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VPI Immingham B Limited
VPI Immingham Power Station
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Your ref: EN010097

7 August 2020

Dear Sir/Madam,

PLANNING ACT 2008

PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR THE VPI IMMINGHAM OPEN CYCLE GAS TURBINE PLANT, SOUTH KILLINGHOLME, NORTH LINCOLNSHIRE

1. Introduction

- 1.1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 7 May 2020 of the Examining Authority (“the ExA”) – a panel comprising of a single member Rory Cridland - which conducted an examination into the application (“the Application”) submitted on 11 April 2019 by VPI Immingham B Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the VPI Immingham Open Cycle Gas Turbine (“OCGT”) plant and associated development (“the Development”).
- 1.2. The Application was accepted for examination on 9 May 2019. The examination began on 8 August 2019 and was completed on 8 February 2020.
- 1.3. The Order, as applied for, would grant development consent for the construction, operation, and maintenance of an electricity generating station comprising an OCGT power station with a gross electrical output of up to 299 megawatts (“MW”). The Development would be located on land to the north of the existing VPI Immingham Combined Heat and Power (“CHP”) Plant, Rosper Road, South Killingholme, Immingham, DN40 3DZ within the jurisdiction of North Lincolnshire Council and North East Lincolnshire Council. The Development would include:
 - The construction and operation of an open cycle gas turbine power station with a gross electrical output of up to 299MW comprising a gas turbine and turbine hall buildings; an

electrical generator; a stack; auxiliary cooling equipment or system; air intake filters; banks of finfan coolers; nitrogen oxide emissions control equipment; transformers; a switchyard, associated switch gear and ancillary equipment; gas receiving area, gas control facilities and gas reception building; storage tanks and equipment; a continuous emissions monitoring system; raw water and fire water storage tanks; water treatment facilities, buildings and basin; firefighting equipment, buildings and distribution pipework; permanent plant laydown area; auxiliary plant buildings, enclosures and structures; mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections with other works; workshop buildings and stores; electrical, control, administration and welfare buildings; and a storm water attenuation system.

- Access works to the main open cycle gas turbine Power Station site and associated works.
- A temporary construction and laydown area 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.
- Gas supply connection works comprising an underground and overground gas pipeline of up to 600 millimetres (nominal internal diameter) and approximately 800m in length for the transport of natural gas from an existing pipeline to the Power Station.
- An electrical supply connection of up to 400 kilovolts with a total length of around 300m and control systems.
- Utilities and services connections.

1.4. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website¹ is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in Chapter 5-7 of the ExA Report, and the ExA's summary of conclusions and recommendation is at Chapter 10.

2. Summary of the ExA's Report and Recommendation

2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- air quality;
- water quality, ground conditions and flooding;
- landscape and visual amenity;
- ecology;
- noise and vibration;
- cultural heritage;
- transport and traffic;
- public health and amenity;
- economic and social impacts;
- climate change;
- Habitats Regulations; and

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/vpi-immingham-ocgt/>

- compulsory acquisition.
- 2.2. For the reasons set out in the Summary of Findings and Conclusions (Chapter 10) of the ExA Report, the ExA recommended that the Order be made, as set out in Appendix C to the ExA Report [paragraph 10.4.1].

3. Summary of the Secretary of State's Decision

- 3.1. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

4. Secretary of State's Consideration of the Application

- 4.1. The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report.
- 4.2. The Secretary of State has had regard to the Local Impact Reports ("LIR") submitted by North Lincolnshire Council and North East Lincolnshire Council, environmental information as defined in Regulation 3(1) of the 2017 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act including relevant National Policy Statements ("NPSs"). In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.
- 4.3. The Secretary of State notes there were 24 Relevant Representations made in respect of the Application by statutory authorities, non-statutory authorities and businesses. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. Unless indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

Need for the Development

- 4.4. The Secretary of State notes that the Application is a 'Nationally Significant Infrastructure Project' as defined in sections 14 and 15 of the 2008 Act by virtue of being an onshore generating station with a generating capacity of greater than 50MW.
- 4.5. The Development is intended to operate as a peaking plant, providing a flexible back-up for intermittent renewable energy, and the ExA concluded that it accorded with the guidance in the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2). [5.12.13 et seq]

The Secretary of State's Conclusion

- 4.6. The Secretary of State agrees with the ExA that substantial weight should be attributed to the contribution that the Development would make towards meeting the national need demonstrated by the Overarching National Policy Statement for Energy (EN-1) and that as a peaking plant it would positively contribute towards a secure, flexible energy supply

facilitating the roll out of renewable energy, ultimately assisting with the decarbonisation of the economy in line with the UK's legal obligations in the Paris Agreement under the United Nations Framework Convention on Climate Change and the Climate Change Act 2008 (as amended).

Air Quality

- 4.7. The Applicant's air quality assessment identified potential impacts on human health and ecological receptors during construction, operation and decommissioning, including from increased particulates and deposited dust from soil and spoil movements and handling and increased NO₂ and PM₁₀, but concluded that these emissions and their impacts are not likely to be significant. The Environmental Statement ("ES") acknowledges that the operation of the Development will result in an increase in atmospheric NO_x concentrations which will increase nitrogen and acid deposition at surrounding habitats, and that some qualifying features of the Humber Estuary Special Area of Conservation ("SAC") already exceed their nitrogen and acid deposition critical load. [5.3.2 et seq] This issue is returned to in the Habitats Regulations Assessment below.
- 4.8. The air quality assessment indicated that residual impacts can be controlled through the use of mitigation in the Construction Environment Management Plan ("CEMP"). The related requirements are secured in Requirements 14 and 24 of the Order. [5.3.5 et seq]
- 4.9. No specific concerns were expressed by Interested Parties ("IPs") in relation to the Development either on its own or in combination with other developments. Natural England was satisfied that the Development is not likely to cause significant impacts on the Humber Estuary Site of Special Scientific Interest ("SSSI"), Special Protection Area ("SPA"), SAC or Ramsar site. The Environment Agency confirmed that the air quality assessment had been reviewed as part of the Environmental Permitting process and was satisfactory. The Environment Agency issued the Environmental Permit for the Development on 22 November 2019. North Lincolnshire Council and North East Lincolnshire Council confirmed in their respective Statements of Common Ground ("SoCG") that they considered there would be no unacceptable impacts upon air quality as a result of the Development. [5.3.7 et seq]
- 4.10. The ExA concluded that no significant effects on air quality are likely to arise. The ExA was satisfied that the measures secured in requirements 14 and 24 of the Order would ensure any residual effects on air quality can be suitably controlled and/or mitigated. On this basis the ExA found that the requirements of the Air Quality Directive and EN-1 will be met. [5.3.17 et seq]

The Secretary of State's Conclusion

- 4.11. The Secretary of State has considered the ExA's Report and notes that no specific concerns in relation to air quality were raised by IPs. The Secretary of State considers that, with the mitigation measures in the CEMP secured by Requirements 14 and 24 of the Order, there will not be a significant effect on air quality. Consequently, this matter does not weigh against granting consent for the Development.

