

VPI Immingham OCGT Project

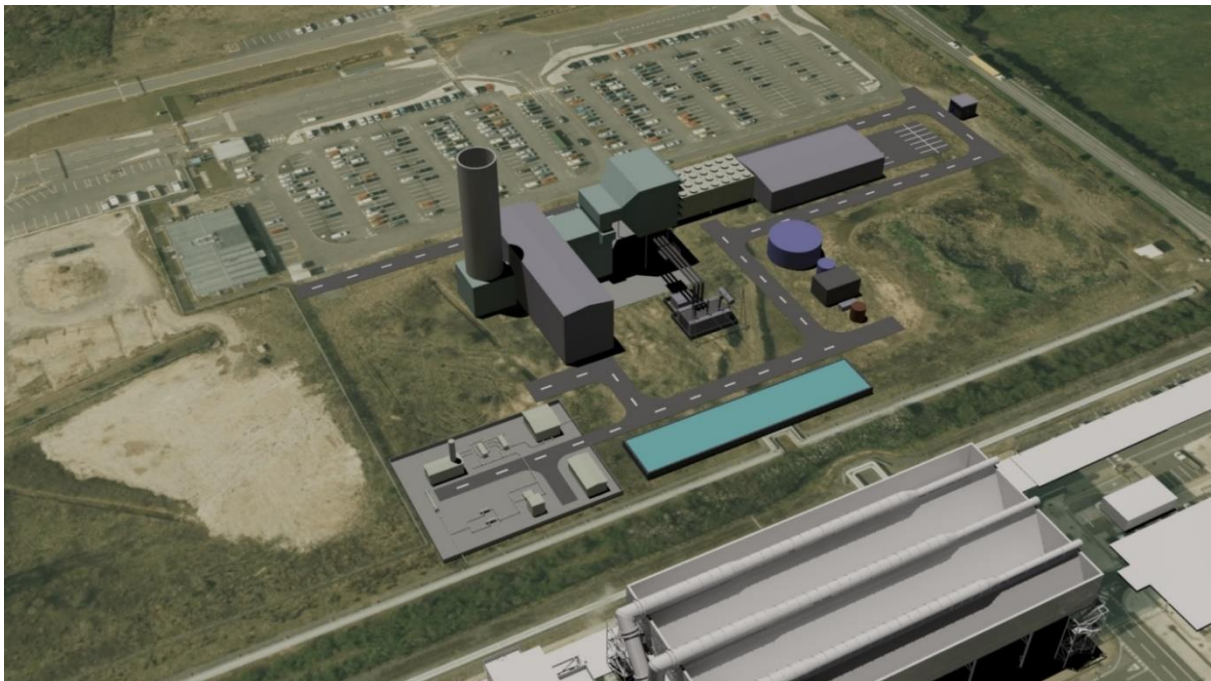
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The Immingham Open Cycle Gas Turbine Order

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

The Applicant's Written Submission of Oral Case – CA Hearing 2

Examination Deadline 5



Applicant: VPI Immingham B Ltd

Date: December 2019

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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 be required for a development. A DCO can also include powers of

Abbreviation	Description
	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.
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.

Abbreviation	Description
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
NET	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 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).

Abbreviation	Description
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 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.

Abbreviation	Description
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.
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.

Abbreviation	Description
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. 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 This document provides a written summary of the Applicant's oral case at the Compulsory Acquisition Hearing 2 held at 10am on 04 December 2019. This document has been submitted for Deadline 5 of the Examination (12 December 2019).

