

VPI Immingham OCGT Project

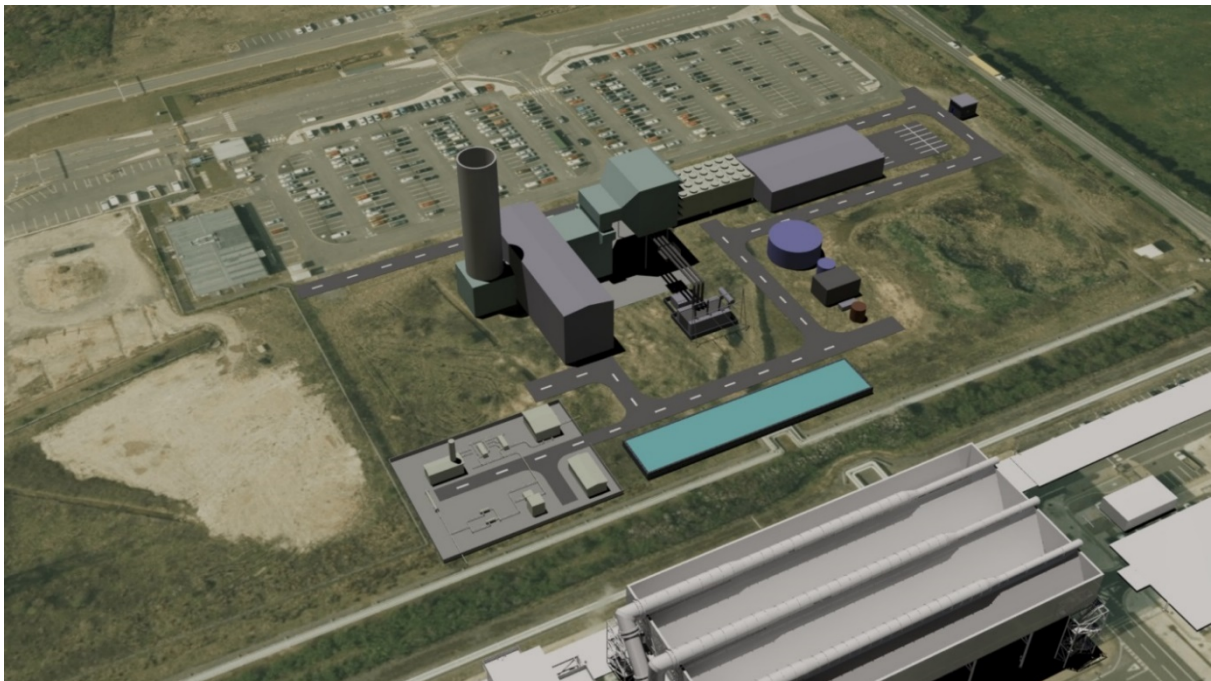
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The Immingham Open Cycle Gas Turbine Order

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

The Applicant's Response to Phillips 66 Limited's Deadline 5 Submission

Examination Deadline 6



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

Abbreviation	Description
	Kingdom Government. It is responsible for examining applications for NSIPs, and reporting to the Secretary of State who makes a final decision on such applications.
PPG	Planning Practice Guidance – guidance expanding upon and supporting the NPPF.
Project Land	The land required for the Proposed Development (the Site) and the land comprising the Existing Gas Pipeline Site. The Project Land is the same as the 'Order land' (in the DCO).
Proposed Development	The construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 MW, including electrical and gas supply connections, and other associated development.
PRoW	Public Right of Way
SAC	Special Area of Conservation – High quality conservation sites that are protected under the European Habitats Directive, due to their contribution to conserving those habitat types that are considered to be most in need of conservation.
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.

Abbreviation	Description
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.
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 sets out the Applicant's response to Phillips 66 Limited's Deadline 5 submission. The Applicant's response is tabulated in Section 2.

2. The Applicant's Response

- 2.1.1 Table 2.1 on the following pages sets out the Applicant's response to Phillips 66 Limited's Deadline 5 submission.

Table 2.1 – the Applicant's response to Phillips 66 Limited's Deadline 5 submission.

P66 Submission	Applicant's Response
<p>Introduction</p> <p>1.1 This is the written submission of the oral case made to the Examining Authority ("ExA") on behalf of Phillips 66 Limited ("P66") in respect of VPI Immingham B's application for the VPI Immingham OCGT DCO, reference EN010097, at the compulsory acquisition hearing held on Wednesday 4 December 2019.</p> <p>1.2 All terms used within this document are as defined in the Applicant's Application Documents, and P66's previous submissions, unless otherwise stated.</p>	<p>No comment.</p>
<p>Applicant's Proposal</p> <p>2.1 What the Applicant is proposing is the acquisition of rights over land owned by P66.</p> <p>2.2 That land is already the subject of leasehold agreements between P66 and the Applicant.</p> <p>2.3 Compulsory purchase is something of a blunt tool. It does not allow for the creation and acquisition of leasehold interests; not as an estate in land for a fixed period of time. But absent the term of years absolute, that is what is being proposed here by the Applicant.</p> <p>2.4 What the Applicant seeks to do is to take all of the benefit of the existing rights its sister company has been granted under the Existing Arrangements, but without any of the controls which are habitually</p>	<p>The ExA is directed to the Applicant's response below at 3 (Principle of Using Protective Provisions) and 4 (Details of Protective Provisions).</p>

P66 Submission	Applicant's Response
<p>provided for in leasehold arrangements. It seeks to do so over land on which existing and substantial infrastructure is in place.</p> <p>2.5 Instead of the usual leasehold protections, the Applicant is now seeking to replicate those protections through the use of protective provisions [see Appendix 1 of REP4-007 – the Applicant's Deadline 4 submissions].</p> <p>2.6 There are two areas of concern with that approach, one is of principle, and the other the details of the provisions being offered.</p>	
<p>Principle of Using Protective Provisions</p> <p>3.1 On the principle, what the Applicant offers is novel and without precedent.</p> <p>3.2 Protective provisions are usually offered as safeguards during the construction of DCO projects. That is for example the manner in which the original protective provisions were offered by the Applicant – in respect of the hydrocarbon pipeline crossings. In that context the use of protective provisions is standard practice in DCOs. The important point is that the protective provisions regulate the carrying out of construction works. They do not purport to mimic the protections of a leasehold agreement. And they are not generally used to regulate the use of existing infrastructure in DCOs.</p>	<p>With the exception of the lift and shift provisions, the Applicant disagrees that the protective provision could be described as "novel and without precedent".</p> <p>The protective provisions relating to the protection of the pipelines (paragraphs 36 – 49) further protections (paragraphs 50 – 54) and expert determination and service of notice provisions (paragraphs 83 and 84 respectively) were largely proposed by P66 which, as set out in its Written Representation, reflect protections "usually provided to pipeline operators" and that replicate provisions included in the York Potash DCO¹.</p> <p>The protections relating to the exercise of specified rights (paragraphs 55-74) broadly replicate the above arrangements whereby the undertaker is required to give notice and seek approval from P66 for works that may have an effect on the HOR, carry out such works diligently in accordance with various requirements, and</p>

¹ See paragraph 7.6 of Written Representation from Phillips 66 dated 11 September 2019.

