



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Immingham Open Cycle Gas Turbine Project

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Business, Energy and Industrial Strategy

Examining Authority

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7 May 2020

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OVERVIEW

File Ref: EN010097

The application, dated 11 April 2019, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 11 April 2019.

The applicant is VPI Immingham B Ltd (Co No. 10630563).

The application was accepted for examination on 9 May 2019. The examination began on 8 August 2019 and was completed on 8 February 2020.

The development proposed comprises an Open Cylinder Gas Turbine power station with a gross electricity generating capacity of up to 299 megawatts along with ancillary works including new connections to the gas and electricity networks, access, services and utilities connections and temporary construction and laydown areas.

The application also seeks powers in the Development Consent Order for the compulsory acquisition and/ or temporary possession of land and rights including the right to utilise an existing gas pipeline.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form set out in Appendix C.

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**ERRATA SHEET – Immingham Open Cycle Gas Turbine Project -
Reference EN010097**

**Examining Authority’s Report of Findings and Conclusions and
Recommendation to the Secretary of State for Business, Energy and
Industrial Strategy, dated 7 May 2020.**

**Corrections agreed by the Examining Authority prior to a decision
being made**

Paragraph	Error	Correction	
3.3.7	“project of present”	Change to “project or present”	Agreed
4.2.18	“received the”	Insert “from”	Agreed
5.4.23	“any these”	Insert “of”	Agreed
5.4.26	“IP’s”	Change to “IPs”	Agreed
5.4.33	“that that”	Delete second “that”	Agreed
5.4.41	“set out NPS”	Change to “set out in NPS”	Agreed
5.5.14	“WLCD’s”	Change to “WLDC’s”	Agreed
5.6.10	“enhancements measures”	Change to “enhancement measures”	Agreed
5.7.20	“that site”	Insert “the”	Agreed
5.10.3	“Consideration of the impacts”	Delete “Consideration of”	Agreed
5.10.4, footnote 47	“form”	Change to “from”	Agreed
5.12.7	“raided”	Change to “raised”	Agreed
7.1.9	“WEF”	Change to “WER”	Agreed
8.2.3	“between the ‘Order land’ the ‘Order limits’”	Insert “and”	Agreed
8.4.1, second bullet	“set out Schedule 6”	Insert “in”	Agreed
8.8.26	“there a”	Insert “is”	Agreed
8.8.58	“PP’s”	Change to “PPs”	Agreed
8.9.3	“DCO outweighs”	Insert “that”	Agreed
10.2.2, first bullet	“paragraph h”	Delete “h”	Agreed

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for a new gas-fired power station and associated development on land to the north of, and in the vicinity of, the VPI Immingham Power Station, Rosper Road, South Killingholme, North Lincolnshire DN40 3DZ (the Proposed Development) was submitted by VPI Immingham B Ltd (the Applicant) to the Planning Inspectorate on 11 April 2019 [[APP-003](#)] under section (s) 31 of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 9 May 2019 [[PD-003](#)] ("the Application").

1.1.2. The Proposed Development is for the construction and operation of an Open Cycle Gas Turbine (OCGT) power station with a gross electrical output of up to 299 megawatt (MW). It comprises:

- (Work No.1) an OCGT power station (the 'OCGT Power Station') with a gross capacity of up to 299MW, consisting of:
 - a gas turbine and turbine hall buildings;
 - an electrical generator;
 - a stack;
 - auxiliary cooling equipment or system;
 - gas turbine air intake filters;
 - banks of finfan coolers;
 - nitrogen oxide emissions control equipment;
 - transformers;
 - a switchyard, associated switch gear and ancillary equipment; a gas receiving area, gas control facilities and gas reception building;
 - lubricating oil, hydraulic oil and chemical storage tanks and equipment;
 - a continuous emissions monitoring system;
 - raw water and fire water storage tanks;
 - water treatment facilities, demineralised water treatment works, including storage tanks;
 - oily water treatment plant building 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 between parts of this Work No. 1 and Work Nos 4, 5 and 6;
 - workshop buildings and stores;
 - electrical, control, administration and welfare buildings; and
 - a storm water attenuation system;
- (Work No.2) access works comprising access to the main OCGT Power Station site and access to Work Nos. 3, 4, 5 and 6;

