

VPI Immingham OCGT Project

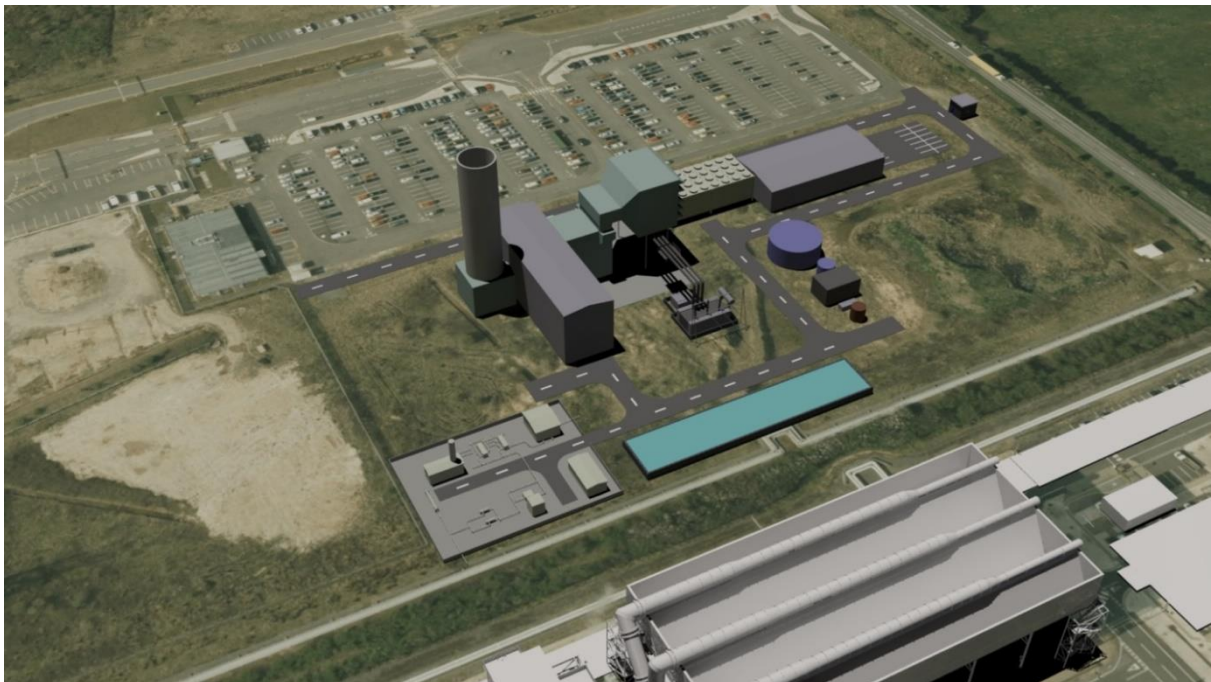
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The Immingham Open Cycle Gas Turbine Order

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

The Applicant's Deadline 7 Response

Examination Deadline 7



Applicant: VPI Immingham B Ltd

Date: February 2020

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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).
CCA 2008	The Climate Change Act 2008
CCA Order	The Climate Change Act 2008 (2050 Target Amendment) Order 2019
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

Abbreviation	Description
	Significant Infrastructure Project. A DCO can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition.
EA	Environment Agency – a non-departmental public body sponsored by the United Kingdom government's Department for Environment, Food and Rural Affairs (DEFRA), with responsibilities relating to the protection and enhancement of the environment in England.
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

Abbreviation	Description
	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.
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.
Temporary	Land Required for Work No. 3.

Abbreviation	Description
Construction and Laydown Site	
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 addresses the first and second items from the Deadline 7 section of the Examination timetable, by providing responses, where necessary, to comments received from Interested Parties at Deadlines 6 and 6a.
- 1.6.2 Specifically, this includes responding to, amongst other things, (i) any comments on the draft DCO and (ii) any submissions made by Interested Parties in respect of the tests set out in sections 127 and 138 of the PA 2008. The Applicant's response is tabulated in Section 2 of this report and separate documents also forming part of the Deadline 7 submission, including the Draft DCO (Document Ref: 2.13), are cross-referenced where necessary.

2. THE APPLICANT'S RESPONSE

- 2.1.1 Tables 2.1 and 2.2 on the following pages set out the Applicant's response to comments received from Interested Parties at Deadlines 6 and 6a. They address, as stated in the previous section, the first and second items from the Deadline 7 section of the Examination timetable.
- 2.1.2 Table 2.1 addresses each Interested Party submission in turn, providing a summary of the submission and then setting out the Applicant's response in the next column, other than P66's. Table 2.2 addresses P66's submissions, in the same way.

Table 2.1 – The Applicant's response to Interested Parties (other than P66)

Interested Party	Summary of comments	Applicant's response
Phillips 66 Limited		
Hornsea 1 and Hornsea 2 (the "Hornsea Companies" Deadline 6a Submissions)	<p>Paragraph references below correspond to those included in the Hornsea Companies Deadline 6a submissions.</p> <p>1.3 Section 127 of the 2008 Act applies in respect of the compulsory acquisition powers sought by the Applicant as these compulsory acquisition powers are being sought over land in which the Hornsea 1 Companies hold an interest for the purposes of their statutory undertaking¹. These are plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92, as described in the Applicant's Book of Reference submitted at Deadline 4, ("the Relevant Land").</p> <p>1.4 The Hornsea 1 Companies have acquired leases, and associated rights, within areas of the Relevant Land ("Interests in Land") in order to lay, maintain etc. electricity supply cables and other associated apparatus (collectively "the Apparatus"). The Apparatus is expected to be laid over the coming months in the Relevant Land to connect the Hornsea Project One offshore generating station with the onshore substation.</p>	<p>The Applicant notes that the Deadline 6a submissions on behalf of the Hornsea Companies are identical save for reference to the individual Companies and their respective Projects. On that basis the response below applies to both Hornsea Companies' submissions.</p> <p>1.3 The Applicant acknowledges and agrees with the location and apparatus of the Hornsea Companies included within the DCO Order Limits. As confirmed in its Deadline 6a submissions (Document Ref: 7.28) (and the Hornsea SoCGs (Document Ref: 8.9)), the areas of overlap with the Hornsea Companies' infrastructure are solely within the Existing Gas Pipeline Site, where the Applicant has sought powers of compulsory acquisition. The Applicant also acknowledges and agrees with the identified Interests in Land as set out in paragraph 1.4 of the Hornsea Companies' submissions.</p> <p>1.5 and 1.6 The Applicant acknowledges and agrees that sections 127 and 138 are engaged in respect of the Hornsea Companies' relevant land and apparatus, respectively. However, the Applicant does not agree that the proposed compulsory acquisition powers (and the operation and maintenance rights to which they relate), if exercised, would result in serious detriment to the Hornsea Companies' undertakings. The Applicant repeats its position as set out in Document Ref: 7.28 that the protective provisions included in</p>