P66 Submission	Applicant's Response
<p>3.3 Instead, what the Applicant now offers [Appendix 1 of REP4-007], is protective provisions which would purport to regulate (in perpetuity) the rights it is seeking to acquire over P66's freehold land.</p> <p>3.4 The principle of using protective provisions for this purpose is fraught with problems.</p> <p>3.5 The first is enforcement. A lease is a private law arrangement between two parties which the Court will enforce at the request of either party. A DCO is a public law arrangement, so looks to the planning authority and the criminal courts to enforce breaches, both of which substantially weaken the enforcing party's position. The relevant provisions of the Planning Act 2008 are s.161 (which makes it a criminal offence to breach the terms of a DCO) and s.171 (under which injunctions are available to local planning authorities). Whilst prosecution or enforcement by the relevant public authority may be expected where a statutory undertaker's apparatus is being protected by the conventional use of protective provisions, the position is much less straightforward in the circumstances proposed by the Applicant. There is no certainty that P66 would be able to secure the enforcement of the latest protective provisions offered. The local planning authority is unlikely to be willing or sufficiently resourced to assist P66 in the protection of its interests under the DCO.</p> <p>3.6 There are other fundamental aspects of a landlord's armoury which cannot be re-created by protective provisions. Chief amongst those is the remedy of forfeiture; but the criticism also potentially extends to cover the absence of specific performance, damages, even repudiation.</p>	<p>indemnify P66 for any losses incurred in connection with a failure to comply with its obligations.</p> <p>The Applicant accepts that the lift and shift provisions (paragraph 75 – 82) have required bespoke drafting. However this is not relevant in itself to consideration of the protective provisions. Rather it is for the ExA / Secretary of State to be satisfied that the proposed protective provisions are sufficient in the protection they provide and can be effectively enforced. The Applicant's position is that these tests are satisfied. For further details, the ExA is directed to Page 11 (Appendix 1 to Further Written Questions (the 'new' protective provisions)) of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p> <p>The Applicant disagrees that the protective provisions only "regulate the carrying out of construction works". The ExA is directed to the Applicant's submissions at Page 11 (Enforceability) of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p> <p>The Applicant disagrees that the protective provisions are "fraught with problems". With respect to the enforceability of the protective provisions, the ExA is directed to the Applicant's detailed submissions at Page 9 - 11 (Enforceability) of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p> <p>The Applicant position is that its submissions above are sufficient to address P66's concerns regarding the enforceability of the protective provisions and provide sufficient protection in order to allow the ExA</p>

P66 Submission	Applicant's Response
<p>3.7 The ExA raised the question as to whether the protective provisions offered by the Applicant ought to replicate the Existing Arrangements, or otherwise provide necessary safeguards for the protection of P66's existing operations.</p> <p>3.8 On behalf of P66 the submission was that the appropriate test is that of providing necessary safeguards. However, the Existing Arrangements provide a useful indication of what those safeguards ought to entail, having previously been negotiated by two independent parties as part of a commercial transaction. The Applicant refers to the Existing Arrangements as a level of protection which ought to satisfy P66's concerns. That would appear to indicate it considers they amount to the minimum necessary safeguard required in this instance.</p> <p>3.9 That position is reinforced by paragraph 8 of the DCO CPO Guidance, which indicates that any interference to be authorised by CPO with private rights must be necessary and proportionate. The Applicant appears to accept that the unfettered acquisition of rights over P66's interests would not be necessary and proportionate. In order to fetter its acquisition, the Applicant's proposal is to recreate the Existing Arrangements as protective provisions.</p> <p>3.10 P66 disagrees that the protective provisions as proposed secure those necessary safeguards. But the standard the Applicant is aiming at in drafting the suggested measures is clearly the recreation of the Existing Arrangements. It can be inferred, on the Applicant's proposal, that the minimum necessary safeguards to be imposed on the CPO powers within the DCO are those which effectively replicate the Existing Arrangements.</p>	<p>/ Secretary of State to grant compulsory acquisition powers over P66's land interests. To the extent that P66 has any residual concerns over the effective enforcement of the protective provisions the Applicant confirms that it would be willing to enter into a side agreement with P66 that would replicate the protective provisions in Part 4 of Schedule 9 of the DCO. This would give P66 a contractual route to enforce the protective provisions directly against the Applicant and is effectively what the Applicant has already proposed (the Protection Agreement) and which was not progressed by P66.</p> <p>The Applicant rejects that it considers that the Existing Arrangements provide a "minimum necessary safeguard". The Applicant's position is 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 the Existing Arrangements. For further details the ExA is directed to the Applicant's submissions at Page 10 (Enforceability) of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p>

P66 Submission	Applicant's Response
<p>3.11 P66's position is that the protections of the Existing Arrangements must be recreated within the proposed DCO. To do otherwise is disproportionate and unnecessary, and therefore contrary to guidance on this issue.</p>	
<p>Details of Protective Provisions</p> <p>4.1 Turning to examples of the details of the protective provisions being offered by the Applicant.</p> <p>4.2 One critical issue in those protective provisions is the scope of the indemnity. This is used as an illustrative example of the approach being taken by the Applicant.</p> <p>4.3 Paragraph 64 of the protective provisions offered by the Applicant is an indemnity limited to direct losses. That compares to liability for consequential loss under the Existing Arrangements.</p> <p>4.4 This one point illustrates that the Applicant is not seeking to replicate the Existing Arrangements. Even on its solution it is proposing a different commercial settlement, compared to those Existing Arrangements.</p> <p>4.5 This is an excellent illustrative example because it is a commercial point which is also in issue between the parties in their negotiations over new lease arrangements – the Proposed Arrangements as they have been called.</p> <p>4.6 The Applicant's proposed protective provisions would limit its liability. P66 seeks unlimited liability. That is a perfectly reasonable commercial term, which underpins the Existing Arrangements. This</p>	<p>The reference by Phillips 66 to an indemnity at paragraph 64 of the draft DCO appears to be intended as a reference to paragraph 65 of the draft DCO.</p> <p>The indemnity at paragraph 65 is an indemnity against losses incurred or sustained directly as a consequence of or in connection with any breach of any of obligations on the part of the undertaker or affiliated parties under Part 4 of Schedule 9 of the DCO. However the Applicant would point out that the draft DCO submitted at Deadline 5 reinstated under paragraph 49 that the undertaker would be obliged to keep P66 indemnified against consequential loss and damage which may be incurred by P66:</p> <ol style="list-style-type: none"> 1. by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or 2. by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development, <p>This indemnity provides a comprehensive right for P66 to recover any losses (including consequential loss or damage) incurred by it</p>