2. WRITTEN SUMMARY OF APPLICANT'S ORAL CASE

2.1 Introductory Remarks

- 2.1.1 The Compulsory Acquisition Hearing 2 was held at 10am on 4 December 2019 at The Ashbourne Hotel, Vicarage Lane, North Killingholme, North Lincolnshire, DN40 3JL.
- 2.1.2 The main purpose of the Compulsory Acquisition Hearing 2 was to enable the ExA to inquire further into the Applicant's case to Compulsorily Acquire (CA) and/or take Temporary Possession (TP) of land or rights over land. It also sought to discharge the ExA's duty to hear persons 'affected' by CA and TP proposals who requested to be heard and enabled the ExA to consider whether relevant legal and policy tests applicable to CA and TP proposals have been met.
- 2.1.3 The Compulsory Acquisition Hearing took the form of running through the Examining Authority's ('ExA') agenda published on 26 November 2019 and the updated Compulsory Acquisition Schedule submitted for Deadline 4 on 14 November 2019 (Document Ref. 7.16).

2.2 The Applicant (participants)

- 2.2.1 The Applicant:
- Marvin Seaman, VPI
 - Nick McDonald, Pinsent Masons

2.3 Applicant's Summary of Oral Case

Table 2.3 – Applicant's Summary of Oral Case

	AGENDA	SUMMARY OF ORAL CASE
1.	Welcome, introductions and arrangements for the Hearing	n/a
2.	Purpose of the Compulsory Acquisition Hearing	n/a
3.	Applicant's update since Deadline 4	<p>The Applicant provided the following update in relation to the negotiations with a) statutory undertakers and b) others who have objected to the compulsory acquisition powers.</p> <p>The Applicant confirmed that it will provide information on the protective provisions at or before Deadline 6, in order to allow other parties time to comment on the proposed form to the extent that they are not agreed.</p> <p>Statutory Undertakers</p> <p><u>Cadent Gas</u> The position remains as it was at Deadline 4, the Applicant awaits Cadent's comments on the draft protective provisions. The matters regarding Cadent's AGI and the amendments to the Land Plans and Book of Reference are resolved.</p> <p><u>Network Rail</u> The Applicant awaits comments from Network Rail on the draft easement which has been issued. The draft easement is based on the existing easement and on that basis the Applicant anticipates the document could be agreed in relatively short order.</p>

AGENDA	SUMMARY OF ORAL CASE
	<p><u>National Grid Electricity and National Grid Gas</u> Substantial progress has been made since Deadline 4 and principles are now agreed. The agreement and protective provisions are now to be updated and it is anticipated the documents will be agreed in the next couple of weeks, although they may not be completed until the new year. The Applicant anticipates revisions to the protective provisions may be made for Deadline 5, but these are not likely to be the final form.</p> <p><u>Hornsea 1 and Hornsea 2 companies</u> The parties' discussions are continuing. The Applicant is expecting to receive a revised agreement and protective provisions from the Hornsea companies imminently. It was agreed between the parties that the Applicant could report at the CAH that the parties anticipate the form of documents being agreed in the next few weeks.</p> <p>Other affected persons</p> <p><u>Able UK</u> The protective provisions are agreed and the Applicant awaits Able's comments on the draft Statement of Common Ground. The Applicant anticipates being able to submit the Statement of Common Ground and Able withdrawing its objection by Deadline 5 or 6.</p> <p><u>Air Products</u> The agreement between the Applicant and Air Products is in the process of being signed and the Applicant anticipates it will be completed shortly, following which Air Products will be in a position to withdraw its objection.</p> <p><u>Total Lindsay Oil Refinery</u> Negotiations on the variations to the option agreement have been continuing. The Applicant anticipates agreeing terms within the next few weeks, and is aiming for signature before Christmas if possible. The Applicant doesn't anticipate needing to make any further amendments to the draft DCO in relation to TLOR. Discussions with TLOR have proceeded on the basis that the protective provisions in the draft DCO are acceptable, and that other matters can be dealt with in the option</p>