Interested Party	Summary of comments	Applicant's response
	<p>1.5 Without the protections of appropriate protective provisions and a crossing agreement, the Hornsea 1 Companies submit that the inclusion of compulsory acquisition powers under the Order in respect of the Relevant Land (and/or the Apparatus therein) could lead to serious detriment to Hornsea Project One and to their and any future Offshore Transmission Owner's statutory undertaking and therefore in terms of Section 127 such powers should not be included in any grant.</p> <p>1.6 Section 138 of the 2008 Act is engaged by Article 29 of the draft Order. This Article would enable the Applicant to extinguish or relocate apparatus of statutory undertakings. As described in paragraph 1.4 above, the Hornsea 1 Companies hold Interests in Land over the Relevant Land and will install Apparatus for the purpose of their Statutory Undertaking. The Hornsea 1 Companies submit it would be of serious detriment to their undertaking, and their own Nationally Significant Infrastructure Project, if the Applicant is granted the unfettered right to extinguish rights and remove apparatus in the terms sought and does not consider that it has been demonstrated that such powers are necessary in respect of the Relevant Land and/or the</p>	<p>the dDCO are proportionate and adequate to avoid any alleged serious detriment.</p> <p>1.7 The Applicant welcomes and fully agrees that discussions to date have been both detailed and positive. The form of the agreements is well advanced, with very few matters remaining under negotiation. The Applicant anticipates reaching agreement with the Hornsea companies imminently, and the consequential withdrawal of the Hornsea companies' representations.</p>

Interested Party	Summary of comments	Applicant's response
	<p>Apparatus.</p> <p>1.7 The Hornsea 1 Companies and the Applicant have had positive detailed discussions on the terms of protective provisions (to be included in the Order) and a proposed crossing agreement. The form of protective provisions and agreement are close to being finalised. If the remaining issues can be agreed and thereafter (i) the protective provisions included in the Order; and (ii) the crossing agreement entered into by the parties, then the Hornsea 1 Companies would be in a position to withdraw their objection.</p>	
<p>Cadent Gas Limited Deadline 6 and 6a Submissions</p>	<p>Background</p> <p>2.3 The broad scope of the new rights that the Promoter is seeking (for example to alter, remove, refurbish, reconstruct, improve) are akin to usual construction activities permitted pursuant to a DCO. As such, Cadent requires the same protections as it would in respect of a DCO granting powers to construct works adjacent to its apparatus.</p> <p>Protective Provisions</p> <p>3.3 The protective provisions included at Schedule 9, Part 11 of the dDCO submitted by the Promoter at deadline 5 are for the benefit of Cadent. These are based on Cadent's standard form but several</p>	<p>Protective Provisions</p> <p>3.3 and 3.4 The Applicant maintains its position that as no works to the Existing Gas Pipeline or on, or in proximity to, Cadent's interests/apparatus or powers other than compulsory acquisition powers are to be authorised by the DCO, the Applicant does not consider that the form of protective provisions proposed by Cadent (and appended to its Deadline 6a submission) are necessary or applicable in the circumstances. However, the Applicant has agreed to accept the majority of the protective provisions requested by Cadent to regulate any future interactions between the Existing Gas Pipeline and Cadent's apparatus. Whilst the Applicant hopes that agreement on the drafting of the protective provisions will be reached, it none-the-less maintains that the protective provisions at Schedule 9 Part 11 of the dDCO (submitted for Deadline 7) are adequate to ensure that no serious detriment to Cadent's</p>

Interested Party	Summary of comments	Applicant's response
	<p>sections have been removed or amended by the Promoter. As proposed by the Promoter, these are not adequate to prevent serious detriment to the carrying on of Cadent's undertaking.</p> <p>3.4 Further to Cadent's deadline 6 submission, Cadent has accepted the removal of various paragraphs of its standard form protective provisions on the basis that they are not applicable in the circumstances. The Promoter is seeking further amendment to Cadent's standard protective provisions on the basis that it states that the main construction works authorised by the Order do not affect Cadent's apparatus. However, as outlined at paragraph 2.3 above, the rights that the Promoter is seeking are broad and are akin to usual construction activities. As such, Cadent must ensure that adequate protection exists for its apparatus.</p> <p>3.5 Cadent and the Promoter are continuing to negotiate the form of protective provisions which Cadent requires to be included on the face of the Order.</p> <p>3.6 On 18 January Cadent provided the Promoter with full justification for why certain remaining paragraphs contained within its standard form protective provisions and which remain applicable in the circumstances (which we include at appendix 1 for reference) are required. Cadent is awaiting a response from the</p>	<p>undertaking would result from the exercise of any relevant compulsory acquisition powers included in the DCO. Cadent's position that the proposed compulsory acquisition powers (and the operation and maintenance rights to which they relate) are akin to usual construction activities permitted by a DCO, is strongly refuted. The Existing Gas Pipeline is already in operation and subject to routine maintenance and Cadent has not suggested that this existing position causes serious detriment to the carrying on of Cadent's undertaking. The Applicant considers that Cadent is merely seeking its standard protective provisions without giving due consideration to the specific circumstances in this case and the likely impacts on its undertaking.</p> <p>3.5 and 3.6 The Applicant agrees that the parties are in on-going discussions about the proposed form of protective provisions and will continue such discussions.</p> <p>Indemnity</p> <p>3.8 – 3.10 The Applicant notes Cadent's position in respect of an indemnity (and as previously confirmed in Document Ref: 7.6 submitted at Deadline 3), the Applicant considers that the position expressed in the Eggborough Gas Fired Generating Station Order 2018 decision related, in significant part, to the Canal and River Trust's status as a charitable organisation. That is not a factor which applies to Cadent. The Applicant considers that the potential liability to Cadent is identifiable, and that a cap on the indemnity is reasonable. However, the Applicant has included an uncapped</p>

Interested Party	Summary of comments	Applicant's response
	<p>Promoter as to whether this tailored form of the protective provisions included at appendix 1 can be accepted.</p> <p>3.7 The material points that remain outstanding between the parties are the indemnity, security and insurance provisions.</p> <p>Indemnity</p> <p>3.8 Cadent has a duty to maintain its network in an efficient state, in good repair and any damage to its network would impact on financial outlay (for which Ofgem requires Cadent to act responsibly to recover losses from third parties as part of its obligations to provide an efficient distribution network).</p> <p>3.9 As communicated to the Promoter, the form of protective provisions included at Schedule 9, Part 11 of the draft DCO do not fully regulate the interaction between the Project and Cadent's apparatus. Schedule 9, Part 11 does not adequately address the principle that Cadent should not be exposed to any liability as a result of a third-party scheme which it derives no benefit from (a principle recognised by the Secretary of State in the Eggborough decision).</p> <p>3.10 The Promoter is seeking to cap the indemnity it provides. An uncapped indemnity from the</p>	<p>indemnity in the protective provisions contained at Schedule 9 Part 11 of the dDCO (submitted for Deadline 7).</p> <p>Insurance</p> <p>3.11 – 3.13 The Applicant agrees that discussions on this point are ongoing and an agreed position is hoped for. The Applicant has included Cadent's requested insurance provisions in the protective provisions contained at Schedule 9 Part 11 of the dDCO (submitted for Deadline 7). However, the Applicant considers that the amount of insurance requested by Cadent is excessive considering that the Existing Gas Pipeline has already been constructed and is in operation. The Applicant notes that Cadent has not provided any justification for the figure of £50,000,000.00 which is far in excess of the insurance usually obtained for maintenance activities in proximity to a high pressure gas pipeline. The Applicant is prepared to provide insurance in the sum of £25,000,000 which it considers to be more than adequate and is consistent with the insurance amounts agreed with other statutory undertakers.</p> <p>Security</p> <p>3.14 – 3.16</p> <p>The Applicant has been willing to discuss the provision of security in a separate side agreement that contains commercial advantageous terms for both parties. However, the Applicant considers that it is not reasonable or necessary for security provisions to be included within the dDCO as this creates an</p>