Water Quality, Ground Conditions and Flooding

- 4.12. The Environment Agency and North Lincolnshire Council agreed that the assessment of surface water, flood risk and drainage is appropriate and identified appropriate mitigation. [5.4.29]

- 4.13. The Environment Agency and the Applicant have noted in their SoCG that further assessment in relation to ground water conditions will be needed if the foundations require piling into the bedrock. The Environment Agency is content with Requirement in the Order to submit a written piling and penetrative foundation design method statement to the relevant local planning authority. [5.4.34 et seq]
- 4.14. North Lincolnshire Council is satisfied with the approach to contamination set out in the ES and that any risks can be mitigated by the discharge of Requirements 12 and 20. [5.4.36]
- 4.15. The Applicant's Flood Risk Assessment ("FRA") states that the Development lies in Flood Risk area 3a. [5.4.1] The Environment Agency inspects the flood defences regularly and confirmed that the condition of the defences were either 'good' (Condition Grade 2) or 'fair' (Condition Grade 3) [Flood Risk Assessment, paragraph 4.2.12]. The 2008 Humber Flood Risk Management Strategy approach for the area of the site is "to continue to protect the area and improve the defences that protect existing development" [Flood Risk Assessment, paragraph 4.2.15]. The Applicant noted that any tidal flooding as a result of climate change would be beyond the lifetime of the Development and as such would pose no risk to it. [5.4.32]
- 4.16. The North Lincolnshire Local Plan allocates the site for B1, B2 and B8 employment uses. NPS EN-1 advises that in such cases the Applicant need not apply the Sequential Test but should instead supply a sequential approach to locating development in the site. The Applicant's FRA concludes that the Development passes both the Sequential and Exception Tests, and the ExA agreed with this assessment. [5.4.11 et seq]
- 4.17. The ExA concluded that the Applicant's Flood Risk Assessment is appropriate and meets the requirements of NPS EN-1 and that sufficient mitigation is secured through Requirement 12 of the Order to guard against the risk of flooding. [5.4.38 et seq]
- 4.18. The ExA's overall conclusion was that water quality and resource issues arising from the Development have been adequately addressed and that it accords with the requirements of the Water Environment (Water Framework Directive)(England and Wales) Regulations 2017 and the Water Framework Directive. An appropriate FRA, meeting the requirements of the NPS, has been carried out and sufficient mitigation would be secured in the Order to guard against the risk of flooding. The ExA considered that this issue was neutral in the planning balance. [7.1.9]

The Secretary of State's Conclusion

- 4.19. The Secretary of State has considered the ExA's Report and the Applicant's Flood Risk Assessment. The Secretary of State agrees with the ExA that the site is an appropriate location for the Development and considers that the risk and potential impacts of flooding have been considered appropriately. The Secretary of State considers that the mitigation measures proposed for drainage and potential contamination are appropriate. The Secretary of State considers that this matter does not weigh against granting consent for the Development.

Landscape and Visual Effects

- 4.20. The ExA's Report describes the site of the Development as within an area characterised by open, low-lying, flat landscape with open views. Its immediate locality contains large scale structures, storage facilities, and oil refineries and ancillary structures (including overhead electrical cables) which combine to significantly degrade the surrounding rural landscape character. [5.5.1]

- 4.21. NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case-by-case basis according to the development, its location, and the landscape setting. NPS EN-2 notes that it is not possible to eliminate the visual impact associated with a fossil fuel generating station, and provided that the location is appropriate and the development has been designed sensitively the visibility of a fossil fuel generating station should be given limited weight. [5.5.2 et seq]
- 4.22. The ES assessed the landscape and visual effects during all phases of the Development. It identified potential temporary impacts on landscape and visual amenity during construction but noted that industrial development is characteristic of the landscape and the Development would not introduce any new, uncharacteristic landscape elements. The ES concluded that due to the existing industrial character of the site and surroundings the landscape and visual effects during construction, operation and decommissioning would not be significant, and that the cumulative and combined effect of the Development would be negligible. [5.5.4 et seq]
- 4.23. North Lincolnshire Council confirmed that the controls in Requirement 7 ensure that the Development will have no significant adverse effects resulting from light nuisance during construction or operation, but raised concerns that the Order did not require a landscaping scheme to be submitted and approved. [5.5.9 et seq] The Applicant stated that the landscaping scheme concern could be addressed as part of the Biodiversity Enhancement and Management Plan (“BEMP”) secured under Requirement 6. The ExA accepted that these measures would provide some further mitigation of visual impact at the detailed design stage but recommended that Requirement 5 of the Order should be amended to require the submission of landscaping details. [5.5.16 et seq]
- 4.24. West Lindsey District Council were concerned that the Development could affect views from Brocklesby Park including the wider setting of the historic park and garden and an Area of Great Landscape Value designated under Policy LP17 of the Central Lincolnshire Local Plan. [5.5.11] The Applicant identified a representative viewpoint but discounted it due to a lack of intervisibility. The ExA agreed with this conclusion. [5.5.14]
- 4.25. The ExA concluded that the main, lasting, visual impact of the Development would result from the emissions stack, which would be visible close-up and from further afield. However, the ExA concluded that this would be seen in the context of the existing industrial sites and observed a number of larger stacks in the near vicinity meant the proposed stack would not appear unduly prominent or out of place. [5.5.13]
- 4.26. The ExA was satisfied that the assessment of landscape and visual effects of the Development met the requirements of NPS EN-1 and was satisfied that Requirements 5 and 6 of the Order will provide further opportunities to mitigate the visual impact of the Development on its surroundings. The ExA was satisfied that the Development is unlikely to have a significant effect on landscape or visual amenity and meets the requirements of NPS EN-1 and EN-2. [5.5.18 et seq]

The Secretary of State’s Conclusion

- 4.27. The Secretary of State is satisfied that the ExA has appropriately considered all the potential landscape and visual impacts of the Development. He agrees with the conclusions reached by the ExA and considers that although there will be a limited visual impact from the erection of the stack this impact should be given limited weight. The Secretary of State agrees with the proposed amendment to Requirement 5 of the Order. He considers that there are no landscape or visual impacts arising from the Development that would justify refusal.

Ecology (see also section on Habitats Regulations Assessment at Section 5 below)

- 4.28. The site is located around 1.4 km to the west of the Humber Estuary SAC, SPA and Ramsar site, all of which support internationally important populations of wintering birds. There are also a number of SSSIs which are of national conservation value as well as local wildlife sites. [5.6.1]
- 4.29. The ES was accompanied by a Preliminary Technological Appraisal along with survey reports on great crested newts, wintering birds, breeding birds, terrestrial invertebrates, reptiles, and botany - all of which had been identified as either actually or potentially being within the zone of influence of the Development. [5.6.7]
- 4.30. The assessment identified no significant effects on ecological receptors from air quality, surface water quality, visual disturbance or noise impacts during either operation or decommissioning. However, it noted the potential for construction impacts to cause significant effects on the qualifying winter bird assemblage of the Rosper Road fields as well as potential effects on local wildlife sites and on water vole. After assessing the likely impacts, the ES concludes that the best practice construction measures secured within the CEMP mean that the effects are mostly neutral. [5.6.8]
- 4.31. The assessment recognised that the construction of the Development would result in the permanent loss of approximately 1.03 ha of Open Mosaic Habitat as well as the loss of Semi-improved Neutral Grassland. This was assessed as resulting in a moderate adverse impact, which in the absence of mitigation would result in a significant effect. [5.6.9] To address this, the Applicant proposes the reinstatement of the laydown areas on completion of the construction works, and using the south-east of the Site to replace the lost habitats, as well as pre-construction surveys for water vole and a strategy for great crested newt in the event that the species is identified on site. [5.6.10] A number of enhancement measures are also proposed, which would be secured by the BEMP secured via Requirement 6 of the Order. [5.6.11]
- 4.32. Natural England raised specific concerns in relation to the potential for noise impacts on the wintering bird assemblage of the Humber Estuary, and sought further information from the Applicant to enable a more detailed assessment of the likely effects on wintering bird populations using the functionally linked Rosper Road fields. [5.6.12]
- 4.33. Natural England also raised concerns about the potential for piling operations to impact on bird species associated with the SPA and Ramsar site. [5.6.13] Natural England and the Applicant agreed that rotary and hydraulic piling techniques would not give rise to significant effects on birds using the Rosper Road fields, but that impact piling does have the potential to cause disturbance. Following discussion during the Examination, the Applicant proposed restricting impact piling to times of the year when no wintering bird assemblage would be using the Rosper Road fields. It amended Requirement 14 to require the CEMP to provide information on any proposed piling methods, their duration and timing, and the agreement of details relating to it, and included Natural England as a consultee. Requirement 20 secures the submission and approval of a written Piling and Penetrative Foundation Design Method Statement prior to commencement of construction of the Work No.1 (the power station). [5.6.18 et seq] As a result the ExA concluded that the risks of disturbance on the Humber Estuary bird species have been adequately assessed and that the Development would not result in any significant adverse effects on the species either during construction or operation. [5.6.20]
- 4.34. North Lincolnshire Council and North East Lincolnshire Council raised no matters of ecological concern and agreed in their SoCGs that, subject to the inclusion of Requirement

6 in the Order, they considered that there would be a net gain in biodiversity as a result of the Development. [5.6.14] However, Natural England did express concerns about net biodiversity gain. Its SoCG with the Applicant acknowledged that the BEMP allows for a net gain in biodiversity and that Natural England will be afforded an opportunity to comment on the BEMP as part of the discharge of Requirement 6. The ExA noted that Natural England stated it had no further concerns in this respect. [5.6.21]

- 4.35. The ExA was satisfied that all ecological concerns raised by Interested Parties had been addressed during the Examination and that there were no outstanding issues in respect of ecology. [5.6.22] The ExA was satisfied that Requirements 6, 14 and 20 of the Order dealt adequately with Natural England's concerns and concluded that ecological and nature conservation issues have been adequately assessed and that the requirements of NPS EN-1 have been met. [5.6.23 et seq]

The Secretary of State's Consideration

- 4.36. The Secretary of State has considered the ExA's Report, submissions made during the Examination and the Applicant's ES. The Secretary of State agrees with the ExA's conclusions and considers that the Development would not cause a significant impact upon ecological features. Further consideration relating to the Humber Estuary SPA, SAC and Ramsar site is set out in section 5 below.