	AGENDA	SUMMARY OF ORAL CASE
		<p>agreement/variation.</p> <p><u>CLH Pipeline</u> The position remains as at Deadline 4. The issues are limited and the draft agreement is well progressed. The Applicant is endeavouring to agree the final issues in the next few weeks, and would anticipate CLH Pipeline will ask that the protective provisions in the draft DCO be removed.</p> <p>In response to a query from the Examining Authority, the Applicant confirmed that the protective provisions are currently in the draft DCO (and have been since the Application was submitted), and CLH Pipeline has had opportunity to comment on them.</p> <p><u>Centrica</u> The parties are discussing an outstanding matter (which was not known at Deadline 4) which needs to be resolved. The Applicant anticipates this point will be resolved by Deadline 5 or 6, and may require an update to the protective provisions. It may be that the parties agree to deal with this issue outside of the DCO, but in any event the Applicant will endeavour to be clear at Deadline 5 as to how the issue is being dealt with.</p> <p><u>P66</u> Discussions between the Applicant and P66 have progressed positively and various points of principle have been agreed. Property agreements are proposed to be entered into and need to be updated to reflect those matters, but it is not anticipated by the Applicant that significant changes will be needed. The parties are working on the documents and seeking to reach agreement as soon as possible.</p>
4.	Outstanding objections	<p><u>P66</u> P66 confirmed that the Applicant's summary of the current position between the parties was accurate. P66 set out its objections to compulsory acquisition powers – in the event that agreement cannot be reached with the Applicant on the property agreements - and the Applicant's main responses were as follows.</p>

AGENDA	SUMMARY OF ORAL CASE
	<p><i>[Post-hearing note: references to paragraph numbers below are to those in the protective provisions as included in the Applicant's Deadline 5 Draft DCO (Document Ref. No 2.10)].</i></p> <p><u>Enforceability</u> In respect of P66's position that there is an issue of enforceability with regard to the proposed protective provisions, the Applicant expressed that if this were the case for P66 then it would appear to be an issue for many statutory undertakers protected by protective provisions on many DCOs granted to date. It is not an issue which the Applicant has heard raised previously on this or other DCO projects. The Applicant noted that protective provisions are often included in DCOs and are routinely relied on by the Secretary of State in order to be satisfied that he or she can lawfully grant consent (for instance with protective provisions relied on in order to satisfy the tests under section 127 of the Planning Act 2008).</p> <p><i>[Post-hearing note: since the hearing the Applicant has reviewed the draft DCO and protective provisions. The Applicant notes that the base protective provisions (including the paragraphs providing for the benefit of the provisions) were provided by P66 and at no time did it suggest that these would be unenforceable. The Applicant also notes that the protective provisions include an expert determination clause – this provides a clear mechanism for the resolution of disputes, and as noted above this was the mechanism which P66 itself proposed for inclusion in the draft DCO.</i></p> <p>The Applicant noted that the powers of the Secretary of State to include matters in a DCO are broad, including for instance the ability for a DCO to amend primary legislation. Section 120 and Schedule 5 of the Planning Act 2008 provide a list of matters which can be included in a DCO, some of which are particularly pertinent to the Secretary of State's powers to include protective provisions such as those the Applicant is proposing. These include for instance paragraphs 10 ("the protection of the property or interests of any person"), 11 ("the imposition or exclusion of obligations or liability in respect of acts or omissions") and 14 ("the removal, disposal or re-siting of apparatus"). The Applicant firmly considers that the matters put forward in the revised protective provisions can be lawfully imposed by the Secretary of State and are adequate to provide protection such that, were compulsory acquisition powers to be relied on, the impacts that P66 has alleged may occur would not in fact arise, and the Secretary of State can be satisfied of that.</p>