Interested Party	Summary of comments	Applicant's response
	<p>Promoter to Cadent is required because:</p> <p>(a) Cadent is receiving no direct benefit from the Project and therefore should not be put to any cost in respect of it;</p> <p>(b) Cadent is a statutory undertaker with responsibilities and a duty to its regulator and the general public to conduct itself in an efficient and cost-effective way. It therefore requires equivalence in monetary terms arising from the impact of the Project;</p> <p>(c) the Promoter should be responsible to Cadent for the full extent of any losses to which Cadent is put by reason of execution of works which are entirely within the Promoter's control; and</p> <p>(d) as a means to properly and appropriately incentivise the Promoter to adhere to all appropriate standards, codes and details relevant to the execution of the Project in the proximity of and in relation to Cadent's apparatus.</p> <p>Insurance</p> <p>3.11 Cadent's standard protective provisions include a requirement for the Promoter, and any contractor(s) working near Cadent's assets, to hold third party liability insurance for the period of the works.</p> <p>3.12 This is a fundamental requirement for Cadent, to ensure that it is properly protected against any damage caused by the Promoter or its contractors.</p>	<p>unnecessary burden on the Applicant or any other party exercising rights under the DCO (such as another statutory undertaker).</p> <p>The drafting proposed by Cadent would mean that Cadent could prevent the maintenance of an Existing Gas Pipeline that supplies a nationally significant infrastructure project from proceeding due to financial as opposed to safety grounds (obtaining approval for any maintenance works in proximity to Cadent' apparatus being a separate process in the protective provisions). Whilst the Applicant agrees that the provision of security for an indemnity is not exceptional in a commercial agreement, it is the Applicant's position that it is unusual for security to be required in respect of a liability for damage in relation to the exercise of statutory powers. For example, there is no statutory requirement for an undertaker to provide security to support the liability for damages or loss under section 82 of the New Roads and Street Works Act 1991.</p> <p>The Applicant refers to paragraph 18 of DCLG's Guidance related to procedures for the compulsory acquisition of land (December 2013) and notes that the purpose of the Funding Statement [APP-009] is to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made. It is not intended to demonstrate how the Applicant will fund any damage or loss caused to third party apparatus during construction.</p>

Interested Party	Summary of comments	Applicant's response
	<p>3.13 The Promoter has agreed to provide insurance, however the level of insurance to be provided is still to be agreed between the parties.</p> <p>Security</p> <p>3.14 Cadent's standard protective provisions include a requirement for the Promoter to provide appropriate security (by way of parent company guarantee or bond) to cover any liability to Cadent. This principle is commonplace, as security provisions ensure that the indemnity provisions are meaningful, and that the Promoter is in a financial position to deliver on any liability arising under the indemnity provisions. This is particularly important given that the Promoter is an SPV and has not provided evidence of covenant strength.</p> <p>3.15 The Promoter is taking the stance that security provisions are not required on the basis that they believe that insurance alone is sufficient.</p> <p>3.16 Cadent's position is that security is also required, particularly given that: (1) the level of insurance proposed by the Promoter is not yet agreed; and (2) even if such insurance is provided, there remains the possibility that any such policy cannot be claimed against because the conditions attached thereto are not met.</p>	<p>The Applicant acknowledges that the dDCO requires security to be put in place prior to the exercise of compulsory acquisition powers. However, this is in recognition of the fact that liability to landowners arises automatically on the exercise of such powers and that such powers could be exercised in advance of the commencement of construction of the authorised development. In contrast, liability under the protective provisions only arises where damage or an interruption to service is caused as a result of construction, use or maintenance of the specified works.</p> <p>Whilst the Applicant is a SPV, the Funding Statement clearly demonstrates that it has the financial resources available to construct the authorised development (estimated to be £120M).</p> <p>The Applicant considers that provision of an indemnity and requirement to have insurance to be more than sufficient.</p> <p>The Applicant is not aware of the principle of security for the indemnity provided to statutory undertakers being considered by the Secretary of State before. In any event, the Applicant does not consider that the provision of security is necessary to satisfy the tests set out in s127 and s138 of the PA 2008. The Applicant notes that Cadent has provided no evidence to support the amount of the security it is seeking.</p> <p>Arbitration</p> <p>The Applicant notes that Cadent's preferred form of protective provisions excludes the ability for disputes to be referred to</p>

Interested Party	Summary of comments	Applicant's response
	<p>5. SUMMARY</p> <p>5.1 Cadent has consistently communicated its requirements to the Promoter since April 2019, and has negotiated in good faith to tailor its standard form protective provisions to the circumstance of this scheme. It will continue these discussions to seek to agree terms before the close of examination.</p> <p>5.2 In the event that suitably worded protective provisions cannot be agreed then the following consequences may arise from the exercise of unfettered compulsory purchase powers:</p> <p>(a) any damage to apparatus potentially has serious hazardous consequences for individuals and property located in the vicinity of the apparatus if it were to fail; and</p> <p>(b) potentially significant consequences arising from continuity of supply.</p> <p>5.3 In the event that suitably worded protective provisions are agreed, then Cadent considers this sufficient to remove any serious detriment to its undertaking. However, in the absence of suitably worded protective provisions, Cadent considers that the Secretary of State would be unable to satisfy itself that the rights can be purchased without serious detriment to the carrying on of</p>	<p>arbitration for certain matters. The Applicant considers this to be wholly unreasonable and Cadent has provided no justification as to why it should be treated differently to any other statutory undertaker or other body that is subject to arbitration under the DCO.</p> <p>Section 120 of the Planning Act 2008 prescribes what may be included in a DCO and includes those matters listed in Part 1 of Schedule 5. Paragraph 37 of Schedule 5 prescribes "<i>The submission of disputes to arbitration</i>".</p> <p>The SoS has previously considered whether a public body with statutory functions and responsibilities, Natural England, should be a party to arbitration provisions in a DCO. In respect of both the Triton Knoll Offshore Wind Farm Order 2013 and the Burbo Bank Extension Offshore Wind Farm Order 2014, Natural England submitted that it should be excluded from those provisions on the basis that the exercise of NE's statutory powers should not be subject to arbitration. In both cases, the SoS did not agree.</p> <p>At para 7.3 of the Triton Knoll decision letter the SoS states: "<i>The Panel also asked the Secretary of State to consider whether SNCBs should be removed from the provisions for arbitration covered by Article 12 of the draft Order at Appendix E (headed "Arbitration") [ER 5.11.20]. To maintain consistency with other offshore wind farms approved under the Planning Act 2008 since the close of the Panel's Examination, the Secretary of State has decided that the arbitration provisions should apply to SNCBs and has therefore modified the article in the Order accordingly.</i>"</p>