Noise and Vibration

- 4.37. The ExA considered the potential noise and vibration impacts of the Development against the policy in NPS EN-1, which acknowledges that development consent should not be granted unless significant adverse noise impacts on health and quality of life are avoided and other adverse impacts are mitigated and minimised. [5.7.1] NPS EN-2 sets out the specific noise considerations that apply to fossil fuel generating stations and identifies potential sources of noise and vibration. It requires that the Secretary of State should be satisfied that noise will be adequately mitigated through Requirements attached to the Order. [5.7.3]
- 4.38. The ES considered the potential noise and vibration impacts resulting from the construction, operation and decommissioning phases of the Development as well as the cumulative and combined effects of the Development with other nearby developments. [5.7.6] The assessment identified a number of potential impacts including effects due to construction activities on nearby noise sensitive receptors ("NSRs"), the potential for abnormal night-time construction traffic, and the potential for vibration impacts on surrounding buildings. It identified one NSR with the potential to be significantly impacted but concluded that standard noise control measures can be built into the detailed design or otherwise managed as part of the CEMP (secured via Requirement 14 of the Order) to ensure that construction noise is minimised. [5.7.7 et seq]
- 4.39. Natural England raised concerns about the potential for noise from the Development to impact on the wintering bird assemblage using the functionally linked fields between the Development and the Humber Estuary. [5.7.13] The ExA asked the Applicant to justify the decision not to include ecological receptors within the noise assessment. The Applicant explained that no fixed ecological receptors were identified as being susceptible to noise impact within the study area and as a result had not been included as NSRs within the assessment. [5.7.15] These potential impacts are considered in detail in the Ecology section above and the Habitats Regulations Assessment in section 5 below.

- 4.40. The ES also considered vibration impacts during construction and concluded that the identified NSR is sufficiently distant from the Development that it will not be significantly affected. Consequently, the ES proposed no additional mitigation in respect of vibration. The ExA agreed with that conclusion. [5.7.9]
- 4.41. The Applicant's noise modelling indicated that operational noise would have a negligible effect. The Applicant concluded that standard noise control measures can be built into the detailed design and consequently no additional mitigation is required. [5.7.10] The Applicant considered cumulative noise impacts and noted that the prevailing noise environment is dominated by existing industrial sources and the level of effect meets the locally agreed criterion for minor adverse effects even when based on worst-case assumptions. It concluded that the residual noise effects of the Development at the nearest NSR during construction, operation and decommissioning would be negligible. [5.7.12]
- 4.42. North Lincolnshire Council considered that operational noise from the Development has the potential to cause disturbance to local residents and requested that the restriction on operational noise included in Requirement 19 of the Order should be lowered from +5 dB above background noise levels to +3 dB. [5.7.14] The Council noted that the assessments indicate that background noise levels in the area are already high and argued that allowing an additional +5 dB would be unacceptable. The ExA noted that the background noise and ambient noise levels are already about the WHO threshold for sleep disturbance and considered that further increases may have unacceptable impacts on the identified residential NSR. Following discussions between the Applicant and North Lincolnshire Council during the Examination Requirement 19 of the Order was altered to limit operational noise to a maximum of +3 dB above background noise levels. [5.7.19 et seq]
- 4.43. The Applicant considered that noise from decommissioning activities would be comparable to those from construction and proposes to manage these through the use of a Demolition Environmental Management Plan secured under Requirement 24 of the Order. [5.7.11]
- 4.44. The ExA was satisfied that all concerns raised by IPs in relation to noise and vibration had been addressed. It considered that the assessment of noise and vibration impacts of construction, operation and decommissioning of the Development meets the requirements of NPS EN-1 and EN-2. The ExA was satisfied that the noise arising from the construction, operation and decommissioning of the Development would remain below the significance thresholds and that the inclusion in the Order of Requirements 14, 19 and 24 governing the control of noise during the construction and operation provide sufficient safeguards to ensure that adverse impacts resulting from the Development would be minimised. Consequently, the application accord with the Government's policy on noise and vibration set out in NPS EN-1, EN-2, the Noise Policy Statement for England and the NPPF. [5.7.24 et seq]

The Secretary of State's Conclusion

- 4.45. The Secretary of State has considered the ExA's report and agrees with the ExA's conclusions. The Secretary of State agrees that with the inclusion of the measures set out in the Requirements that noise and vibration impacts should be avoided. Potential noise and vibration impacts on birds are considered further in section 5 below.

Cultural Heritage

- 4.46. NPS EN-1 recognises that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impact on the historic environment. It indicates that both designated and non-designated heritage assets may be of equivalent significance and that the absence of designation should not be taken to indicate a lower

significance. It states that if the evidence before the Secretary of State indicates that a non-designated heritage asset may be affected by the Development then the heritage assets should be considered subject to the same policy considerations as those which apply to designated heritage assets. [5.8.1]

- 4.47. The Secretary of State notes Historic England made no representations in respect of the assessment or the impact of the Development on cultural heritage. [5.8.10]
- 4.48. The ES set out the Applicant's assessment of the effects of the Development on cultural heritage. It identified three Grade II listed heritage assets, the Killingholme South Low Lighthouse, Killingholme North Low Lighthouse and the Killingholme High Lighthouse, as having the potential to be impacted by the visual effects of the Development. All are approximately 1.25 km to the east of the Site and are of architectural and historic interest in their own right. The ES notes that that their significance is increased when viewed as a group. [5.8.5 et seq]
- 4.49. The ExA noted that while the Development will be visible from the Grade II listed lighthouses the new structures will be seen within the existing industrial context with large stacks, industrial buildings and associated pylons already prominent in the skyline. The ExA agreed with North Lincolnshire Council that there would be no adverse impact on the setting of these designated heritage assets. [5.8.13]
- 4.50. The Applicant also identified two non-designated heritage assets of archaeological value which will be directly impacted and are likely to suffer significant effects from the Development. The first of these is within the main OCGT site and consists of Iron Age ditches associated with the Iron Age Settlement Site located on the site of the Existing VPI CHP plant. The second is located within the temporary construction and laydown area running alongside Rosper Road and consists of an area of Romano-British settlement features preserved in situ when the neighbouring CHP plant was constructed. The construction works proposed could lead to the destruction of these features. The Applicant proposes a programme of archaeological strip, map and record for the Iron Age Ditches, and continued preservation in situ for the assets located within the construction and laydown area. Requirement 13 of the Order requires the submission of a Written Scheme of Investigation in accordance with the framework document submitted with the application. [5.8.8 et seq]
- 4.51. North Lincolnshire Council were satisfied that there would be no adverse impact on the significance of designated heritage assets or their settings. However, they were concerned to ensure that the archaeological remains located within the OCGT site were preserved and an adequate archaeological record of the site was made. It proposed including further details in the Written Scheme of Investigation to ensure that the proposed mitigation and protection measures were undertaken prior to construction work commencing. It also sought to ensure sufficient protection to safeguard the Iron Age Settlement Site and its preservation in situ. [5.8.12] Following discussions with North Lincolnshire Council, the Applicant changed the framework Written Statement of Investigation to clarify the timescales and include the provision of a Method Statement to be agreed by the council in advance of archaeological works being carried out. Requirement 14 was updated so details relating to fencing and protection in accordance with the strategy are provided as part of the CEMP. North Lincolnshire Council confirmed that this satisfactorily addressed their concerns in relation to cultural heritage. The ExA was satisfied with an updated framework Written Statement of Investigation submitted at Deadline 4. [5.8.15 et seq]
- 4.52. West Lindsey District Council noted the potential for the Development to impact on the heritage assets at Brocklesby Park, including the wider setting of the historic park and garden

and the relationship with the Pelham Pillar at Cambourne High Wood. These designated assets are located over 5 km from the site. [5.8.11] As noted in paragraph 4.24 above, there is little intervisibility between the Development and the heritage assets at Brocklesby. On this basis the ExA was satisfied that they would not be impacted by the Development. [5.8.14]