AGENDA	SUMMARY OF ORAL CASE
	<p>In respect of P66's assertion that protective provisions are commonly directed at the construction stage of projects, the Applicant commented that it is fair to say that what is in the parties' minds when considering protective provisions is often construction, but that merely reflects the fact that this is likely to be when the biggest scale of potential impact usually arises. P66's submission was that the protective provisions are restricted to construction – that is plainly not the case. By way of example the Applicant drew attention to the protective provisions for the benefit of National Grid, where key terms (requiring the approval of National Grid to certain works) apply beyond construction, to all works carried out by the undertaker.</p> <p><i>[Post-hearing note: the Applicant notes that the protective provisions included in the Draft DCO are expressed to apply to a "relevant work" (see for instance paragraphs 36, 37, 40, 41 and 43) and this is defined as "a work which may have an effect on the operation, maintenance, abandonment of or access to any of the pipelines". There is no limitation restricting this definition or the operation of the relevant paragraphs to only the construction of the authorised development, and the word "work" is very broad. In relation to the 'new' protective provisions, the Applicant notes that the relevant defined term is "specified rights" (being those to be acquired pursuant to the Order and which clearly includes maintenance of the Existing Gas Pipeline), and that paragraph 59 is broad in terms of when the listed restrictions and requirements apply. The newly added protections (e.g. paragraphs 55-56) use the term "specified work" and similarly broad in application.]</i></p> <p>The Applicant confirmed its view that it is for the Examining Authority / Secretary of State to be satisfied that the proposed protective provisions are sufficient in the protection they provide – it is not a requirement that they directly or indirectly replicate an existing arrangement.</p> <p>To the extent that P66 are concerned that the Existing Arrangements should be replicated, the Applicant noted that it had previously provided a draft Protection Agreement to P66, and which is still capable of being entered into between the parties. It is not the Applicant's position that this is needed, but it is available and open to P66 to enter into it, if it would prefer a contractual replication of the protections in the Existing Arrangements.</p>

AGENDA	SUMMARY OF ORAL CASE
	<p>Responding to a question from the Examining Authority, the Applicant confirmed that the compulsory acquisition powers would remain in the DCO in the event that the Protection Agreement was entered into. The Applicant confirmed the Protection Agreement was drafted for a scenario where property agreements could not be agreed. If the property agreements are entered into, the Protection Agreement would be redundant. The Applicant confirmed that the Protection Agreement is not currently being progressed by the parties, but if it were to become relevant again, the Applicant would consider whether it would be necessary for the Secretary of State to have sight of it.</p> <p>In response to a question from the Examining Authority, the Applicant confirmed that if the property agreements are completed, the Applicant would be prepared to restrict the compulsory acquisition powers in the DCO so far as they relate to P66.</p> <p><u>Indemnity and further points raised at Deadline 3/3A</u> The Applicant confirmed that it is prepared to amend the provisions relating to each of the points raised by P66 at Deadline 4 (see paragraphs 2.13 and 2.14, Document Ref. No. REP4-018).</p> <p><i>[Post-hearing note: the Applicant updated the protective provisions and issued a revised version to P66 on 8 December 2019. This included the three changes which P66 sought at Deadline 3. The changes are also reflected in the protective provisions included in the revised Draft DCO submitted at Deadline 5 (Document Ref. No. 2.10)].</i></p> <p><u>Appendix 1 to Further Written Questions (the 'new' protective provisions), paras 75-79</u></p> <p>In response to P66's submissions on the 'new' protective provisions and the lift and shift provisions in particular, The Applicant noted that the position in the draft protective provisions is as follows, and that these provide for a comprehensive, clear and enforceable mechanism:</p> <ul style="list-style-type: none"> ● If P66 is considering development, paragraph 76 provides that there must be engagement and consultation between the parties so as to take account of the Existing Gas Pipeline. This has various purposes, not least to enable the parties to agree