Interested Party	Summary of comments	Applicant's response
	<p>Cadent's undertaking (in accordance with section 127 of the Act).</p> <p>5.4 Cadent reserves its position to further update the Examining Authority ahead of close of examination as to whether agreement with the Promoter has been reached.</p>	<p>The outcome in Triton Knoll was noted by the ExA in its report on Burbo (as noted in para 7.45 and 7.46 of the Report): <i>"This draft article provides for the appointment of an arbitrator if a dispute arises in respect of any provision of the DCO. Early draft DCOs excluded NE from the operation of the provision, pursuant to an opinion provided by NE to the Triton Knoll Offshore Wind Farm Examining Authority that the exercise of its statutory powers should not be subject to arbitration and should only be adjudicated upon by the court. However, the Secretary of State in the Triton Knoll decision decided not to exclude NE from the arbitration provision in that DCO, on the basis that all issues and parties should be equally subject to arbitration on the same basis. I proposed to delete the exclusion of NE from the arbitration provision in my draft DCO. The applicant and NE did not object to this revision which was sustained in the applicant's draft DCO Version 6 [APP-099]. I am content with the current drafting of this article."</i> The SoS endorsed the ExA's conclusion in the made Order.</p> <p>Examining Authorities and the SoS have therefore already opined on this point and concluded that <i>"all issues and parties should be equally subject to arbitration on the same basis"</i>. The Applicant therefore considers that it is entirely appropriate and reasonable for Cadent to be subject to arbitration on all matters in the same manner as other statutory undertakers, statutory nature conservation bodies and other stakeholders.</p>
Network Rail Deadline 6 and 6a	In respect of the compulsory acquisition powers sought and the operation of section 127	The drafting of the option Agreement and the Deed of Easement is agreed and the parties are close to agreeing the final commercial matter. Separately, the Applicant and Network Rail have agreed

Interested Party	Summary of comments	Applicant's response
Submissions	<p>The Plots are operational railway land and Network Rail does not consent to property rights in relation to such land being compulsorily purchased as this could jeopardise the safety and operational efficiency of the railway. Network Rail does not have any other land available to it which could be used to avoid such serious detriment given that it has an existing operational railway line running across the Plots and such line cannot be moved.</p> <p>Discussions are ongoing with the Applicant in relation to securing the following documents in an agreed form:</p> <ul style="list-style-type: none"> (i) Protective Provisions to ensure that compulsory purchase powers are not exercised against Network Rail (it is acknowledged that the Applicant has included a short form of NR protective provisions in DCO Draft 4 and amendments to these are being discussed with the Applicant); and (ii) Property agreements in the form of an Option for an Easement, draft Easement and Deed of Variation to the existing Easement. <p>It is hoped that these documents can be agreed to enable Network Rail to withdraw its objection. However, if the documents cannot be agreed then Network Rail will maintain its objection. In conclusion, in relation to the tests set out in section 127 PA 2008:</p> <ul style="list-style-type: none"> • the land comprised in the Plots was acquired by 	<p>the Protective Provisions to be included within the dDCO and these have been incorporated into the dDCO submitted at Deadline 7. On this basis the Applicant is confident that Network Rail will withdraw its objection to the DCO. As the protective provisions are agreed, the Applicant considers that the provisions of sections 127 and 138 are satisfied in respect of Network Rail's land and apparatus.</p>

Interested Party	Summary of comments	Applicant's response
	<p>Network Rail for the purposes of their undertaking; and</p> <ul style="list-style-type: none"> • Network Rail has submitted a relevant representation and written representation in relation to the application for the Order granting development consent and its objection has not yet been withdrawn; and • The use of compulsory acquisition powers to acquire new rights and extinguish existing (including the acquisition of rights to "...alter, remove, refurbish, reconstruct, replace..."the existing underground gas pipeline and other equipment) cannot be done without serious detriment to the carrying out of Network Rail's undertaking; and • any detriment cannot be made good by Network Rail using other land belong to, or available for, acquisition by them. 	
Air Products Deadline 6 Submissions	Confirmation of withdrawal of objection.	The Applicant acknowledges and welcomes Air Product's withdrawal of its objection.
Centrica Deadline 6a Submission	Confirmation of withdrawal of objection provided agreed protective provisions included in final DCO.	The Applicant has included the agreed protective provisions in the dDCO submitted at Deadline 5 and has not amended these. On that basis the Applicant considers Centrica's objection is withdrawn.
Environment Agency Deadline 6a	Confirmation that Environmental Permit for Project has been issued.	The Applicant acknowledges and welcomes the Environment Agency's confirmation.

Interested Party	Summary of comments	Applicant's response
Submission		

Table 2.2 – The Applicant's response to P66

P66's Submission	Applicant's response
<p>P66's Deadline 6 Submission</p> <p>Introduction</p> <p>1.1 These submissions comprise the comments of Phillips 66 Limited ("P66") to the Examining Authority ("ExA") in respect of VPI Immingham B's application for the VPI Immingham OCGT DCO, reference EN010097, at Deadline 6 on 2 January 2020.</p> <p>1.2 In particular, these comments are made on the dDCO submitted by the Applicant at D5 [REP5-003].</p> <p>1.3 All terms used within this document are as defined in the Applicant's Application. Documents, and P66's previous submissions, unless otherwise stated.</p>	n/a
<p>"Old" Protective Provisions - Hydrocarbon Pipelines Crossing (Plot 17)</p> <p>2.1 P66 sought protective provisions within its Written Representation [REP2-024] at D2. These have been referred to as the "old" protective</p>	The Applicant welcomes confirmation from P66 that it is content with the drafting of the "old" protective provisions in Part 4 of Schedule 9 to the dDCO. The final form of the "old" protective has been included in the dDCO subject to the minor amendments

P66's Submission	Applicant's response
<p>provisions. They relate to the protection of 3 hydrocarbon pipelines operated by P66 within the Order Limits and over which the Applicant proposes crossing works for the service connections (gas, electricity, and other utilities) of its proposed OCGT plant. Those pipelines are situated within plot 17 of the Land Plans.</p> <p>2.2 An amended version of those provisions were included by the Applicant in its dDCO at D3 [REP3-004].</p> <p>2.3 P66 addressed the outstanding issues with those amended provisions at the first DCO ISH and subsequently in its D4 submissions at paragraphs 2.13 and 2.14 [REP4-018].</p> <p>2.4 The Applicant's latest amendments to the dDCO (as shown in the comparison version [REP5-004]) now achieve the effect sought by P66 at D2.</p> <p>2.5 P66 is therefore now content with the drafting of paragraphs 36 to 50 of Part 4 of Schedule 9 to the dDCO [REP5-003].</p> <p>2.6 Notwithstanding what is said above in respect of the old protective provisions, P66 continues to object to the principle of compulsory acquisition of the rights necessary for these works to be carried out. These rights are available (subject to agreement of appropriate commercial terms) to the Applicant on a voluntary basis, and the compulsory acquisition of such rights is not therefore capable of meeting the test under s.122 of the Planning Act 2008.</p>	<p>proposed by the Applicant in its Deadline 6a response (see below).</p> <p>With respect to the principle of the inclusion of compulsory acquisition rights in the dDCO and compliance with the test under s.122 of the Planning Act, the ExA is directed to the Applicant's submissions at Page 13 – 14 of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p>
<p>"New" Protective Provisions - Creating New Rights in the Existing Gas Pipeline Site (Plots 33, 39 to 40, 42 to 58) and Existing VPI</p>	<p>With respect to the principle and adequacy of relying on protective provisions to safeguard PP6's interests, the ExA is directed to the</p>