P66 Submission	Applicant's Response
<p>serves as a good example of why CPO should not be used to circumvent private treaty in a leasehold situation.</p> <p>4.7 Other examples of detail which emerge from the suggested drafting include the following:</p> <p>Terms and conditions</p> <p>4.8 There is an absence of many of the detailed controls which are contained within the Existing Arrangements. Another example being the terms and conditions which apply under the lease of the Existing Pipeline Site. Those terms and conditions control many important issues such as access to and egress from the site, as well as the control of sources of ignition.</p> <p>Lift and shift provisions</p> <p>4.9 The drafting of the lift and shift provisions has been amended to apparently avoid any obligation to pay compensation. The key operative drafting omits the notification obligation on the Applicant to elect to pay compensation.</p> <p>4.10 It was suggested during the hearing that the effect was to limit the Applicant's ability to elect to retain its pipeline. But if that is the effect of the omission, then it would appear an alternative problem has been created, which is that there would be no obligation to pay compensation where planning permission is refused to P66 by virtue of the presence of the pipeline.</p>	<p>as a consequence of the Applicant carrying out the authorised development.</p> <p>The Applicant notes that it sent a revised version of the protective provisions including the reinstatement of consequential loss and damage provision under paragraph 49 to Burges Salmon on 8 December 2019, prior to Deadline 5, although this was not acknowledged in its representation at that point.</p> <p>The Applicant disagrees that it is proposing a "different commercial settlement" compared to the Existing Arrangements. This is evidenced by the Applicant having already offered to replicate the Existing Arrangements in their entirety (including the indemnity contained therein) through the Protection Agreement. The Applicant cannot unilaterally require P66 to enter into the Protection Agreement (nor agree the form of the property agreements) and therefore the purpose of the protective provisions is to provide an alternative means of providing sufficient protection to P66.</p> <p>With respect to the terms and conditions in Schedule 3 of the Existing Gas Pipeline Lease, the ExA is directed to the additional protective provisions enclosed at Appendix 1. The Applicant has also included a detailed summary of how each of the terms and conditions are replicated in the draft DCO in Appendix 2 (or otherwise an explanation as to why certain terms and conditions have been excluded).</p> <p>With respect to the lift and shift provisions and payment of compensation, the ExA is directed to the Applicant's detailed submissions at page 12 – 13 (Option of compensation under</p>

P66 Submission	Applicant's Response
<p>4.11 The Applicant appeared to indicate that regardless of the effect of the lift and shift drafting, P66 would be entitled to compensation on the grant of the DCO powers if exercised by the Applicant. The intimation being this is simply a matter of compensation. However, that misses entirely the impacts that the proposed DCO and its powers of CPO may have on P66's business. This to a large extent is the same issue as that addressed above on the standard the protections of the DCO must secure; whether it must replicate the Existing Arrangements, or simply provide a necessary safeguard. P66 contends that the current drafting of these lift and shift provisions would have a disproportionate impact on its business operation. They should not therefore be approved on these terms.</p> <p>Other detailed drafting points</p> <p>4.12 There are a number of further drafting issues with the protective provisions offered by the Applicant. The ExA directed during the hearing that the appropriate time for those detailed submissions could be Deadline 6, by which time P66 will have been able to review and assess the detailed drafting offered by the Applicant at Deadline 5. These points of detail, and others, will therefore be set out at that time.</p>	<p>Appendix 1 to FWQs, para 78) of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p> <p>With respect to the further drafting points, the Applicant welcomes and looks forward to receipt of P66's comments on the protective provisions at Deadline 6.</p>
<p>Justification</p> <p>5.1 The ExA was also addressed on the question of justification. The Applicant has referred to paragraphs 3.1.3 and 3.6.8 of EN-1 in so far as they refer to the need for the development proposed; gas fuelled generating capacity. It should be noted that the "urgent" need attributed to that technology type, appears from the language of 3.6.8 to apply only to schemes which are to be Carbon Capture and Storage (CCS) schemes. There is a need recognised for Carbon Capture Ready (CCR)</p>	<p>The Applicant disagrees that paragraph 3.6.8 specifies a need only for Carbon Capture and Storage (CCS) schemes and not non-CCS fossil fuel fired stations. The ExA will note that the wording appears under the heading at 3.6 of EN-1 entitled "The role of fossil fuel electricity generation". The text that follows specifies:</p> <ul style="list-style-type: none"> • 3.6.1 - "<i>Fossil fuel power stations play a vital role in providing reliable electricity supplies</i>"