- 4.53. The ExA concluded that the Applicant had adequately assessed the significance of the heritage assets affected by the Development and that the Application meets the requirements of NPS EN-1. The ExA concluded that notwithstanding the mitigation measures there would be adverse effects, but that there would be less than substantial harm to non-designated heritage assets, but their significance could be adequately recorded. The ExA considered this harm to be less than substantial. [5.8.18]

The Secretary of State's Conclusion

- 4.54. The Secretary of State has carefully considered the ExA's Report. The Secretary of State agrees that, due to their existing industrial setting, the three Grade II lighthouses will not be adversely affected by the Development. The Secretary of State notes the conclusions of the ExA in relation to the non-designated heritage assets and agrees with the ExA's conclusion that there will be an adverse impact on non-designated heritage assets although this would be less than substantial. The Secretary of State has balanced this impact against the public benefits of the Development and agrees with the ExA's conclusion that the benefits outweigh the impacts.

Traffic and Transport

- 4.55. NPS EN-1 recognises that new energy NSIPs can result in substantial impact on the surrounding transport infrastructure. NPS EN-2 advises that new fossil fuel generating stations need to be accessible for the delivery and removal of construction materials and incorporate suitable access leading off from the main highway network. The Applicant's ES sets out the policy context and relevant guidance and considers the transport and traffic impacts of the Development during construction, operation and decommissioning. It considers the feasibility and viability of sustainable transport solutions including rail and water, in accordance with the advice set out in NPS EN-1. [5.9.1 et seq]
- 4.56. Access to the site would be via the existing access currently serving the Total Lindsey Oil Refinery site and the existing VPI Combined Heat & Power site. [5.9.8] The assessment indicates that the increase in traffic as a result of the construction works would be below 5% on all links, well below the threshold for significant impact. Effects on severance, pedestrian amenity, fear and intimidation, accidents and safety, and driver delay are considered to be negligible. The assessment concludes that there will be no impacts of significance to the surrounding highway network during construction. The Applicant has identified a number of mitigation measures during the construction phase which would help reduce the overall impact. These include identifying and communicating pedestrian and cycle routes to and from the site to contractors, providing appropriate facilities for safe storage of cycles, information on local bus connections, car sharing and other shared transport options, identify designated routes to the site for construction traffic, limiting delivery times for Heavy Goods Vehicles, providing wheel cleaning facilities, road condition surveys and erection of advance warning signs for drivers. These are secured in the Order by means of a Construction Traffic Management Plan ("CTMP") (Requirement 16) and a Construction Worker Travel Plan ("CWTP") (Requirement 17), to be approved by the Local Planning Authority in consultation with the highway authority. Framework versions for both documents were included with the application. [5.9.4 et seq]

- 4.57. Two IPs referred to traffic and transport impacts in their Relevant Representations. West Lindsey District Council requested that consideration is given to the proposed route of construction traffic to ensure that the settlements of Brocklesby and Keelby are not subjected to undue impacts through increased construction traffic. The Applicant explained that the construction traffic would approach the site using the “A” road network and in particular, the A160 and A180 and the ES demonstrated that there would be no significant impact on these roads or further afield. [5.9.10] North Lincolnshire Council were satisfied that the existing highway network and site accesses are operating within capacity, and acknowledge that whilst there will be an increase in traffic during construction they do not consider it would be excessive and that it can be accommodated in the existing highway network. [5.9.11] North Lincolnshire Council and North East Lincolnshire Council agree in their Statements of Common Ground that notwithstanding the predicted increase in traffic during the construction phase there would be no significant traffic or transport effects. [5.9.12]
- 4.58. Highways England confirmed that protective provisions have been agreed with the Applicant to protect their interest in the Strategic Road Network. These are included in Schedule 9, Part 12 of the Order. Highways England agreed in its Statement of Common Ground that the information supplied with the application demonstrates that the Development can be constructed, operated and decommissioned without significant effects on the road network in terms of capacity, functionality and safety. [5.9.14]
- 4.59. Highways England is identified as a consultee for both the CTMP and the CTWP in Requirements 16 and 17 of the Order and the ExA was satisfied that these Requirements contain suitable measures to ensure that construction traffic would be suitably managed and controlled. [5.9.15]
- 4.60. The ExA concluded that the traffic and transport assessments meet the requirements of NPS EN-1 and was satisfied that no significant traffic or transportation effects are likely to arise from the Development either alone or in combination with other developments. Requirements 16 and 17 of the Order are considered sufficient to mitigate any likely adverse effects of the Development to an acceptable level. Consequently, the requirements of NPS EN-1 in respect of traffic and transportation impact have been met. [5.9.17 et seq]

The Secretary of State’s Consideration

- 4.61. The Secretary of State has considered the ExA’s Report and notes its conclusions. He also notes the views of Highways England, North Lincolnshire Council and North East Lincolnshire Council on the likely impacts upon the road network of the Development at all stages of its lifetime. The Secretary of State is satisfied that the low level of traffic anticipated to be generated, coupled with the Requirements within the Order, mean that there will not be any unacceptable traffic and transport impacts arising from the Development.

Public Health and Amenity

- 4.62. The ExA noted that the impacts on human health arising from air quality, traffic and transport, noise and vibration, emissions to water and land contamination are considered in the ES. [5.10.3]
- 4.63. No Interested Party raised concerns in relation to public health effects. Public Health England confirmed that it had reviewed the ES and was satisfied that the methodology was acceptable and raised no areas of concern. [5.10.6 et seq]
- 4.64. NPS EN-1 recognises that energy production has the potential to impact on the health and well-being of the population. It notes that generally those aspects of energy infrastructure

which are most likely to have a significantly detrimental impact on health subject to separate regulation which will constitute effective mitigation of them. NPS EN-5 contains guidance on the assessment of the effects of Electromagnetic Fields (“EMFs”). [5.10.1 et seq]

- 4.65. The ES concluded that the Development has the potential for differential rather than whole population impacts in terms of EMFs. There were no residential receptors present within the EMF study area or anticipated to be present in the future and that no significant health effect is predicted for the general population. It identified some potential for exposure to EMFs for construction workers and operational staff: measures will be implemented to protect them from potential EMF effects associated with the existing substation and the electrical cable in accordance with the appropriate legislation and guidance. It concluded that with appropriate precautions in place no significant health effects in the medium to long-term are predicted. [5.10.4 et seq]
- 4.66. The ExA concluded that the Applicant has had adequate regard to given health impacts, that the evidence indicates no significant impacts on human health are likely to arise from the Development either alone or in combination with other developments, and that accordingly the application accords with the guidance set out in NPS EN-1 and EN-5. [5.10.8 et seq]

The Secretary of State’s Conclusion

- 4.67. The Secretary of State has considered the ExA’s Report and agrees with its conclusions. The Secretary of State is satisfied that the Development will not lead to any significant impacts upon human health.