P66's Submission	Applicant's response
<p>CHP Site (Plots 7 to 16, 18 to 32, 34 to 38)</p> <p>3.1 These are the protective provisions offered by the Applicant at D4 [See Appendix 1 of REP4-007] and relate to the manner in which the Applicant may exercise the "specified rights" (i.e. those rights if proposes to acquire by compulsion over P66's Land at the HOR). The relevant provisions of the Applicant's latest dDCO are paragraphs 51 to 82 of Part 4 of Schedule 9 to the dDCO [REP5-003].</p> <p>3.2 P66 has previously addressed the ExA on its concerns with the principle of relying on protective provisions to recreate a package of existing rights and liabilities affecting the use of land (i.e. a lease) [REP5-009], which is novel and without precedent. These comments on the detail of the new protective provisions should be read in conjunction with P66's earlier comments opposing the principle of their use for the purpose proposed.</p> <p>3.3 The following comments are made without prejudice to P66's submissions that the rights of compulsory acquisition over its land should not be authorised. If despite those submissions, the SoS is minded to authorise such acquisitions, the following matters comprise the minimum safeguards which must be secured by the proposed protective provisions, however they would remain inadequate to meet P66's reasonable needs.</p> <p>Contamination indemnity (paragraph 70)</p> <p>3.4 The Applicant's proposed indemnity in respect of contamination (paragraph 70) limits the scope of the liability to the HOR Land. That compares to the position under the Existing Arrangements where the</p>	<p>Applicant's Response to Phillips 66 Limited's Deadline 5 Submission (Document 7.25).</p> <p>The Applicant has considered each of the amendments to the protective provisions proposed by P66 in preparing the final dDCO which is also submitted at Deadline 7 (Document Ref. 2.13).</p> <p>Contamination indemnity (paragraph 69 in D7 dDCO)</p> <p>Reference to "adjoining land" in the protective provisions is vague and effectively imposes an obligation on the undertaker to indemnify any number of unknown parties with interests within the vicinity of the Humber Oil Refinery. This is inappropriate and unnecessary given that the protective provisions are solely for the benefit of P66 (and future owners of the HOR and pipelines). The Applicant offers an indemnity in favour of P66 which applies across all of the land comprising the Humber Oil Refinery. This is sufficient to protect P66's interests.</p> <p>The Applicant has retained the requirement for P66 to give written notice to the undertaker with particulars of the basis of a claim under the land contamination indemnity. This is reasonable and necessary in order for the undertaker to assess and quantify any claim.</p> <p>The Applicant acknowledges concerns regarding the possibility of a failure to notify within seven days resulting in a claim under the land contamination indemnity being treated as invalid. Whilst there is nothing in the protective provisions which specifies that this would be the effect of not notifying the undertaker timeously, in order to</p>

P66's Submission	Applicant's response
<p>Pipeline Lease (Clause 6.31) indemnity covers losses suffered on the HOR Land (the Landlord's Land) and adjacent land not in the ownership of P66.</p> <p>3.5 To the extent that the exercise of the specified rights results in contamination being caused, the Applicant's liability should not be limited in its spatial extent in the manner proposed.</p> <p>3.6 Since its first draft of the new protective provisions at D4, the Applicant has also introduced further controls (paragraphs 70(2) and 70(3)) on the scope of this indemnity. They have the effect of requiring P66 to give notice of any claim it may have against the Applicant as soon as reasonably practicable and in any case within seven days. If that notice provision is not complied with, the indemnity will not be effective.</p> <p>3.7 This limitation on the effect of the indemnity is unacceptable. It places an unnecessary restriction on the protections being offered by the Applicant. Imposing a seven day time limit is disproportionate and imposes an unnecessary administrative burden on P66, with the risk of an unfair outcome. It was also clearly not felt necessary for such provisions to be included at D4. These new controls (paragraphs 70(2) and 70(3)) should be removed.</p> <p>Terms and conditions and scope of "specified works" (paragraph 35)</p> <p>3.8 Schedule 3 of the Pipeline Lease contains a series of detailed controls on the manner in which the Applicant's sister company is to operate within the site of the Existing Gas Pipeline. These controls are</p>	<p>remove any uncertainty, the Applicant has deleted reference to the 7 day period. It has retained a general requirement to notify the undertaker as soon as reasonably practicable. It is important that P66 is under a duty to inform the undertaker of land contamination timeously in order that the undertaker has an opportunity to mitigate costs.</p> <p>Terms and Conditions</p> <p>As has been acknowledged in P66's Deadline 6 submission, the Applicant has now replicated the "terms and conditions" in Schedule 3 of the Pipeline Lease. Subject to specific changes noted in this response and shown in the comparison version of the D7 dDCO, the Applicant has incorporated the "terms and conditions" in the form proposed by P66 at Annex 3 of its D6a submission.</p> <p>The Applicant has accepted the revised definition of "specified work" which is incorporated in the D7 dDCO.</p> <p>Emergency access (paragraph 72 in D7 dDCO)</p> <p>The emergency access provision is, by definition, restricted to use where there is an "emergency", which is in turn defined in Article 2 of the dDCO:</p> <p><i>"means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether</i></p>

P66's Submission	Applicant's response
<p>not reproduced in the Applicant's new protective provisions, and relate to a wide range of matters governing the detailed manner in which access and works on the site are to be carried out.</p> <p>3.9 What the Applicant appears to have done is to instead propose a method by which, under paragraphs 56 to 58, it provides details of "specified works" to P66 in advance for its approval. Under paragraph 57 P66 can impose reasonable conditions on its approval of such works.</p> <p>3.10 As a minimum, what must be amended in the drafting is the definition of "specified works". Under current drafting that is any works which "may have an effect on the operation, maintenance, abandonment of or access to any part of the HOR". There is no means by which the scope of what does or does not comprise a specified work can be tested or clarified. To remove any ambiguity as to how the measures will be applied, and because any access by the Applicant to the land it seeks to acquire rights over compulsorily may effect the operation of the HOR, that definition of "specified works" should be amended so that it reads as follows:</p> <p><i>"specified work" means any work carried out pursuant to the specified rights.</i></p> <p>Emergency access (paragraph 74)</p> <p>3.11 Another problem which is created by the Applicant's proposed omission of standing terms and conditions which apply to its access to the HOR land is evident in its new proposal for emergency access</p>	<p><i>individuals, classes or generally as the case may be) of taking that action;"</i></p> <p>The Applicant has retained the emergency access provision in order to specifically provide the above situations arising and noting that the clause specifies that the undertaker must:</p> <ul style="list-style-type: none"> • notify P66 as soon as reasonably practicable of the emergency; • comply with its obligations and duties under Part 4 of Schedule 9 as soon as reasonably practicable. <p>The Applicant notes that similar provisions have been accepted by the Secretary of State on other projects (for example see the protective provisions in favour of electricity, gas, water and sewerage undertakers in Part 1 of Schedule 12 of The Eggborough Gas Fired Generating Station Order 2018).</p> <p><i>Specified rights and specified assets (paragraph 35 in D7 dDCO)</i></p> <p>The definitions of "HOR land" and related references in the protective provisions have been deleted and replaced by the new definition of "P66 land" (as proposed by P66 in the changes to the dDCO submitted at D6a).</p> <p>The definition of "HOR" has been retained as a general definition of the Humber Oil Refinery. The definition does not specify an area of land and therefore allows related protections under Part 4 of</p>