P66 Submission	Applicant's Response
<p>schemes, but 3.6.8 is less clear about what need there is for fossil fuel generated schemes which do not meet either of those criteria (i.e. are neither CCS, nor CCR). That of course is the case for the Applicant's proposal.</p> <p>5.2 That is referred to as context for P66's primary submission on justification; which is that the question of whether or not there is a need for the development in question is a very different question to whether or not there is a compelling case in the public interest. The latter is the test the Secretary of State must be satisfied of if he or she is to make the DCO with powers of compulsory acquisition. This is best articulated with reference to paragraph 13 of the DCO CPO Guidance:</p> <p><i>"13. For this condition [the test in s.122] to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss."</i></p> <p>5.3 In order to apply this test, the ExA and Secretary of State must weigh the private loss to P66 as a result of the Applicant's proposal. Given the national importance of P66's business, as outlined in previous representations and not contested by the Applicant, the weight to be attributed to private loss to P66's business should be very great indeed.</p> <p>5.4 The ExA questioned whether the test under s.122 is the same as, or different, to the test which is to be applied at s.104 of the Planning</p>	<ul style="list-style-type: none"> • 3.6.2 – <i>"Fossil fuel generating stations contribute to security of energy supply by using fuel from a variety of suppliers and operating flexibly. Gas will continue to play an important role in the electricity sector – providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply."</i> • 3.6.3 – <i>"new technology offers the prospect of reducing the carbon dioxide emissions of both fuels [gas and coal] to a level where, whilst retaining many of their existing advantages, they also can be regarded as low carbon energy sources"</i> <p>It is specifically in the context of paragraph 3.6.3 that the sub-heading at 3.6.4 follows: "Carbon Capture and Storage". Paragraphs 3.6.4 – 3.6.7 consider the benefits of CCS technology and the importance placed on it by Government in determining applications for CCS development.</p> <p>Paragraph 3.6.8 is a new sub-heading: "The need for fossil fuel generation". It is correct that paragraph 3.6.8 states that <i>"there is a need for CCR fossil fuel generating stations and the need for the CCS demonstration projects is urgent"</i>. However, the preceding text unequivocally highlights that there is a clear need for fossil fuelled generating stations: <i>"...it is clear that there must be some fossil fuel generating capacity to provide back-up for when generation from intermittent renewable generating capacity is low and to help with the transition to low carbon electricity generation"</i>.</p> <p>The Applicant notes that paragraph 3.6.8 has been cited in other DCO applications for OCGT projects as supporting the need case.</p>

P66 Submission	Applicant's Response
<p>Act and the question of whether or not to grant development consent for a project.</p> <p>5.5 P66's submission was that the tests are different, but that the findings on CPO may feed into the s.104 test on the grant of DCO. The DCO CPO Guidance reinforces that conclusion in paragraph 16 where it provides:</p> <p><i>"16. There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land..."</i></p> <p>5.6 Where the two tests may interrelate is on issues such as deliverability. If for example the Secretary of State were not satisfied that a compelling case in the public interest is made out, he or she may also conclude that the Applicant is unable to show that it can deliver the scheme proposed, for want of the rights it seeks over P66's land. Deliverability is a material consideration in the planning regime, and may amount to a relevant and important consideration when applying the s.104 tests.</p>	<p>For example, the ExA is directed to paragraph 5.3.6 of the Planning Statement submitted in support of West Burton Gas Fired Generating Station DCO (this is currently in examination):</p> <p><i>"The Government believes that an increasing reliance on renewables will mean a greater level of electricity capacity is needed in the future to provide an important back-up function (EN-1, paragraph 3.3.12) and to help with the transition to low carbon electricity generation (EN-1, paragraph 3.6.8). Paragraph 3.6.8 further confirms that there is a need for fossil fuel generating stations."</i></p> <p>The Applicant also notes that Phillips 66 refer to paragraph 3.1.3 but does not elaborate on whether it contends that this provision does not apply to gas fuelled generating stations. For the avoidance of doubt, the Applicant considers this to be beyond doubt:</p> <ul style="list-style-type: none"> • paragraph 3.1.1 specifies that the <i>"UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions."</i> • paragraph 3.1.2 specifies <i>"that it is for industry to propose new energy infrastructure projects within the strategic framework set by Government [and] Government does not consider it appropriate for planning policy to set targets for or limits on different technologies."</i> • paragraph 3.1.3 specifies that it is <i>"necessary to assess applications for development consent for the types of</i>

P66 Submission	Applicant's Response
	<p><i>infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that <u>there is a need for those types of infrastructure</u> and that the scale and urgency of that need is described in the relevant parts of the NPS."</i></p> <p>The Applicant would point out that paragraph 3.3.15 of EN-1 specifies that: "<i>In order to secure energy supplies that enable us to meet our obligations for 2050, there is an urgent need for new (and particularly [but not only] low carbon) energy NSIPs to be brought forward as soon as possible.</i>"</p> <p>Taken together and given proper context, and noting the other parts of the EN1, the Applicant strongly disagrees that there is any uncertainty over the need for the Project and that this need is urgent in order to facilitate the transition to a low carbon economy. The ExA is directed to the Applicant's Planning Statement (Document Reference 5.3) for further details.</p> <p>With respect to P66's "primary submission on justification" (the need for the development versus whether there is a compelling case in the public interest) the ExA is directed to the Applicant's submissions on the tests under s.122 and s.104 of the Planning Act 2008 at Page 13 – 14 of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p>
Existing Protective Provisions	The Applicant welcomes confirmation from P66 that the protective provisions relating to the crossing of the existing hydrocarbon pipelines are acceptable subject to the drafting changes proposed

P66 Submission	Applicant's Response
<p>6.1 The references in the foregoing part of these submissions are to the new protective provisions suggested by the Applicant as Appendix 1 to its Deadline 4 submissions [REP4-007].</p> <p>6.2 In its submissions to the ExA on the existing protective provisions the Applicant confirmed that it would be amending its DCO to make the drafting changes suggested by P66 in its Deadline 4 submissions. The particular drafting is referred to at paragraphs 2.13 and 2.14 of those D4 submissions [REP4-018].</p> <p>6.3 Provided those drafting changes are made, the existing protective provisions relating to the crossing of the existing hydrocarbon pipelines are acceptable to P66. With those changes, the provisions would amount to those suggested by P66 in its Written Representation.</p>	<p>by P66 in its Deadline 4 submission. The Applicant notes that it sent a revised version of the protective provisions including these drafting changes to Burges Salmon on 8 December 2019 (4 days before Phillips 66 submitted its Deadline 5 submission to the ExA). For the avoidance of doubt these changes have also been included in the draft DCO submitted at Deadline 5.</p> <p>On the basis of the comments from P66 and in light of the above factual background, the Applicant assumes that the protective provisions at paragraphs 36 – 49, 50 – 54, 83 and 84 of Part 4 of Schedule 9 may be treated as now agreed.</p>
<p>Conclusion</p> <p>7.1 In summary; P66 objects to the exercise of CPO powers against its land. The protective provisions offered by the Applicant do not comprise appropriate safeguards. The use of protective provisions to offer the type of safeguards intended is entirely novel and without precedent. It conflicts with the accepted legal principle against creating leaseholds via compulsory acquisition.</p> <p>7.2 P66 does not contest the Applicant's submission that novelty is no reason of itself not to adopt a particular approach.</p> <p>7.3 However, P66's business is nationally significant. The Applicant appears to have accepted that controls on the exercise of its DCO's powers of compulsory acquisition are necessary to protect that</p>	<p>The Applicant refers to its submissions previously and above.</p>

P66 Submission	Applicant's Response
<p>business. Novelty and a lack of precedent are not features that P66 would usually look for in arrangements relating to its highly regulated, nationally significant, business. The potential for private loss is significant.</p> <p>7.4 The Applicant's proposal fails to meet the test in s.122.</p>	

APPENDIX 1: TERMS AND CONDITIONS

Appendix 1

Below is a list of the "terms and conditions" under Schedule 3 of the Lease dated 16 February 2005 entered into between ConocoPhillips Limited and Immingham CHP LLP and which are referred to in P66's oral submissions on 4 December 2019 and subsequently in its written summary of those submissions.

