at Rosper Road

- 9.3 P66 has queried why the Applicant proposes to extinguish the benefit of an easement or wayleave in respect of plot 8 in the BoR (the right to retain apparatus in Rosper Road). The Applicant has included, as required, all relevant interests in the BoR, and has powers in the Order to be able to extinguish or suspend rights and other interests.
- 9.4 This approach has been adopted in order to address a number of potential proprietary impediments including the existence of known rights, unknown ownerships, unknown rights or restrictions over the Order land, the potential for land agreements not to be completed and to overcome any restriction on VPI Immingham LLP sharing the use of the Existing Gas Pipeline.

- 9.5 As already set out:
- 9.5.1 The Applicant's proposal is that the parties enter into the Proposed Arrangements in order to give the Applicant the necessary rights to construct, operate and maintain the Proposed Development and to safeguard the operation and maintenance of the HOR pipelines by P66;
- 9.5.2 The Applicant has proposed the PPA and is content to discuss the terms of the requested protective provisions further with P66;
- 9.5.3 The Applicant recognises that it may not be possible for it to reach agreement with P66, and that P66 are seeking the removal of powers of compulsory acquisition over the HOR (and indeed other land). Such a position would put the delivery of the Proposed Development in the hands of P66, with the Applicant unable to bring it (and its significant benefits) forward unless it met P66's demands (technical, commercial or otherwise); and
- 9.5.4 For this reason, compulsory acquisition powers over all of P66's land interests within the Order Land (including plot 8) have been sought.

10. HISTORY OF NEGOTIATION

- 10.1 P66 state that the Applicant's account of negotiations with P66 at Table 6.1 of the SoR is "incomplete" and that the Applicant has "*...failed to discharge its obligation to acquire land by negotiation where practicable (paragraph 25 of the [DCLG] Guidance).*"
- 10.2 The Applicant recognises and has complied with the duty in the DCLG Guidance on compulsory acquisition to seek to acquire the necessary land and rights alongside seeking powers of compulsory acquisition.
- 10.3 VPI and P66 hold quarterly meetings to discuss key matters, including the interactions of the respective sites through the energy supply agreement (**ESA**), maintenance plans, long-term issues and to provide an update on other projects.
- 10.4 VPI introduced the OCGT project to P66 at the quarterly meeting on 8th March 2018 and it was discussed amongst other power generation options being considered adjacent the Existing VPI CHP Plant Site (such as the VPI Energy Park A gas engines project).
- 10.5 On 17th July 2018 a further update was provided and included more detail regarding a 50MW Gas Engine project and the proposed 299MW OCGT, the former at that time being the subject of a planning application, and which was being developed ahead of the OCGT. The OCGT was undergoing initial design including identifying potential route options for a new gas pipeline, primarily across P66 land. P66 indicated that they were supportive of the projects, however commercial terms were not discussed at this time as the projects were not sufficiently developed (such as the types and locations of service crossings and associated land plots) to provide a basis for a property agreement or commercial terms. The Applicant made a verbal commitment that property agreements would be compensated at fair market value.
- 10.6 A draft bridge easement (**Draft Easement**) in relation to the Gas Engine project was submitted to P66 for consideration on 29th August 2018. The project was being developed as a standalone entity and the easement was based on common modern legal drafting including clauses and protection to help secure project financing. The easement was amended to facilitate OCGT services and utilities (i.e. it could relate to both VPI projects), and underwent a number of refinements and a plan indicating the approximate design of the bridge was submitted to P66 on 19th October 2018.

- 10.7 Following the statutory consultation on the Proposed Development, the Applicant considered the responses received from consultees, refined the design, eliminated options and potential land plots (including in particular land around the outside of the Existing VPI CHP Plant), and finalised the design for the DCO application. This enabled the Applicant to be in a position to present the structure of all proposed property agreements and how they would interact to support the OCGT project as a stand-alone entity, which took place at the quarterly meeting on 3 May 2019. The presentation aimed to inform P66 and obtain their agreement and engagement on the approach and timeframe for completing the agreements, and noting that commercial terms were to be discussed. Document preparation by the Applicant was already underway but was without any feedback from P66 on the draft easement first provided on 29th August 2018.
- 10.8 A key discussion point during the quarterly meetings with P66 was (and is) the existing ESA and the terms and conditions of its renewal (which whilst some years away must be considered now to allow the parties sufficient time to plan investment and other medium/long-term decisions). Throughout the discussions, P66 continued to include the proposed easement within the discussions concerning commercial terms of the ESA renewal, for instance seeking to secure rights to existing VPI assets as part of a package which would also give the Applicant the proposed easement. During the meeting in May 2019 P66 reiterated this, requested rights to two key VPI generating assets and also suggested a consideration for the easement. P66 provided verbal feedback that the easement was not in their standard form and would need to be re-written to incorporate the existing principles as per the VPI LLP / P66 leases.
- 10.9 P66 noted in its relevant representation dated 25 June 2019 that a proposal from the Applicant was under consideration.
- 10.10 VPI indicated that the agreements could be redrafted and issued to P66 by late June / early July. Subsequently at the next update meeting on 2 July 2019, P66 requested a meeting between P66 and the Applicant's legal representatives to discuss the property agreements and their interaction, so that P66 could understand the proposal and consider it further. VPI did not provide the draft agreements prior to the requested meeting, given that the discussion was to include matters of principle.
- 10.11 The legal meeting was arranged for 13 August 2019 and was attended by P66, VPI and their legal representatives. Agreement was reached on the structure and interaction of the property agreements, and inclusion of P66 standard terms as per the existing VPI CHP and Pipeline Leases, including covenants subsequently agreed by VPI LLP. At the start of the meeting P66 reiterated the request for rights to the VPI CHP assets as part of a joint property and ESA negotiation. After discussion it was agreed that the ESA and the property agreements for the Proposed Development should remain separate. VPI has subsequently committed to provide an update regarding steam and power supplies under the ESA negotiations, a matter which is not directly related to the Proposed Development but which has up to this point been included in the overall commercial discussions.
- 10.12 Since the meeting the Applicant has submitted a full suite of legal agreements, and included a commercial offer to P66, on 11 September 2019. The Applicant also provided an undertaking to cover their legal costs in respect of negotiating the agreements, as had already been verbally agreed at the meetings. Since that date the Applicant has (through its solicitors and directly) sought to follow up the documents to discuss any principal matters and has offered telephone calls and/or to meet P66. A meeting has now been arranged for the week commencing 15 October 2019.
- 10.13 The Applicant is of the opinion that they have pursued negotiations with P66 in good faith and in good time, and that the above represents compliance with the DCLG

compulsory acquisition guidance. The Applicant notes that the above should be viewed in the context of the existing commercial relationship between the parties (which is under review by the parties). The Applicant has made a full commercial proposal that deals with all the necessary property rights required from P66 to support the OCGT project. The next step is for P66 to revert with their comments, and the Applicant remains committed to engaging with P66 to reach an agreed position, and avoid the need to rely on compulsory acquisition powers.