P66's Submission	Applicant's response
<p>being permitted without any controls on such access (paragraph 74).</p> <p>3.12 This is unacceptable to P66, and disproportionate. The Applicant is in a position where it is able to specify what those controls should be, but it refuses to do so. This paragraph 74 should be deleted.</p> <p>Specified rights and specified assets (paragraph 35)</p> <p>3.13 The Applicant's proposed use of terms to refer to the spatial extent of the protective provisions is inadequate.</p> <p>3.14 Under the proposed drafting the "specified rights" are those granted under the DCO in respect of the "HOR Land". That those rights affect the HOR Land is therefore an essential pre-condition of the protective provisions applying.</p> <p>3.15 The HOR Land in turn is defined as land which forms part of the HOR, being the Humber Oil Refinery owned and operated by P66.</p> <p>3.16 The operational HOR does not currently include the Existing VPI CHP Site. It is a separate site operated by VPI, in respect of which P66 retains the freehold reversion.</p> <p>3.17 On the Applicant's own drafting therefore the protective provisions would not extend to protect P66's interests in the Existing VPI CHP Site. That is despite a clear indication that the intention is that the provisions should extend to that land.</p> <p>3.18 It is understood that this is simply a drafting error and not the Applicant's intent. However, should this point be in issue, paragraph 75 makes it clear that the diversion provisions in that part are intended to</p>	<p>Schedule 9 to be effective even if the land comprising the HOR changes in the future (for example to include the Existing VPI CHP Site or other land). The Applicant considers that this addresses P66's concerns and allows the following protective provisions to be effective</p> <ul style="list-style-type: none"> • Paragraph 55 - rights of P66 to withhold authorisation of specified work where it may significantly affect the safety of the HOR; • Paragraph 69 – the land contamination indemnity in favour of P66; • Paragraph 85 – the protection of buildings and structures within the HOR; • Paragraph 88 – purging the existing gas pipeline so far as it passes through the HOR where it is to be abandoned. <p>Lift and shift/diversion provisions (paragraphs 94 to 102 in D7 DCO)</p> <p>With respect to the principle of the obligation to pay compensation, the ExA is directed to the Applicant's submissions at Page 13 – 14 of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p> <p>Further to P66's submissions at paragraph 3.28, P66 have proposed a new paragraph in the lift and shift/diversion provisions in its D6a response, requiring that a failure to carry out the agreed diversion works within a twelve month period will trigger an automatic requirement on the undertaker to remove the existing</p>

P66's Submission	Applicant's response
<p>offer protection to P66 in respect of both the Existing Gas Pipeline Site, and the Existing VPI CHP Site.</p> <p>3.19 The means by which these drafting errors can be remedied requires both of the following changes:</p> <p>(a) First the definition of "specified rights" should omit express reference to the HOR and should instead refer to rights acquired over any land P66 has an interest in as of the date of the Order; and</p> <p>(b) Any reference to the HOR within the remainder of the drafting of the protective provisions should be omitted. It is not an area of land which ought to control the effect of the protective provisions.</p> <p><i>Lift and shift / diversion provisions (paragraphs 75 to 82)</i></p> <p>3.20 The drafting of the lift and shift provisions has been amended apparently to avoid any obligation to pay compensation. The Applicant has offered an explanation of the justification for this in its D5 submissions, and has also since amended the drafting of the protective provisions compared to those submitted at D4. The point remains that the diversion provisions as offered by the Applicant do not provide compensation in the event that planning permission cannot be obtained for P66's proposed development as a result of the presence of the Existing Gas Pipeline.</p> <p>3.21 As has been stated consistently, the drafting and enforcement of lift and shift provisions is notoriously difficult. However, their intention is clear. The owner of a piece of apparatus (e.g. a pipeline) which may impact on the future development of the underlying freehold land should</p>	<p>gas pipeline from the pipeline corridor.</p> <p>The Applicant has not accepted this drafting - it is not reasonable to impose a finite time limit on a works programme for carrying out the diversion works. This would inevitably depend on the scale of the works, and also on third parties (including P66 itself, timeously granting necessary rights) and regulatory approvals. In short, completing the works within a specified time frame may be beyond the control of the undertaker, and complete removal of the pipeline as a result of a failure to do so is not reasonable or proportionate.</p> <p>In order to address concerns regarding the timeframe for completion of diversion works, the Applicant has inserted a new obligation on the undertaker requiring that it must use its reasonable endeavours to carry out the diversion works as soon as reasonably practicable following service of notice on P66 confirming that it intends to carry out diversion works.</p> <p><i>Excluding the CHP Land (paragraph 94)</i></p> <p>The Applicant has amended the definition of the CHP land in order that it excludes any rights in land acquired under Article 21 of the Order. This removes any uncertainty over the requirement for P66 to demonstrate that it has "permanent occupation control" over the Existing VPI CHP Site.</p> <p>For the avoidance of doubt, the diversion provisions apply across the "described land" (being any land owned by P66 which has the benefit of a P66 planning permission). The diversion provisions are therefore not restricted to the Existing Gas Pipeline Site and the</p>

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<p>be responsible for either:</p> <p>(a) Moving the apparatus to enable that development to be carried out; or</p> <p>(b) Carrying out enabling or protective works to allow that development to be carried out; or</p> <p>(c) Paying compensation for resulting loss where it elects to maintain its apparatus.</p> <p>3.22 The Applicant proposes to amend the diversion provisions to remove any obligation on it to pay compensation. It does not offer an explanation as to why that approach is taken.</p> <p>3.23 Its solution is to turn the usual mechanism on its head. Instead of it being the owner of the apparatus which elects to "lift and shift" or pay compensation, on the Applicant's drafting it is the freeholder of land (i.e. P66) which can elect whether or not the apparatus owner "lifts and shifts" or carries out protective works. Any reference to compensation is omitted.</p> <p>3.24 What that solution does not address is a situation where it is impossible to divert the apparatus, or carry out protective works. The risk for P66 is that the Applicant then argues that there is no further obligation on it to move the apparatus in such a situation.</p> <p>3.25 That it may not be possible to divert apparatus is a key factor in the rationale behind the conventional drafting of lift and shift provisions. The owner of the apparatus seeks a form of land interest less than the acquisition of the freehold, in part on the basis that its apparatus will be</p>	<p>Existing VPI CHP Site (as suggested at paragraph 29 of P66 D6a submission).</p> <p><i>Identity of the beneficiary of the protective provisions</i></p> <p>The protective provisions benefit "P66" under paragraph 34. P66 is correct that the definition of "P66" is restricted to meaning Phillips 66 Limited and "any subsequent owner of the pipelines".</p> <p>The Applicant acknowledges that the protective provisions should be for the benefit not just of the owner of the pipelines but also the owner of the HOR. This is relevant to the effective operation of the "new" protective provisions related to the exercise of the specified rights and the diversion provisions. The Applicant has accordingly amended the definition in the D7 dDCO to:</p> <p><i>"means Phillips 66 Limited (Company number 00529086) and any subsequent owner of the pipelines or HOR"</i></p> <p>The Applicant disagrees that the definition of "P66" should include <i>"successors in title to any interest in land owned by P66 on the date of this Order"</i>.</p> <p>This definition would in effect mean that the protective provisions were for the benefit of any party who acquires any interest in land from P66 (irrespective of the nature of the interest acquired or the location of the land). That is neither reasonable nor necessary to ensure the ongoing protection of the pipelines and the HOR.</p>