The first column contains the relevant paragraph number in Schedule 3 of the Lease and the second column sets out the relevant term or condition.

The third column contains:

- a) a reference to the paragraph number in Part 4 of Schedule 9 of the DCO where the same or a similar term or condition already benefits Phillips 66;
- b) a reference to a new protective provision to be included in the next submission of the dDCO to the ExA (see Appendix 2); or
- c) where no reference is provided, an explanation as to why the same term or condition has not been included in Part 4 of Schedule 9 of the DCO.

Para no. in Sch 3	Term or condition as included in Schedule 3 to the Lease	Explanation of Approach Taken by the Applicant in the Protective Provisions Benefitting P66
1.1	All reasonable and proper precautions will be taken by the Tenant to minimise damage to property and livestock caused as a result of the construction of the Pipeline.	See paragraph 59(1)(a) which contains an equivalent protection. Various additional protections are afforded with respect to works to the pipeline. See for example paragraphs 36 – 39 (authorisation of works details affecting pipelines or protected crossings) paragraph 40 (notice of works) paragraphs 41 – 42 (further provisions about works) paragraph 43 – 44 (monitoring for damage to pipelines) paragraph 45 (compliance with requirements etc. applying to the protected land) paragraph 46 (restriction on exercising powers).
1.2	The construction work will be carried out under the supervision of an engineer acting on behalf of the Tenant who will appoint adequate local representatives properly to supervise the execution of the works and to maintain contact with the Landlord and any Occupiers along the route of the Pipeline. The Landlord and the	See paragraph 59(1)(c) – (e) which contain an equivalent protection.

	Occupier will be given the name, address and telephone number of the person to whom queries may be addressed. The Tenant will accept responsibility for the actions and omissions of its contractors and of their sub-contractors and of all persons employed in connection with the works, except for actions carried out, or omissions directed, expressly at the request of the Landlord or the Occupier.	
	Preliminary survey, etc and commencement of work	
2.1	Exploratory trial pits and/or boreholes in advance of the work where necessary will be opened or performed only after consultation with and with the consent of the Landlord or Occupier (in each case such consent not to be unreasonably withheld or delayed) and/or any necessary surveys, soil investigation, drainage works, and/or other similar activities considered necessary by either Party or the Occupier acting reasonably. The methods of carrying out the work will be such as to cause the least practicable disturbance to the Occupier.	<p>Procedures for submitting works and securing approval from Phillips 66 are included at paragraphs 36 – 39 (authorisation of works details affecting pipelines or protected crossings) paragraph 40 (notice of works) paragraph 41 (further provisions about works) and paragraph 55 – 58 (exercise of specified rights).</p> <p>Paragraph 56 requires that in exercising powers the undertaker must all at all times act so as to minimise, as far as reasonably practicable, any detrimental effect on the HOR.</p> <p>Paragraph 59(1)(b) requires that in the exercise of the specified rights the undertaker must cause the least practicable disturbance to or interference with the business and operations of P66.</p>
2.2	<p>Written notice of intention:</p> <p>(a) to commence soil investigation, drainage or other work to be carried out prior to Pipeline construction, and</p> <p>(b) to commence Pipeline construction itself;</p> <p>will be given to the Landlord and any Occupiers before entry. The notice period will be as long as is reasonably practicable and in any event not less than seven days in the case of (a) above and fourteen days in the case of (b) above. The work will, so far as it is practicable, be carried out in accordance with a programme previously</p>	<p>Paragraph 40 (notice of works) requires that the undertaker must provide to P66 a minimum of 28 days' notice prior to commencing any "relevant work" (being work which may have an effect on the operation, maintenance, abandonment of or access to any of the three hydrocarbon pipelines).</p> <p>Paragraph 38(3) requires that the authorised development must be carried out in accordance with the works details authorised under paragraph 37 and any conditions</p>

	discussed with the Landlord and any Occupiers and to which they have consented. Where entry on foot only for survey purposes is required, 48 hours notice will be given.	imposed on the authorisation under paragraph 38(1). Paragraph 57(3) requires that the authorised development must be carried out in accordance with the works details authorised under paragraph 56 and any conditions imposed on the authorisation under paragraph 57(1).
2.3	Any information or data obtained from any of the activities carried out under paragraphs 2.1 or 2.2 above shall be treated by the Tenant as confidential and shall not be disclosed to any third party not immediately connected with the Tenant's activities other than with the consent of the Landlord	See new protective provision 1 at Appendix 2.
	Record of Condition	
3	Before any construction work is commenced the Tenant will at its own expense conduct an investigation or procure that an investigation is carried out into the condition of the Demised Land and the Described Land and prepare at its own expense a written record of such condition for agreement with the Landlord and the Occupier. Such investigation and record shall be sufficient to detail (among other things) any Historic Contamination that affects the Demised Land and the Described Land.	See amended definition of "works details" at Appendix 2. The effect of this amendment is that details of the condition of land affected by a relevant work or specified work must be submitted to and approved by Phillips 66.
	Timber	
4	Where it is reasonably necessary so to do the Tenant will be entitled to remove trees within the working area subject to prior consultation and agreement with the Landlord and the Occupier. All timber will remain the property of the Landlord and be cut and disposed of in accordance with the reasonable requirements of the Landlord. Where timber is cut and disposed of the Tenant will compensate the Landlord for any loss thereby properly and reasonably incurred by the Landlord. Where practicable, trees will be replanted and the Tenant will maintain them until they are reasonably well established.	See amended definition of "works details" at Appendix 2. The effect of this amendment is that details of trees that will be removed pursuant to carrying out the proposed works must be submitted to and approved by Phillips 66. See new protective provisions 2 and 3 at Appendix 2 which specify that timber will remain the property of Phillips 66 and that the disposal of any timber will be subject to the payment of compensation to Phillips 66.