Economic and Social Impacts

- 4.68. The ES identifies that the Development has the potential to create an estimated 150 construction jobs, of which approximately 110 are expected to be sourced from the region. It is also expected to generate approximately 15 long-term employment opportunities once operational. The ES identifies no adverse effects during the construction and operation of the Development and considers that it will have an overall positive economic effect on the area. [5.11.3 et seq]
- 4.69. North Lincolnshire Council and North East Lincolnshire Council acknowledge that the Development has the potential to support further growth of the construction and energy sectors in their respective areas. The Development fits within the overall regeneration/economic development targets of the councils. [5.11.5]
- 4.70. The Development would have little impact on the visitor economy of North Lincolnshire. It would result in an increase in vehicle movements during the construction period which may impact on journey times for local residents. There may also be some short-term amenity issues such as increased noise levels and there is potential for some negative impact on local businesses. These were anticipated to be small and limited to the 21 months estimated for construction. [5.11.6]
- 4.71. Requirement 23 of the Order secures the submission and implementation of an Employment, Skills and Training Plan which would promote employment, skills and training development opportunities for local residents during the construction and operation of the Development. [5.11.7]
- 4.72. The EXA concluded that there were no outstanding matters and was satisfied that the Applicant had had adequate regard to the socio-economic impact of the Development. The evidence indicated some moderate positive socio-economic benefits to the local economy

and the Development has the potential to support further economic development in the local area. The ExA concluded that the Development meets the requirements of NPS EN-1 in this respect. [5.11.8 et seq]

The Secretary of State's Conclusion

4.73. The Secretary of State has considered the ExA's Report and agrees with its conclusions. He notes the positive benefits of the Development and the views expressed by North Lincolnshire and North East Lincolnshire Councils that it has the potential to support further growth of the construction and energy sectors in the local area. Against these he has considered the potential negative impacts upon local residents and businesses during the construction period. On balance the Secretary of State agrees with the ExA's conclusion that there is a moderate positive socio-economic benefit from the Development.

Climate Change, Combined Heat and Power and Carbon Capture Readiness

4.74. The Secretary of State notes that no concerns were raised by IPs in respect of climate change. [5.12.7]

4.75. The Climate Change Act 2008 sets a legally binding target for the UK to reduce its net greenhouse gas emissions from 1990 levels. When the application was submitted the target was 80%. In June 2019, the UK Government altered this target to 100% by the Climate Change Act 2008 (2050 Target Amendment) Order 2019.

4.76. The ExA noted that the UK is a signatory to the Paris Agreement under the United Nations Framework Convention on Climate Change, and that this Convention provides a framework to keep global warming below 2°C, pursuing efforts to limit the temperature increase to 1.5°C. [5.12.2]

4.77. The ExA noted the statement within NPS EN-1 about the importance of securing reliable supplies of energy as the UK transitions to a low carbon economy, and that gas is the cleanest and most reliable fossil fuel and is likely to continue to be a central part of the transition to a low carbon economy. NPS EN-2 advises that climate change should be considered by the Applicant in the ES, including how the development would be resilient to higher temperatures. [5.12.3 et seq]

4.78. The ES assessed the impact on greenhouse gases and recognises that the Development would result in greenhouse gas emissions during construction and operation, noting that there will be effects no matter the level of mitigation measures implemented, but indicating that emissions during construction and operation would not be significant, particularly when considered in terms of their contribution towards the UK's carbon budgets. [5.12.5 et seq]

4.79. The ExA asked the Applicant to provide updated information on how the amended emissions target in the 2019 Order affected the assessment in the ES. The Applicant concluded that the Amendment had no effect on the assessments contained in the ES as the emissions of the Development equates to less than 1% of the total emissions under the fourth and fifth carbon budgets to 2032, and that the sixth carbon budget has not yet been published. The ExA was satisfied with this response. [5.12.10 et seq]

4.80. The ExA was satisfied that adequate consideration had been given to minimising the risks of climate change impacts, noting that the flood risk issue had been considered under the section on flooding. [5.12.12]

- 4.81. The ExA considered that the peaking nature of the Development would support the UK's transition to low carbon energy generation by positively contributing towards a secure, flexible energy supply and help meet the identified need for additional generating capacity. The small increase in greenhouse gas emissions would not be significant and was outweighed by the contribution to meeting the UK's carbon commitment and supporting the transition to a low carbon economy. [5.12.9 and 5.12.13]
- 4.82. The ExA was satisfied that the Development accords with the guidance in NPS EN-1 and EN-2 and would be in accordance with the UK's commitment under the Climate Change Act 2008 and the Paris Agreement. [5.12.14]
- 4.83. NPS EN-1 requires applicants to include CHP in the project or present evidence that its possibility has been fully explored. The Applicant has provided a report on the feasibility of operating the development of the CHP plant [APP-026]. This identified a number of theoretical heat users within a 15 km radius of the Development, but noted that the provision of CHP is not compatible with the short-term and intermittent peaking nature of the OCGT or the lack of any hot water and steam generation to provide a medium for usable heat. The report concludes that the operating system of the Development would need to change in order to allow any future CHP opportunities. The ExA accepted that CHP provision is not compatible with the short-term and intermittent peaking nature of the OCGT and considered that the Development should not be required to be constructed to be CHP ready.
- 4.84. NPS EN-1 sets a requirement that new power stations over 300 MW have to be constructed carbon capture ready ("CCR") so that carbon capture storage can be retrofitted to the plant to later date if required. The proposed generating station is limited in Schedule 1 of the Order to a gross maximum electrical output of 299 MW, so it falls below the threshold for CCR.

The Secretary of State's Conclusion

- 4.85. The Secretary of State has considered the ExA's Report and agrees with its conclusions. The Secretary of State notes that the peaking nature of the Development is not compatible with the inclusion of CHP in the scheme and that at 299MW electrical output it falls below the threshold for CCR. However, the Secretary of State considers that neither of these issues counts against the Development. The Secretary of State notes the inevitable increase in greenhouse gases arising from the Development but considers that this is outweighed by its contribution to a secure and responsive energy supply which will facilitate the roll out of increased levels of renewable energy.

Other Matters

- 4.86. The Secretary of State notes that the Ministry of Defence raised concerns about aviation safety in their Relevant Representation. The Secretary of State notes that the ExA twice questioned the Ministry of Defence seeking an articulation of their position but that no update was provided. [4.2.5 et seq] The Secretary of State also consulted the Ministry of Defence seeking an update but received no response. The Secretary of State has taken account of the findings of the ExA in this matter and, in the absence of any further information from the Ministry of Defence has concluded that any risks of aviation safety arising from the Development have been considered and dealt with appropriately in the Examination process and the subsequent further consultation. Consequently, the Secretary of State does not consider that there are any aviation safety risks which would prevent the Development from being consented and does not consider that any additional aviation safety features are required to be incorporated into the Development.

Cumulative and combined effects

- 4.87. The ES concluded there would be no significant cumulative and combined effects during construction or operation. [5.13.2] No IPs raised concerns in relation to this issue. North Lincolnshire Council and North East Lincolnshire Council agreed that all relevant planned and consented projects had been considered and the cumulative impacts are acceptable. [5.13.4 et seq]
- 4.88. The ExA was satisfied no long-term and cumulative adverse impacts were likely to arise from construction, operation and decommissioning activities, and consequently the requirements of National Policy Statement EN-1 are met. [5.13.7] The ExA considered that the planning balance was neutral. [7.1.22]

The Secretary of State's Conclusion

- 4.89. The Secretary of State has considered the ExA's Report and its conclusions. He notes that no IPs raised concerns in relation to the issue and that both North Lincolnshire and North East Lincolnshire Councils agreed that all the relevant planned and consented projects had been considered and that the cumulative impacts would be acceptable. The Secretary of State is satisfied that there will be no cumulative and combined effects arising from the Development.

5. Impacts on Natura 2000 Sites and Their Features

- 5.1. The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a Natura 2000 Site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. Consent may only be granted if the Development will not adversely affect the integrity of a European site.
- 5.2. The Applicant applied a 15km search radius for Natura 2000 sites and identified two designated sites: the Humber Estuary SPA and the Humber Estuary SAC. The Applicant also identified the Humber Estuary Wetland of International Importance (Ramsar site). Government policy requires that Ramsar sites are given the same level of protection as Natura 2000 sites. All three sites are located approximately 1.4km north-east of the Development. The Applicant identified three potential impact pathways: changes to surface water quality; changes to air quality; and noise disturbance. [6.3.1 et seq] Natural England did not raise any issues with the sites, impacts or pathways identified or indicate any omissions. [6.3.6] The potential for these impact pathways to lead to likely significant effects on the interest features of the designated sites is discussed below.