AGENDA	SUMMARY OF ORAL CASE
	<p>solutions which may be mutually agreeable at a time when the proposed HOR development is still at a formative stage. Such engagement of course reflects the long-established and firm planning policy requirements for pre-application consultation;</p> <ul style="list-style-type: none"> • Paragraph 78 sets out the potential scenarios after consultation and that P66 must notify the Applicant if the pipeline needs to be diverted; and • Under paragraph 78, the Applicant must confirm whether or not it will carry out such works as may be necessary so as not to materially affect the development, or divert the pipeline. The Applicant noted that it is appropriate to provide for alternative solutions – diversion may be necessary, but there may also be scenarios where (for instance) increased protection of the pipeline (in situ) may be sufficient to allow P66's development to proceed. <p>The Applicant clarified that “whether or not” is <u>not</u> intended to allow the Applicant to do nothing; it is intended that the Applicant must to one or the other of those two options. The Applicant confirmed it would be content to amend this wording in paragraph 78 for clarity.</p> <p><i>[Post-hearing note: the Applicant has amended this drafting to make clear that the undertaker must notify P66 as to which of the following actions it will take.]</i></p> <p><u>Option of compensation under Appendix 1 to FWQs, para 78</u> The Applicant addressed the point raised by P66 that paragraph 78 does not include an option whereby the Applicant pays P66 compensation, as is provided for in the Existing Arrangements. The Applicant noted that the position of the Existing Arrangements and under the DCO (if compulsory acquisition powers are required) is not the same, and the change in the proposed provisions reflects that. The provision for compensation in the Existing Arrangements was put in place as part of a commercial transaction and which would have taken account of other aspects, including for instance the term of the lease and rent payable, and any other relevant circumstances (which may have included for instance the energy supply agreement which was put in place between P66 and VPI Immingham LLP).</p> <p>Where the undertaker acquires rights through compulsory acquisition that would trigger a right to</p>

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	<p>compensation and this arises at 'day 1' (i.e. on acquisition of the rights). Following this there is a process whereby the Applicant and the affected landowner would negotiate the terms of the compensation. Where the parties cannot reach agreement, the matter can be referred to the Upper Tribunal (Lands Chamber). There are different bases on which compensation may be awarded - for example the market value of the land based on its existing use, or the value can take into account the potential for development of the land. It would be for the parties to make representations on both the correct approach to the assessment of compensation and quantum, and it would be open to P66 to argue that compensation should reflect future development potential (and of course any impact that the rights acquired could have on that). The Compensation Code is the appropriate mechanism by which compensation should be assessed, and for this reason the Applicant does not consider it should be included as an option within the above drafting.</p> <p>In relation to P66's submissions on the tests under section 122 and 104 of the Planning Act 2008, the Applicant responded as follows:</p> <ul style="list-style-type: none"> • The Applicant agreed that the order of consideration should be section 122, and then a separate consideration of the test under section 104 as to whether the adverse impacts of the scheme outweigh its benefits. • The Applicant's position is that the compulsory acquisition powers sought are fettered (by the protective provisions) and the impacts are adequately controlled. On this basis the s122 test is satisfied and therefore compulsory acquisition powers should be granted. • The Applicant confirmed that were the Secretary of State to form the view that there is no compelling case in the public interest under section 122, the section 104 test should still be applied and it would remain open to the Secretary of State to grant consent. • The Applicant agreed that "need" (as identified in the Statement of Reasons) in itself does not take account of private loss. Private loss should be considered within the context of the provisions the Applicant proposes - on this basis it would not be right to consider the full extent of the alleged loss to land owners without having regard to the protections the Applicant has proposed. Potential losses must be considered in the context of protective provisions and how those will avoid or mitigate any alleged losses.

	AGENDA	SUMMARY OF ORAL CASE
		<p>In response to a query posed by the Examining Authority, the Applicant confirmed that under Schedule 6 of the DCO the Applicant would acquire rights to maintain the Existing Gas Pipeline, and under paragraphs 59-63 of the protective provisions, the undertaker is required to minimise damage to the Existing Gas Pipeline and maintain it in a good condition in accordance with standard industry practice. The Applicant further confirmed that this would continue were the Existing Arrangements (with VPI Immingham LLP) to determine, as the protective provisions are not dependent on those (or any other) contractual arrangements.</p>
5.	Any other Compulsory Acquisition issues	n/a
6.	Review of issues and actions arising	Relevant matters covered above.
7.	Next steps	Relevant matters covered above.
8.	Close	n/a

2.4 Close

2.4.1 The hearing closed at 12.08pm.