		See paragraph 61 which requires that the undertaker must, following a written request by P66, replace or restore any growing crops, trees, hedges, bushes or plants removed in the exercise of the specified rights.
	Fencing the Working Area	
5.1	Unless otherwise agreed with the Occupier, the method of fencing the working width will be a fence adequate for the purpose of excluding any livestock kept on adjoining land, and where no livestock is kept, a demarcation fence of posts and wire will be used provided that where necessary such fencing complies with any requirement of any statutory or other body or pursuant to any statute or other obligation. All temporary fencing will be maintained in position during construction work and until reinstatement and will then be removed by and at the cost of the Tenant (unless otherwise agreed with the Occupier).	See new protective provision 4 at Appendix 2.
	Reinstatement of Field and Farm Boundaries	
5.2	If it is reasonably practicable existing hedges will be preserved but any hedges, fencing, banks or walls destroyed or rendered ineffective by the operations of the Tenant will be replanted or restored and any replanted hedge will be maintained until reasonably established. The Tenant will during construction of the Pipeline, at its own expense, erect straining posts in field boundary fences where they are intersected by the working area and each part of the field boundary fence will be secured and strained to these straining posts.	See paragraph 61 which requires that the undertaker must, following a written request by P66, replace or restore any growing crops, trees, hedges, bushes or plants removed in the exercise of the specified rights. See new protective provision 4 and 5 at Appendix 2.
	Notifiable soil borne pests and diseases	
6	The Tenant, in conjunction with the Landlord and any Occupiers directly affected by the Pipeline operations, will take such reasonable precautions as may be necessary in accordance with the Department of the Environment Food and Rural Affairs Code of Precautions against the spread of animal or plant disease to avoid the spreading of notifiable soil borne pests and diseases.	The Applicant does not consider this to be relevant to the carrying out of a relevant work or the exercise of the specified rights within HOR.

	Straying stock	
7	The Tenant will after consultation with the Occupier take all necessary precautions to prevent the straying of livestock via the working area on to neighbouring land and will relieve the Landlord, the Occupier or other owner of such livestock of all losses, damage or claims arising from the straying of such animals and will pay compensation for injury to or death of the animals where such straying is due to any act or omission on the part of the Tenant.	The Applicant does not consider this to be relevant to the carrying out of a relevant work or the exercise of the specified rights within HOR.
	Bridging and services	
8	Wherever an access is obstructed by the Tenant's excavations proper and adequate temporary crossings of the working area will be provided by the Tenant as reasonably required by the Occupier and also any crossings that may be reasonably required to provide any alternative access. The Tenant will take all reasonable steps to permit the provision of any new or improved access or water supply pipes and drains reasonably required after the execution of the works.	See paragraph 46 which requires that the undertaker must at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on P66, including any disruption to access and supplies of utilities and other services that are required by P66 in order to carry out its operations. See paragraph 57(1)(b) that permits Phillips 66 to impose conditions on its approval of work details in order to ensure it retains reasonable access to specified assets.
	Restoration of land	
9	Topsoil excavated during the works will be kept apart from all other excavated material and will not be run over by any machinery. If reasonably required by the Landlord or Occupier of the working area all cultivated turf will be carefully reinstated or replaced with turf of equivalent quality. All trenches will be backfilled as soon as practicable and care will be taken to ensure that backfill material is properly consolidated in accordance with Good Industry Practice. Excavated material will be replaced with topsoil uppermost so as to restore the working area to its former condition so far as is reasonably practicable. The Tenant will ensure that no large stones are left on the surface after reinstatement of the trench. Large stones and any surplus subsoil will be removed by the Tenant where specifically requested by the Landlord or the Occupier and where deemed by the Tenant to be necessary. All construction debris, tools, equipment, temporary work and litter will be removed	See new protective provision 6 at Appendix 2.

	from the working area as soon as practicable. The topsoil of agricultural land will be left in a loose and workable condition to its full depth. Compacted subsoil will be loosened with a cultivator where the topsoil has been removed and before it is replaced.	
	Depth of pipe	
10	The Pipeline will be laid to contour at a depth of not less than 1.1 metres from the original ground surface to the top of the Pipeline. This depth will only be departed from where necessary in which event written notice of the departure will be given to the Landlord. The Pipeline will generally be laid so as to avoid as far as possible continued interference with [normal] agricultural operations.	See new protective provision 7 at Appendix 2.
	Support of structures	
11	Temporary underpinning, supports and other protective measures for buildings, structures and apparatus in or adjacent to the trench will be of proper design and sound construction and will be securely placed to the reasonable satisfaction of the Landlord or Occupier and of the Tenant and in accordance with Good Industry Practice.	See new protective provision 8 at Appendix 2.
	Ditch crossings	
12	Where the pipe crosses below a ditch or stream it will be protected by a concrete slab. The pipe will be located at such a depth as to provide at least 1.1 metres cover from the true cleaned bottom of the ditch or stream to the top of the pipe. All ditches, open drains or watercourses interfered with by the Pipeline will be maintained in effective condition during construction and finally restored to as good a condition as before the commencement of the works.	See new protective provision 9 at Appendix 2.
	Protection of water supplies	
13	With the assistance of the Occupier or Landlord in locating water supplies, the Tenant will use all reasonable endeavours to ensure that existing water supplies, drainage systems and any other services are not interrupted or detrimentally affected during construction, failing which the Tenant will make good all damage	See new protective provision 10 at Appendix 2.

	caused to the reasonable satisfaction of the Occupier or Landlord or make available an adequate and unpolluted alternative supply or system as the case may require. Supplies of water to stock will not be completely withdrawn. The Tenant will take all reasonably practicable steps to prevent the pollution of water supplies or watercourses. In the event of such pollution occurring because of the construction or use of the Pipeline or the works, the Tenant will pay compensation in respect of any costs, claims, damage or expenses arising.	
	Sporting rights	
14	The Tenant will prohibit its agents and servants from carrying firearms and will take all reasonably practicable steps to protect fishing and sporting rights in or over the land affected by the construction and use of the Pipeline and the works.	The Applicant does not consider this to be relevant to the carrying out of a relevant work or the exercise of the specified rights within HOR.
	Land drains	
15	Particular care will be taken to ensure that minimum damage or disturbance to land drains is caused and, where practicable, the Pipeline will be laid to run below the level of land drains. The position of all land drains cut or disturbed during excavation will be prominently marked by pegs at both sides of the trench immediately following their location. Such land drains will also be logged and a subsequent land drainage record kept by the Tenant for future reference. The Tenant will engage a land drainage expert to design appropriate pre-construction drainage, where necessary, and also any necessary land drainage reinstatement. The methods to be employed in repairing damage to field drainage systems will be agreed with the Landlord and the Occupier and, failing agreement, will be referred to an expert acceptable to the Tenant and the Landlord and the Occupier. Where new drains are laid, 'as built' plans showing their position will be provided after the Pipeline has been constructed.	See new protective provision 11 at Appendix 2.
	Reinstatement of roads	
16	Private roads and footpaths will be permanently reinstated to a condition equivalent to that subsisting before the commencement of the works to the reasonable satisfaction of the Landlord and the Occupier.	See paragraph 60 which requires that the undertaker must with all practicable speed reinstate and put any part of the HOR land opened or broken up in the exercise of the specified rights into as good a condition in all respects so