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<p>moved (or compensation paid) should it impact on the future development of the land. In this instance the Applicant refuses to countenance the industry-standard approach, and instead seeks to place all future risk around the ability to develop land around the constraint of the Existing Pipeline onto P66 as landowner.</p> <p>3.26 This is unacceptable, and an illustration of the submission made from the outset of this examination on behalf of P66 that unilaterally imposing complex landlord and tenant provisions, such as lift and shift provisions, through a public law statutory instrument is an inappropriate use of the SoS's powers in this regard. The Applicant has continually failed to adequately address this issue.</p> <p>3.27 The Applicant's fall-back argument is that any issue with the diversion provisions becomes a matter of compensation for P66 on the grant of the specified rights. Clearly the Applicant accepts it is necessary to recreate the diversion provisions in order to avoid a disproportionate impact on P66's ongoing operations at the HOR. However, the problem for the Applicant its attempt to do so simply illustrates the inadequacies of a statutory instrument to recreate what ought to form part of private treaty negotiations (i.e. effective diversion provisions).</p> <p>3.28 If, despite these submissions, the drafting suggested by the Applicant is to be used by the SoS in any DCO, it must include an additional provision which covers the scenario where it is not possible to divert the apparatus, or carry out protective works. In such circumstances the drafting should require the Applicant to remove its apparatus from the relevant part of the Order Land, so as to prevent interference with future development, or to pay compensation for the</p>	

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<p>loss occasioned by the sterilisation of future development.</p> <p><i>Excluding the CHP Land (paragraph 75)</i></p> <p>3.29 A further problem faced by the Applicant is that it seeks to offer drafting for the protection of P66 in respect of the diversion provisions which applies to both the Existing Gas Pipeline Site, and the Existing VPI CHP Site.</p> <p>3.30 It therefore offers paragraph 75 which provides that the diversion provisions do not apply until P66 occupies (<i>"has permanent occupational control"</i>) the CHP land (the Existing VPI CHP Site).</p> <p>3.31 When doing so, the Applicant presumably has in mind the existing terms of the lease for that land which expires in 2047, which makes sense of the drafting. On expiry of a lease the land returns unencumbered to the reversionary freeholder.</p> <p>3.32 However, in proposing this drafting the Applicant overlooks the permanent rights that it proposes to acquire over that same land by virtue of Schedule 6 to the DCO. Those include the rights to <i>"install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace and improve"</i> various over ground services across that site including a gas pipeline with a nominal internal diameter of up to 600mm, an electrical connection of 400 kilovolts and various other services.</p> <p>3.33 Those indefinite and unlimited rights acquired over the Existing VPI CHP Site mean that there must at least be a question whether P66 will ever be capable of showing that it has <i>"permanent occupational control"</i> of the Existing VPI CHP Site in order to satisfy the precondition</p>	

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<p>of paragraph 75.</p> <p>3.34 Paragraph 75 should be deleted.</p> <p><i>Identity of the beneficiary of the protective provisions</i></p> <p>3.35 The Applicant accepts that it ought to be P66, and its successors in title, which benefit from the protective provisions. Its definition of "P66" has been amended to include reference to future owners of the pipelines. This is correct: it is the purpose to which the HOR and its associated assets is put which is the matter to which the protective provisions, rather than P66 solely in its capacity as the current owner and operator of those assets.</p> <p>3.36 Unfortunately, the Applicant has not considered its terms. "Pipelines" is defined to mean the 3 hydrocarbon pipelines crossing the Order Limits. What it does not include, is the Existing Gas Pipeline or the Existing VPI CHP Site. That is problematic as the "new" protective provisions are aimed at protecting the Existing Gas Pipeline Site and Existing VPI CHP Site.</p> <p>3.37 The definition of the beneficiary of the protective provisions should be amended to refer to the:</p> <p>(a) Owners or operators from time to time of the Existing Gas Pipeline Site and Existing VPI CHP Site; and</p> <p>(b) Owners or operators from time to time of the 3 hydrocarbon pipelines.</p>	

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<p>P66's Deadline 6a Submission</p> <p>Introduction</p> <p>1.1 These submissions comprise the case of Phillips 66 Limited ("P66") to the Examining Authority ("ExA") in respect of VPI Immingham B's application for the VPI Immingham OCGT DCO, reference EN010097, at Deadline 6a on 23 January 2020.</p> <p>1.2 In his Rule 17 letter of 9 January 2020 the Examining Authority requested all Statutory Undertakers with outstanding objections to compulsory acquisition to submit their cases on the tests in sections 127 and 138 of the Planning Act 2008 by the new D6a. Whilst P66 is not a Statutory Undertaker, it has been treated as one throughout the course of the Examination. and it has therefore understood the Rule 17 letter to indicate that it should also submit its case on the Applicant's proposal to compulsorily acquire its land. In this case P66's comments comprise its case on whether or not the Applicant has shown that there is a compelling case in the public interest for the compulsory acquisition of P66's land.</p> <p>1.3 All terms used within this document are as defined in the Applicant's Application Documents, and P66's previous submissions, unless otherwise stated.</p>	n/a
<p>P66's Objection to Compulsory Acquisition</p> <p>2.1 P66's case is that the Applicant has failed to demonstrate that there is a compelling case in the public interest for the compulsory acquisition of P66's land. Accordingly any provisions of the dDCO which would</p>	The ExA is directed to the Applicant's Statement of Reasons (Document Reference 3.2) and the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).

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<p>authorise compulsory acquisition ought to be modified to prevent such acquisition.</p> <p>2.2 P66 does not object to the grant of DCO per se. However, if the ExA removes the powers of compulsory acquisition over P66's land, it will need to consider whether the Applicant is able to demonstrate a reasonable prospect of its scheme being delivered.</p> <p>2.3 Appendix One contains drafting amendments to the dDCO which the SoS ought to consider in the event he or she is minded to grant the dDCO, but remove powers of compulsory acquisition of P66's land.</p>	
<p>"New" Protective Provisions - Creating New Rights in the Existing Gas Pipeline Site (Plots 33, 39 to 40, 42 to 58) and Existing VPI CHP Site (Plots 7 to 16, 18 to 32, 34 to 38)</p> <p>3.1 These are the protective provisions offered by the Applicant to overcome P66's objection to the compulsory acquisition of unfettered rights over the HOR. It is these "new" protective provisions which would control those rights sought by the Applicant.</p> <p>3.2 P66's case is that the rights sought by the Applicant over:</p> <p>(a) the Existing Pipeline Site (Plots 33, 39 to 40 and 42 to 58); and</p> <p>(b) the Existing VPI CHP Site (Plots 7 to 16, 18 to 32 and 34 to 38), are not justified, and do not meet the test of a compelling case in the public interest under s.122 of the Act.</p> <p>3.3 However, in the event the SoS is minded to grant those rights to the Applicant, he or she must consider when doing so what form</p>	<p>With respect to the principle of the inclusion of compulsory acquisition rights in the dDCO and compliance with the test under s.122 of the Planning Act, the ExA is directed to the Applicant's submissions at Page 13 – 14 of the Applicant's Written Submission of Oral Case – CA Hearing 2 (Document Reference 7.19).</p> <p>The Applicant welcomes receipt of the consolidated protective provisions proposed by P66. The Applicant has based the protective provisions in Part 4 of Schedule 9 of the DCO submitted at Deadline 7 (Document Ref. 2.13) on the protective provisions proposed in Appendix Two and Three of P66's Deadline 6a submission subject to:</p> <ol style="list-style-type: none"> 1. The changes outlined in the table above in response to the P66 Deadline 6 submission; and 2. The further changes reported on below.