Changes to surface water quality

- 5.3. The Applicant identified potential impacts to surface water quality at the Natura 2000 sites should accidental pollution events occur which allowed contaminated water to flow through the existing drainage regime to the sites. The Applicant considered that the only project with hydrological connection with the Development was VPI Immingham Energy Park A. Natural England raised no concerns on surface water deterioration at the Humber Estuary SAC, SPA or Ramsar site. [6.4.3]

- 5.4. The Applicant considered that with the implementation of best practice mitigation measures outlined in the framework CEMP there was no potential for likely significant effects to occur. The ExA considered significant effects may occur without these surface water drainage measures and that reasonable scientific doubt existed on the Applicant's conclusion of no likely significant effect. It concluded that an Appropriate Assessment is required. [6.5.6] The Secretary of State agreed with the ExA's recommendation that the Applicant should not have taken mitigation into account at the screening stage and that without mitigation there is potential for likely significant effects alone and in-combination and that therefore an Appropriate Assessment is required.

Noise disturbance

- 5.5. The Applicant identified the potential for noise emissions from piling during construction to affect bird interest features of the Humber Estuary SPA and Ramsar site when using the nearby Rosper Road fields (which act as functionally linked habitat for feeding, roosting and/or loafing). The Secretary of State agreed with the ExA's recommendation that there is potential for likely significant effects alone and in-combination and that therefore an Appropriate Assessment is required.

Changes to air quality

- 5.6. The Applicant identified that Development operation will result in an increase in atmospheric NO_x concentrations which will result in an increase in nitrogen and acid deposition at surrounding habitats. The Applicant stated that the Development's NO_x emissions are likely to result in a direct impact pathway to the qualifying features of the Humber Estuary SAC, and an indirect impact on the qualifying features at the Humber Estuary SPA and Ramsar site as these qualifying features are themselves dependent on the Humber Estuary SAC habitat's qualifying features. The Applicant's air quality impact assessment identified that the Humber Estuary SAC is already in exceedance of its NO_x critical level and that some qualifying features are also in exceedance of their nitrogen and acid deposition critical loads.
- 5.7. The ExA considered that any increase in NO_x concentrations could worsen the NO_x impact and result in a likely significant effect upon the Humber Estuary SAC and subsequently the Humber Estuary SPA and Ramsar site. The Secretary of State agrees with the ExA's recommendation that there is potential for likely significant effects alone and in-combination and that therefore an Appropriate Assessment is required.

Appropriate Assessment (conclusions on Habitats Regulations Assessment)

Humber Estuary Special Area of Conservation

- 5.8. Likely significant effects upon the interest features of the Humber Estuary SAC were identified because of the potential for the Development, both alone and in-combination with other plans and projects, to impact site features via changes to surface water quality and changes to air quality.
- 5.9. With regard to changes to surface water quality, the ExA considered that the measures in the framework Construction Environment Management Plan would prevent surface water quality deterioration at the Natura 2000 sites and are appropriately secured in the Order. Natural England were also content that measures were appropriate. The ExA recommended that there would be no adverse effect on site integrity from the effects of the Development alone or in combination with other plans or projects. Mitigation is secured by Requirements 10 and 14 of the Order.

- 5.10. With regard to changes to air quality, process contributions from the Development would increase the NO_x concentration at the Humber Estuary SAC by just 0.5% of its critical level, half of the 1% increase suggested to be of likely significance by Environment Agency guidance and NO_x concentrations would be negligible at distances greater than 2km from the Development. The only qualifying feature within 2km of the Development is *pioneer, low-mid, mid-upper saltmarshes*. This feature is only sensitive to nitrogen deposition but is only at 75% of its critical load. The Development would only increase the nitrogen deposition at this feature by 0.01% which would not result in exceedance of its critical level. The ExA recommended that it was content that the *pioneer, low-mid, mid-upper saltmarshes* will not be significantly impacted by the Development alone and that due to the nature and location of the other plans and projects assessed, the increase in NO_x concentration and the resultant nitrogen deposition level from the Development in-combination with other projects, would not result in the exceedance of the nitrogen deposition critical load for *Pioneer, low-mid, mid-upper saltmarshes*.
- 5.11. The ExA recommended that with the Development's increases in NO_x concentrations, nitrogen deposition and acid deposition all being less than their 1% critical thresholds it was satisfied that it would not result in adverse effects on site integrity either alone or in-combination with other plans or projects. The Secretary of State agrees with the ExA's recommendation and considers that the air emissions from the Development are *de minimus* and would fall well below the point at which one might observe a potentially adverse effect on the qualifying habitats at these sites.

Humber Estuary Special Protection Area

- 5.12. With regard to the effects of changes to surface water quality and changes to air quality the ExA recommended that the reasons supporting the finding of no adverse effects on the integrity of the Humber Estuary SAC applied equally to those qualifying features in the Humber Estuary SPA which are dependent upon the affected habitat types and that therefore the effects of changes to surface water quality and changes to air quality from the Development, both alone and in combination with other plans or projects, would not result in adverse effects on the integrity of the Humber Estuary SPA . The Secretary of State agrees with the ExA's recommendation and mitigation is secured at Requirements 10 and 14 of the Order.
- 5.13. With regard to the effects of noise disturbance from construction piling to bird features, the Applicant's Piling Note and updated Statement to Inform an Appropriate Assessment concluded that by implementing standard mitigation measures in British Standard BS5228 and a seasonal restriction on piling, no discernible effect to the qualifying features using Rosper Road Fields would be likely. Natural England agreed that the disturbance risks were adequately assessed and that the Development would not result in any adverse effects on those species including on the Rosper Road fields. [6.4.9 et seq] The ExA considered that with the implementation of mitigation measures in BS5228 and seasonal piling restrictions secured in the framework Construction and Environment Management Plan there would be no adverse effects on the integrity of the Humber Estuary SPA alone or in combination with other plans and projects from piling activities during construction. The Secretary of State agrees with the ExA's recommendation and mitigation is secured at Requirements 14 and 20 of the Order.

Humber Estuary Ramsar

- 5.14. The Humber Estuary Ramsar site does not have its own conservation objectives. The Humber Estuary SAC and SPA conservation objectives have been used as a proxy. Based

on the consideration of impacts on the SAC and SPA the ExA was satisfied that the Development would not result in adverse effects to the integrity of the Ramsar site alone or in combination with other plans and projects. [6.7.20] The Secretary of State agrees with the ExA's recommendation and mitigation is secured at Requirements 10, 14 and 20 of the Order.

The Secretary of State's Conclusion

5.15. The Secretary of State has considered the ExA's Report and the environmental information submitted with the Application and during the course of the Examination. The Secretary of State is satisfied that the construction and operation of the Development will not lead to an adverse effect on the Humber Estuary SPA, Humber Estuary SAC or Humber Estuary Ramsar site.

6. Compulsory Acquisition & Temporary Possession

6.1. The Applicant is seeking powers for the Compulsory Acquisition of freehold interests and private rights and for the acquisition of temporary possession of land.

6.2. The Planning Act 2008, together with related case-law and guidance, sets out that compulsory acquisition can only be granted if certain conditions are met.

6.3. The Applicant has sought to acquire the relevant interests by private agreement. [8.6.17] However, it seeks compulsory powers to secure the necessary land and interests to enable the construction, operation and maintenance of the Development within a reasonable timeframe. Powers are also sought to impose restrictive covenants on land over which new rights are acquired in order to protect and preserve the relevant parts of the Development. [8.6.10 et seq]

6.4. The Applicant considers that given the established national need for new energy generation a 'do nothing' scenario is not appropriate. It has not considered an alternative location as the Development's proximity to the existing VPI Combined Heat and Power Plant and the proposed sharing of service connections and utilities represents an efficient approach and reduces the need for compulsory acquisition powers. The Gas Connection route was selected because it requires less third-party land. [8.6.13 et seq]

6.5. The ExA questioned the Applicant and Affected Parties in its first and second written questions, made requests for further information and updates on the parties' positions, and held two Compulsory Acquisition Hearings. [8.6.1] At the close of the Examination, seven Affected Parties had outstanding objections. [8.7.4] After considering the ExA's Report, the Secretary of State consulted those affected parties for updates on the progress of discussions. The implications of those responses are set out in the relevant sections below.