		far as is reasonably practicable as it was in before it was opened or broken up.
	Access to working areas and Pipeline	
17	It is not expected that it will be necessary to install any apparatus (other than marker posts and cathodic protection marker posts) above ground, but any such apparatus so installed will wherever practicable be sited by agreement between the Landlord and the Occupier and the Tenant's agents. As far as is practicable marker posts will be sited in or adjacent to hedges or fences. If the Occupier so requires, marker posts will be placed on both sides of fences or hedges. Marker posts and apparatus will not be treated with any substance toxic to livestock. All marker posts will be properly maintained and the Tenant will take all reasonable steps to ensure that marker posts remain visible at all times.	See new protective provision at 12 at Appendix 2.
	Cathodic protection	
18	The Pipeline will be cathodically protected against corrosion and any buildings and structures likely to be affected will be suitably protected provided reasonable facilities are given for this to be done. This condition does not extend to pipes, cables or like apparatus or any building or structure laid or constructed in the land by third parties after the construction of the Pipeline.	See new protective provision at 13 at Appendix 2.
	Inspection and maintenance	
19	Except in case of emergency, notice will where practicable be given to the Occupier of any subsequent entry for purposes of maintenance or inspection of the Pipeline. Wherever practicable the Landlord and the Occupier will be consulted as to the means of access necessary to carry out such works. Such works will be suspended or restricted to comply with any requirements of the Department of the Environment, Food and Rural Affairs and the Occupier if the area is declared infected on account of foot and mouth disease, fowl pest, swine fever, blue ear disease, brucellosis, rhizomania or other notifiable disease. All representatives of the Tenant entering on the land for the purposes of inspection, maintenance or executing the works or any subsequent works will carry and produce on request adequate means of	Procedures for notifying Phillips 66 of works and seeking their approval for work details and associated arrangements (including with respect to access) are already included in protective provisions. See paragraphs 36 – 39 (authorisation of works details affecting pipelines or protected crossings) paragraph 40 (notice of works) paragraphs 41 (further provisions about works) paragraph 55 – 58 (exercise of specified rights).

	identification.	
	Fossils coins and other articles of value	
20	During the course of work and the exercise of the rights granted to the Tenant, fossils, coins or other articles of value may be discovered. As between the Landlord and the Tenant the Tenant regards such objects as being the property of the Landlord and will acknowledge that the Landlord will not be deemed to have surrendered (whether to the Tenant or its contractors) any right to any reward under the Treasure Act 1996. The Tenant will make all reasonable efforts to comply with the reasonable requirements of the Landlord with respect to such objects (and will oblige his contractors to do so) provided that the Landlord will pay any costs reasonably incurred by the Tenant in so doing.	See new protective provision 14 at Appendix 2.
	Avoidance of trespass	
21	Strict instructions will be given to prevent contractor's workmen trespassing outside the working area or any agreed access to it.	See new protective provision 15 at Appendix 2.
	Abandonment	
22	Should the Tenant at any time after construction of the Pipeline decide to abandon the Pipeline or any part of it the Tenant will purge the Pipeline or that part of it and otherwise render it (or that part) permanently safe and harmless and will give the Landlord and the Occupier written notice to that effect.	See new protective provision 16 at Appendix 2.
	General	
23.1	The Tenant will not permit caravans or huts to be brought on to the Landlord's Land for sleeping accommodation and will ensure that all workmen leave the Landlord's Land at the conclusion of their duties each day.	See new protective provision 17 at Appendix 2.
23.2	The Tenant will provide such sanitary equipment as may be considered necessary for the convenience of workmen.	The Applicant does not consider this to be relevant for the protection of Phillips 66.

23.3.	Work on the Pipeline will normally cease at or before dusk but in the event of work continuing beyond dusk the Landlord and Occupier will be notified in writing in advance.	See new protective provision 18 at Appendix 2.
23.4	Fires will not be lit on site save with the consent of the Landlord or the Occupier.	See new protective provision 19 at Appendix 2.
23.5	The Tenant will make suitable arrangements with the Occupier of the working area in regard to any works to be carried out in the exercise of the Specified Rights during lambing and calving periods.	The Applicant does not consider this to be relevant to the carrying out of a relevant work or the exercise of the specified rights within HOR.
23.6	As far as reasonably practicable the minimum amount of pipe trench will be open at any time.	The Applicant considers that the general provisions for the approval of works and methodologies cover this matter.
23.7	Whenever the Tenant intends to use explosives in connection with the works and the exercise of the Specified Rights reasonable notice of such intention shall be given to the Landlord and any Occupier of the working area including notice of the timing of blasting operations.	See new protective provision 20 at Appendix 2.
23.8	Any loss or repayment of any grants will be taken into account in the assessment of the compensation payable under the provisions of this Lease.	See paragraph 49(2) which requires that the undertaker must indemnify Phillips 66 for any losses incurred (including consequential loss or damage) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it.
23.9	If any livestock is killed or injured by reason of the exercise of the Specified Rights the Tenant shall pay proper compensation to the owner of such livestock immediately after the amount of such compensation has been agreed or determined.	The Applicant does not consider this to be relevant to the carrying out of a relevant work or the exercise of the specified rights.