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<p>appropriate protective provisions ought to be in to regulate those rights.</p> <p>3.4 On the date of these submissions the Applicant has not consolidated its drafting of these “new” protective provisions. The latest version of its protective provisions can be found at paragraphs 51 to 82 of Part 4 of Schedule 9 to the dDCO [REP5-003]. But to those must now also be added the provisions offered by the Applicant at D6; to overcome objections made by P66 in its Relevant Representation. Those latest provisions are numbered 1 to 20 and appear as Appendix 2 to the Applicant's D6 submissions in response to P66's D5 submissions. The drafting appears at page 38 of the pdf of [REP6-006].</p> <p>3.5 P66 has consolidated those sets of protective provisions, and provides appended to these submissions:</p> <p>(a) Appendix Two comprises a redline comparison of P66's proposed protective provisions against the baseline drafting offered by the Applicant to date (summarised in paragraph 4.4 above); and</p> <p>(b) Appendix Three comprises a clean version of those P66 proposed protective provisions.</p> <p>3.6 This drafting offered by P66 should not be construed as agreement to the “new” protective provisions. P66 remains vigorously opposed to the compulsory acquisition of rights over its land. However, if the SoS is minded to grant the dDCO, he or she must be satisfied that the rights it grants are subject to the minimum necessary safeguards over P66's land.</p> <p>3.7 The drafting contained in the appendices to these submissions is P66's best attempt at preparing those minimum necessary safeguards.</p>	

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<p>However, for the reasons previously provided by P66 in its submissions expressing significant concerns inter alia about:</p> <p>(a) The lawfulness of seeking to recreate controls which would normally be included in a private treaty lease within protective provisions; and</p> <p>(b) The practical enforcement of these provisions which the Applicant seeks to impose on P66 on a compulsory, unilateral, basis.</p> <p>P66 submits even this drafting is not adequate to allow the rights of compulsory sought by the Applicant to be confirmed.</p>	
<p>Detailed Comments on the "New" Protective Provisions</p> <p>4.1 The rationale for the drafting amendments suggested by P66 (shown in Appendix Two) are provided in detail in its D6 submissions, and are not repeated here.</p> <p>4.2 One further drafting change been made in the preparation of these submissions is the deletion of proposed paragraph 68, which sought to impose constraints on P66's use of its land beyond those which the Applicant has expressly indicated are to be acquired in Schedule 6 to the dDCO. To the extent the Applicant seeks to prevent P66 (for example) erecting buildings or structures in certain locations within its land within the HOR, it ought to have sought those restrictions in the form of rights it seeks to acquire by compulsion. That the Applicant seeks to impose these as additional restrictions in these protective provisions is further evidence of the inappropriateness of the Applicant's proposed use of protective provisions.</p>	<p>The Applicant directs the ExA to its comments on the "new" protective provision in the table above (Response to P66 Deadline 6 Submission).</p> <p>The Applicant has retained paragraph 68 (now paragraph 66 in D7 dDCO). The obligations on P66 are entirely reasonable and imperative to protect VPI's interests in a nationally significant infrastructure project. The obligations are also aligned with reciprocal obligations on VPI under Part 4 of Schedule 9 with respect to ensuring the protection of the HOR.</p> <p>In respect of the new protective provisions, the Applicant has inserted a new definition of "VPI pipeline corridor" which is defined as the corridor of land along the existing gas pipeline within which the undertaker acquires specified rights (rights acquired under Part 5 of the Order). The previous definition of "pipeline corridor" in the new protective provisions was an error as this is defined as the corridor within which the P66 pipelines are located, and therefore is</p>

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	only applicable in respect of the old protective provisions.
<p>"Old" Protective Provisions - Hydrocarbon Pipelines Crossing (Plot 17)</p> <p>5.1 P66 and the Applicant have agreed the terms of the protective provisions which ought to be included in the dDCO for the protection of 3 hydrocarbon pipelines operated by P66 within the Order Limits and over which the Applicant proposes crossing works for the service connections (gas, electricity, and other utilities) of its proposed OCGT plant. Those pipelines are situated within plot 17 of the Land Plans.</p> <p>5.2 These have been referred to as the "old" protective provisions. They are contained at paragraphs 36 to 50 of Part 4 of Schedule 9 to the dDCO [REP5-003].</p> <p>5.3 Some minor drafting amendments are suggested to refine the operation of these provisions:</p> <p>(a) The definition of "affected asset" has been amended to ensure all possible works which may affect P66 assets are covered by the provisions.</p> <p>(b) The timings for P66 responses at paragraphs 36 and 39 have been extended.</p> <p>Having consulted with P66's technical operations teams the timings proposed would not have been practicable, and these extended periods</p>	<p>The Applicant welcomes confirmation that the "old" protective provisions are agreed.</p> <p>The Applicant responds as follows on the minor drafting points:</p> <p>(a) Definition of "affected asset" – this has been incorporated in the D7 dDCO subject to the clarification that the "potential" for apparatus to be physically affected by the relevant works will be determined based on "the reasonable opinion of P66" to provide clarity as to the test to be applied;</p> <p>(b) Changes to the timings at paragraph 36 and 39 have been extended from those contained in the dDCO submitted at Deadline 5 but shortened from those proposed by P66 in its Deadline 6a submission. The new timings have been agreed between the Applicant and P66.</p> <p>(c) The proposed deletion of the protective provision stipulating minimum clearance between the authorised development and affected asset (formerly paragraph 42) has been accepted. This has not been included in the dDCO submitted at Deadline 7.</p> <p>The Applicant and P66 have also agreed to delete the requirement for the authorised development to be carried out in accordance with the constructability notes (paragraph 53 of the dDCO submitted at Deadline 5). It was agreed that this was superfluous in the absence</p>

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<p>are therefore now suggested. These same periods are also suggested for paragraphs 54 and 57 which provide for a similar mechanism.</p> <p>(c) Following consultation with P66's technical operations team it was considered that the separation distance of the authorised development and the existing hydrocarbon pipelines was best addressed when the work details are proposed by the Applicant. Paragraph 42 has therefore been deleted.</p>	<p>of constructability notes and the other arrangements for the submission of works details. Reference to "constructability notes" in the expert determination clause has also been deleted.</p>