Cadent Gas Limited (Cadent)

6.6. Cadent's infrastructure is situated below ground and without suitable protective provisions it cannot be satisfied that there would not be serious detriment to its undertaking by the powers sought to use, operate and maintain the Existing Gas Pipeline. [8.8.3] The ExA considered that the rights, including the relocation, removal, alteration and replacement of the Existing Gas Pipeline, had the potential to interfere with Cadent's apparatus and their undertaking, [8.8.5] but, subject to suitable protective provisions, would not result in serious detriment to Cadent's operation. [8.8.11]

- 6.7. The parties had not agreed the wording of appropriate protective provisions at the end of the Examination and the Secretary of State requested an update which confirmed that agreement had still not been reached. The outstanding issues related to the level of insurance and security that the Applicant should provide for works to go ahead to cover the risk of an insurance claim being refused and whether Cadent should be subject to arbitration. Cadent has argued for its standard level of £50 million insurance cover, whereas the Applicant was willing to offer £25 million. The ExA recommended provisions within the DCO allowing for the agreement of acceptable insurance and the mechanism to be used if agreement could not be reached. On security to cover the risk of an insurance claim being refused, the ExA was of the view that although there was the possibility that insurance would not cover a claim, such a scenario was relatively remote and the ExA was not persuaded that it was reasonable or necessary to include such provision in the Order. The ExA considered that it was appropriate and reasonable for Cadent to be subject to arbitration. [page 141 et seq.] The Secretary of State has carefully considered the ExA's views on these outstanding issues and agrees with the ExA's approach in the recommended DCO to the insurance coverage and agrees that the provision of further security in the event of an insurance claim being refused is not necessary. The Secretary of State agrees with the ExA's recommendation that any disputes should be subject to arbitration.

Network Rail Infrastructure Limited ("Network Rail")

- 6.8. Network Rail objected on the basis that the new rights and restrictions sought to operate and use the Existing Gas Pipeline cannot be created without serious detriment to its undertaking. [8.8.13]
- 6.9. The ExA noted that VPI Immingham LLP has existing access and maintenance rights for the Existing gas Pipeline and nothing indicated any material impact on Network Rail's undertaking. [8.8.19]
- 6.10. At the close of the Examination, the related property agreement had not been completed. Network Rail's update from the additional consultation exercise was that the only outstanding matter to resolve before the Option Agreement to secure a Deed of Easement in favour of the Applicant could be completed was the value of the payment to be made. However, agreement has not been reached within the anticipated timeframe indicated by Network Rail and is still outstanding. The ExA was satisfied that there were no reasons why the rights should materially affect Network Rail's use of the land and that with the protective provisions contained in the Order would ensure that there was no serious detriment to the carrying out of Network Rail's undertaking.

Total Lindsey Oil Refinery

- 6.11. The Applicant's sister company has an option agreement to lease the Power Station site with other rights. These can be drawn down by other parties including the Applicant. The Applicant seeks compulsory acquisition powers in case the freehold owner (Total Lindsey Oil Refinery) was unable or unwilling to complete the lease under the option agreement's terms. [8.6.9]
- 6.12. Total Lindsey Oil Refinery objected that the construction, use and maintenance of the Gas Connection and Existing Gas Pipeline could detrimentally impact the safe operation of their own infrastructure. [8.8.24]
- 6.13. The ExA considered there was a clear need for all of the land for Work No.1 to be subject to permanent acquisition, and without compulsory acquisition powers there was no certainty that the Development would proceed or the proposed environmental mitigation would be

realised. It was satisfied the rights sought for the operation and maintenance of the Existing Gas Pipeline were also required. [8.8.26 et seq]

- 6.14. The parties had not agreed the wording of appropriate protective provisions at the end of the Examination. Further consultation confirmed that agreement on the protective provisions and a commercial agreement for an option for the Applicant to lease the required land has not yet been reached. The ExA acknowledged the risks inherent in carrying out some of the works in close proximity to the existing infrastructure of Total Lindsey Oil Refinery. However, the ExA was of the view that the protective provisions contained in the Order would go some way to ensuring the likelihood of any damage to the existing infrastructure was minimised and there would be no material risk. On that basis the ExA found that there was a compelling case in the public interest for compulsory acquisition powers to be granted.

CLH Pipeline Systems Ltd ("CLH")

- 6.15. CLH owns and operates a high-pressure pipeline which would be affected by the construction of the power station and the utilities and services connections. The high-pressure pipeline also crosses the Existing Gas Pipeline and the Applicant seeks powers to carry out those works and also to create new rights to operate and maintain the Existing Gas Pipeline. [8.8.34].
- 6.16. CLH submitted a Written Representation at Deadline 1 stating that it would not be attending the Examination but would be continuing to negotiate during the Examination. Agreement had not been reached by the end of the Examination. The ExA noted that the protective provisions in the Order require the Applicant to submit plans to CLH for approval before any proposed works which would affect the operation or maintenance of the pipeline, and this went some way to minimising the risk of damage or interruption to CLH's pipeline or business operations. [8.8.38]. Following further consultation CLH confirmed that they have reached agreement with the Applicant in relation to protective provisions and withdrawn their objection.

Hornsea 1 Limited and the Hornsea 2 Companies

- 6.17. Hornsea 1 Limited was concerned about its electrical supply cables and apparatus connecting its offshore generating station to its onshore infrastructure. The Applicant seeks powers to create rights to operate and maintain the Existing Gas Pipeline and broad powers to suspend rights or restrictions and remove or reposition apparatus. [8.8.41 et seq]
- 6.18. The ExA concluded that with suitable protective provisions the rights sought should not materially affect Hornsea 1's existing use of the land. [8.8.45]
- 6.19. The ExA noted that the concerns of the Hornsea 2 Companies were essentially the same as those raised by Hornsea 1, and that the Applicant's response was essentially the same. It concluded that with suitable protective provision the rights sought should not materially affect the Hornsea 2 Companies' use of the land. [8.8.54 et seq]
- 6.20. The parties had not agreed the wording of appropriate protective provisions or a crossing agreement at the end of the Examination. Following the further consultation exercise both parties confirmed that they had entered into agreements and that the protective provisions submitted by the Applicant at Deadline 7 had been agreed. Provided that these protective provisions are included in the Order and that no potentially prejudicial material changes are made their respective objections are withdrawn.

Phillips 66 Limited

- 6.21. Phillips 66 Limited owns and operates the Humber Oil Refinery. The Existing Gas Pipeline runs immediately adjacent to, under and through part of the refinery. [8.8.60] Phillips 66 argued that the potential business interruption to the oil refinery, what they considered an unacceptable increase in the risk, and adverse impact on future development of the refinery outweighed the public benefits of the Applicant's Development. [8.8.64]
- 6.22. The ExA considered that the unfettered rights sought for three rights "packages" in early versions of the Order had the potential to cause business interruption and considerable damage to Phillips 66's infrastructure. However, the risks arise from rights to lay services and connections and to operate, use and maintain the Existing Gas Pipeline. Rights currently exist via a lease agreement to enable its safe use, operation and maintenance, and the ExA could see no reason in principle that similar mitigation could not be secured in the present case, or that with suitable protective provisions the laying of service connections should result in material harm. [8.8.68] The ExA was satisfied that the protective provisions in the recommended Order were adequate to limit any private loss to Phillips 66.
- 6.23. The parties had not agreed the wording of appropriate protective provisions at the end of the Examination, but an update from Phillips 66 on 22 April 2020 confirmed that protective provisions had been agreed for the hydrocarbon pipeline crossings (as included in the draft Order) but not for the existing Pipeline Site and the VPI Combined Heat and Power site. In addition, Phillips 66 were of the view that the conditions for compulsory acquisition (i.e. that attempts to acquire the land by agreement had failed) were not met because the main outstanding issue between the parties related to lender consent which the applicant had yet to obtain. Further consultation by the Secretary of State confirmed that agreements had not yet been reached. The ExA concluded that the protective provisions included in the final version of the DCO were adequate to ensure that impacts on the interests of Phillips 66 would either not arise or be significantly limited and that there was a compelling case in the public interest for the compulsory purchase powers to be granted. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusions and in relation to the protective provisions which are recommended in the draft Order.