APPENDIX 2: ADDITIONAL PROTECTIVE PROVISIONS

Appendix 2

Additional Protective Provisions

The following provisions are for the benefit of Phillips 66 Limited, and will be included in the next Draft DCO to be submitted to the Examining Authority by the Applicant:

1. Any information or data obtained by the undertaker from carrying out activities under this Part of this Schedule must be treated by the undertaker as confidential and must only be disclosed to a third party who is connected with the undertaker's activities and who needs the relevant information or data, or it may be disclosed with the consent of P66 or where the undertaker is required to disclose information or data by law or by a court of law or other competent authority.
2. Where any trees are removed by the undertaker in carrying out a specified work, all timber will remain the property of P66 and will be cut and disposed of in accordance with the reasonable requirements of P66.
3. Where timber is cut and disposed of by the undertaker pursuant to paragraph [2] the undertaker will compensate P66 for any loss thereby properly and reasonably incurred.
4. Unless otherwise agreed between the undertaker and P66, any fencing required for the purposes of exercising the specified rights will comprise of a demarcation fence of posts and wire provided that where necessary such fencing complies with any requirement of any statutory or other body or pursuant to any statute or other obligation.
5. All temporary fencing will be maintained in position during the carrying out of any specified work and until reinstatement and will then be removed by and at the cost of the undertaker (unless otherwise agreed with P66).
6. In exercising the specified rights, and if reasonably required by P66:
 - (a) topsoil excavated during a specified work will be kept apart from all other excavated material and will not be run over by any machinery and all cultivated turf will be carefully reinstated or replaced with turf of equivalent quality;
 - (b) all trenches dug during a specified work will be backfilled as soon as practicable and care will be taken to ensure that backfill material is properly consolidated in accordance with good industry practice;
 - (c) excavated material will be replaced with topsoil uppermost so as to restore the working area to its former condition so far as is reasonably practicable and no large stones are left on the surface after reinstatement of the trench;
 - (d) large stones and any surplus subsoil will be removed by the undertaker where specifically requested by P66 and where deemed by the undertaker to be necessary;
 - (e) all construction debris, tools, equipment, temporary work and litter will be removed from the working area around a specified work as soon as practicable;
 - (f) the topsoil of agricultural land will be left in a loose and workable condition to its full depth; and
 - (g) compacted subsoil will be loosened with a cultivator where the topsoil has been removed and before it is replaced.

7. Where the undertaker is to relay or move any length of gas pipeline it will be laid to contour at a depth of not less than 1.1 metres from the ground surface to the top of the pipeline and where this depth cannot reasonably be achieved by the undertaker it will give written details of this to P66.

8. Wherever the exercise of the specified rights may reasonably require it, temporary underpinning, supports and other protective measures for buildings, structures and apparatus in or adjacent to the pipeline trench will be of proper design and sound construction and will be securely placed to the reasonable satisfaction of P66 and in accordance with good industry practice.

9. Where the gas pipeline crosses below a ditch or stream it will be protected by a concrete slab and the pipe will be located at such a depth so as to provide at least 1.1 metres cover from the true cleaned bottom of the ditch or stream to the top of the pipe. All ditches, open drains or watercourses interfered with by the exercise of the specified rights will be maintained in effective condition during works by the undertaker and restored to as good a condition as before the commencement of the works.

10. With the assistance of P66 in locating water supplies, the undertaker will use all reasonable endeavours to ensure that existing water supplies, drainage systems and any other services are not interrupted or detrimentally affected during the exercise of the specified rights, failing which the undertaker will make good all damage caused to the reasonable satisfaction of P66 or make available an adequate and unpolluted alternative supply or system as the case may require. Supplies of water to stock will not be completely withdrawn without the written consent of P66. The undertaker will take all reasonable practicable steps to prevent the pollution of water supplies or watercourses. In the event of such pollution occurring because of the exercise of the specified rights, the undertaker will pay compensation to P66 in respect of any costs, claims, damage or expenses arising.

11. Particular care will be taken to ensure that minimum damage or disturbance to land drains is caused by the exercise of the specified rights. The position of all land drains cut or disturbed during excavation will be prominently marked by pegs at both sides of the trench immediately following their location. Such land drains will also be logged and a subsequent land drainage record kept by the undertaker for future reference. The undertaker will engage a land drainage expert to design appropriate pre-construction drainage, where necessary, and also any necessary land drainage reinstatement. The methods to be employed in repairing damage to field drainage systems will be agreed with P66 and, failing agreement, will be referred to an expert in accordance with paragraph [83].

12. The installation of marker posts or cathodic protection marker posts will wherever reasonably practicable be sited by agreement between the undertaker and P66. As far as is reasonably practicable marker posts will be sited in or adjacent to hedges or fences. If P66 so requires, marker posts will be placed on both sides of fences or hedges. All marker posts will be properly maintained and the undertaker will take all reasonable steps to ensure that marker posts remain visible at all times.

13.(1) The undertaker must ensure that the gas pipeline is cathodically protected against corrosion and any buildings and structures within HOR likely to be affected will be suitably protected provided reasonable facilities are given by P66 for this to be done.

(2) Sub-paragraph (1) does not require the undertaker to do anything in respect of pipes, cables or like apparatus or any building or structure laid or constructed after the pipeline was first laid.

14. During the course of the exercise of the specified rights, the undertaker must regard fossils, coins or other articles of value which are discovered as being the property of P66 and will acknowledge that P66 will not be deemed to have surrendered (whether to the undertaker or its contractors) any right to any reward under the Treasure Act 1996. The undertaker will make all reasonable efforts to comply with the reasonable requirements of P66 with respect to such objects (and will oblige its contractors to do so) provided that P66 will pay any costs reasonably incurred by the undertaker in so doing.

15. In exercising the specified rights, the undertaker must provide specific instructions to contractor to notify them that the contractors workers cannot trespass outside the working area or any access to it.

16. In the event that the undertaker decides to abandon the whole or any part of the gas pipeline through HOR, the undertaker must purge the relevant part of the pipeline and otherwise render it permanently safe and harmless, and must provide reasonable details of the works undertaker to P66.

17. The undertaker must not permit caravans or huts to be brought on to HOR land for sleeping accommodation and will ensure that all workmen leave the HOR land at the conclusion of their duties each day.

18. A specified work will normally cease at or before dusk but in the event of work continuing beyond dusk P66 will be notified in writing in advance.

19. The undertaker will not light fires on the HOR land without the consent of P66.

20. Whenever the undertaker intends to use explosives in connection with the exercise of the specified rights, reasonable notice of such intention must be given to P66 of the working area including notice of the timing of blasting operations.

Amendments to Protective Provisions

The following amendments are to be made to the protective provisions that benefit Phillips 66 Limited at Part 4 of Schedule 9 of the dDCO:

Paragraph 36 – amend definition of "works details" so as to include new limbs:

"(j) a description of the land upon which the proposed works will be carried out including a written record of the ground conditions of the land and details of any historic land contamination;

"(k) a description of any trees that will be removed pursuant to the carrying out of the proposed works"