General conclusions on compulsory acquisition

- 6.24. In each case the ExA concluded that compulsory acquisition powers were required in relation to the operation and maintenance of the Existing Gas Pipeline and the construction of the open cycle gas turbine. It concluded that private losses to the Affected Parties would be outweighed by the public benefits from the Development and that there was a compelling case in the public interest to grant the compulsory acquisition powers and that the tests set out in sections 122(2) and 122(3) of the Planning Act 2008 were satisfied.
- 6.25. Cadent, Hornsea 1, the Hornsea 2 Companies and Network Rail are statutory undertakers. In each case the ExA concluded that the tests in sections 127 and 138 of the Planning Act 2008 were satisfied. [8.8.20, 8.8.51, 8.8.58 and 8.8.20] The Secretary of State agrees and has concluded that with the inclusion of the protective provisions contained in the recommended Order the compulsory purchase powers will not cause serious detriment to the carrying on of the relevant undertaking.

Human Rights considerations

- 6.26. As far as human rights in relation to the proposals for compulsory acquisition and temporary possession of land and rights over land are concerned, the ExA is satisfied that: the

Examination ensured a fair and public hearing; any interference with human rights arising from implementation of the Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss. The Secretary of State agrees with the ExA's conclusion that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Overall Conclusion on Compulsory Acquisition

6.27. The Secretary of State is satisfied that there are no outstanding issues or reasons to refuse the Compulsory Acquisition and Temporary Possession powers as recommended by the ExA.

7. The Secretary of State's Consideration of the Planning Balance

7.1. The ExA considered there is a strong case for granting consent for the Development. Against these arguments it identified a limited adverse impact on non-designated cultural heritage assets. The ExA considered all the merits and disbenefits of the Development and concluded that the balance of those matters fell in favour of granting development consent for the Development. The Secretary of State agrees.

7.2. Because of the existence of four relevant National Policy Statements (EN-1 - Overarching National Policy Statement for Energy, EN-2 - National Policy Statement for Fossil Fuel Electricity Generating Infrastructure, EN-4 – Gas Supply Infrastructure and Gas and Oil Pipelines, and EN-5 - Electricity Networks Infrastructure), the Secretary of State is required to determine this application against section 104 of the Planning Act 2008. Section 104(2) requires the Secretary of State to have regard to:

- (a) any local impact report (within the meaning given by section 60(3)),
- (b) any matters prescribed in relation to development of the description to which the application relates, and
- (c) any other matters which the Secretary of State thinks are both important and relevant to the decision.

7.3. The Secretary of State considers that there is a strong case in favour of granting development consent for the Development. NPS EN-1 gives clear support to electricity generating nationally significant infrastructure projects which contribute to security of electricity supply and aid the roll out of renewable energy schemes is relevant and important to the consideration of the Application. This support must however be considered in the planning balance.

7.4. In addition, the Secretary of State acknowledges and adopts the substantial weight the ExA gives to the contribution to meeting the need for electricity generation demonstrated by the Overarching National Policy Statement for Energy (EN-1) and its contribution towards a secure, flexible energy supply that facilitates the roll out of renewable energy. He further notes that the ExA has identified that the Development would be consistent with the Climate Change Act 2008 (2050 Target Amendment) Order 2019 which amended the Climate Change Act 2008 to set a legally binding target of 100% below the 1990 baseline. The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State considers, therefore, that the ongoing need for the Development is established as it is in line with the national need for secure and reliable supplies of electricity as part of the transition to a low

carbon economy, and that granting the Order would not be incompatible with the amendment to the Climate Change Act 2008.

- 7.5. The Secretary of State notes that there are adverse effects identified by the ExA in respect of non-designated cultural heritage and potential short-term socio-economic impacts on residents and local businesses during the construction of the Development.
- 7.6. The Secretary of State has considered all the merits and disbenefits of the Development and concluded that, on balance, the benefits of the Development outweigh its minor negative impacts.

8. General Considerations

Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector “general equality duty” (“PSED”). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships²; pregnancy and maternity; religion and belief; and race.
- 8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination.
- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the Development.

Natural Environment and Rural Communities Act 2006

- 8.4. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.
- 8.5. The Secretary of State is of the view that the ExA’s report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

9. Other Matters

- 9.1. The Secretary of State notes that there are various other consents, licences and permits that are likely to be required to construct and operate the Development [1.8.1], and has no reason to believe that the relevant approvals would also not be forthcoming.

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Able Marine Energy Park

- 9.2. The Secretary of State notes that article 41 of the Order provides for the amendment of the Able Marine Energy Park Development Consent Order 2014 (“the Able Marine Energy Park Order”) to address overlaps between the Able Marine Energy Park Order and this Order and to ensure that works can be carried out without prohibiting or causing any adverse impacts to the other project. Schedule 13 to the Order inserts a new Part 16 into Schedule 9 to the Able Marine Energy Park Order which, together with Part 8 of Schedule 9 of the Order, regulates the overlapping operation in respect of the OCGT water connection and access between the OCGT development and Rosper Road. The new Part 16 of Schedule 9 to the Able Marine Energy Park Order also makes the exercise of powers in specified articles of the Able Marine Energy Park Order subject to the prior written consent of the Applicant and ensures cooperation between the parties.
- 9.3. The Secretary of State agrees with the ExA and the Applicant that section 120(5) provides an appropriate mechanism for a new Development Consent Order to amend an existing Development Consent Order and that the provisions in article 41 and Schedule 13 are necessary and expedient as they will ensure that the proposed Development can be constructed, operated and maintained without impediment.

10. Representations Received After the Close of the Examination

- 10.1. The Secretary of State received a representation from Phillips 66 after the close of the Examination, referred to in paragraph 6.23 above, which was resubmitted in response to the Secretary of State’s further consultation. The Secretary of State has considered the matters raised in the correspondence but does not think they raise any new issues that were not considered by the ExA in its report.

11. Secretary of State’s Conclusions and Decision

- 11.1. For the reasons given in this letter, the Secretary of State considers that there is a strong case for granting development consent for VPI Immingham OCGT power station. Given the national need for the development, as set out in the relevant National Policy Statements, the Secretary of State does not believe that this is outweighed by the Development’s limited potential adverse impacts, as mitigated by the proposed terms of the Order.
- 11.2. The Secretary of State has therefore decided to accept the ExA’s recommendation to make the Order granting development consent [10.4.1] to include modifications set out below in section 12 below. In reaching this decision, the Secretary of State confirms regard has been given to the ExA’s Report, the LIRs submitted by North Lincolnshire Council and North East Lincolnshire Council, the National Policy Statements, and to all other matters which are considered important and relevant to the Secretary of State’s decision as required by section 104 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

12. Modifications to the Order by the Secretary of State

- 12.1. The Secretary of State has made the following specific modifications to the Order:
- Amendment to the definition of “maintain” to include the limitations previously within Article 4 as to materially different environmental effects in the definition itself;

- Amendment to Article 21 to provide that any powers exercised by the statutory undertaker must be with the consent of the Secretary of State, the use of compulsory purchase orders by statutory undertakers are subject to the same restrictions, liabilities and obligations as would apply under the order if that power were exercised by the undertaker;
- There have also been changes to the arbitration provisions in Article 42 to remove provisions for the referral of the Secretary of State's determination in the event an appointment as not been made within 14 days.

12.2. The Secretary of State has also made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes made in the interests of clarity and consistency, and changes to ensure that the Order has its intended effect.

13. Challenge to decision

13.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

14. Publicity for decision

14.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

14.2. Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours faithfully,

Gareth Leigh

Gareth Leigh

Head of Energy Infrastructure Planning

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/vpi-immingham-ocgt/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)