- (Work No.3) 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;
- (Work No.4) gas supply connection works comprising an underground and overground gas pipeline of up to 600 millimetres (nominal internal diameter) and approximately 800 metres (m) in length for the transport of natural gas from an existing gas pipeline (“the Existing Gas Pipeline”) to Work No. 1 (the ‘Gas Connection’);
- (Work No.5) an electrical connection of up to 400 kilovolts with a total length of around 300m and control systems (the ‘Electrical Connection’); and
- (Work No.6) utilities and services connections (the ‘Utilities and Services Connections’).

1.1.3. In addition, the application includes provision for the use of the Existing Gas Pipeline to provide fuel (natural gas) to the Proposed Development. The Existing Gas Pipeline was originally constructed in 2003 to provide fuel to the neighbouring VPI Immingham Combined Heat and Power Plant (the ‘Existing VPI CHP Plant Site’). The route of the pipeline runs from a connection point at an above ground installation (the ‘Existing AGI’) within the Existing VPI CHP Plant Site’ to a tie in point at the existing National Grid Feeder No.9 pipeline located to the west of South Killingholme.

1.1.4. The location of the Proposed Development is shown in the Location Plan [[APP-010](#)] and Land Plans, an updated version of which was submitted at Deadline 4 [[REP4-004](#)]. The site lies in the administrative county of Lincolnshire and is wholly in England.

1.1.5. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for Housing, Communities and Local Government (SoSHCLG) in the decision as to whether or not to accept the application for Examination in accordance with s55 of the PA2008 [[PD-002](#)]. It was accepted that the Proposed Development is an NSIP as it comprises an onshore gas-fired electricity generating station with a capacity of more than 50MW and associated development is within s15(2) of the PA2008, and so requires development consent in accordance with s31 of the PA2008. I am similarly satisfied that the Proposed Development meets the definition of an NSIP set out in s14(1)(a) and s15(2) of the PA2008 [[PD-003](#)].

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 24 June 2019, I was appointed as the Examining Authority (ExA) for the application under s78 and s79 of the PA2008 [[PD-004](#)].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. The persons involved in the Examination were:

- persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP; and
- Affected Persons (APs) who were affected by a compulsory acquisition (CA) and/ or temporary possession (TP) proposal made as part of the Application.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 8 August 2019 and concluded on 8 February 2020.

1.4.2. The principal components of, and events around, the Examination are summarised below.

The Preliminary Meeting

1.4.3. On 10 July 2019, I wrote to all IP's, AP's, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) [[PD-005](#)], outlining:

- the arrangements and agenda for the PM;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination timetable;
- availability of RRs and application documents; and
- my procedural decisions.

1.4.4. The PM took place on 8 August 2019 at The Royal Suite, The Humber Royal Hotel, Littlecoates Road, Grimsby, South Humberside DN34 4LX. An audio recording [[EV-001](#)] and a note of the meeting [[EV-002](#)] was published on the Planning Inspectorate's National Infrastructure website¹.

1.4.5. My procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [[PD-006](#)], dated 15 August 2019.

Key Procedural Decisions

1.4.6. All of the key procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on my consideration of the planning merits of the Proposed Development. The decisions can be obtained from the Rule 8 Letter [[PD-006](#)] and so I have not reiterated them here.

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

- 1.4.7. I wrote to IPs on 26 November 2019 [[PD-010](#)] to inform them that I did not consider it would be necessary to issue a Report on the Implications for European Sites (RIES). This decision was taken having considered the issues arising from the representations received at that date. Habitats Regulation Assessment (HRA) matters are considered further in Chapter 6 below.
- 1.4.8. I also accepted a late submission from Cadent Gas Limited which was received after Deadline 7 but before the close of the Examination [[AS-007](#)].

Site Inspections

- 1.4.9. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.10. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and/ or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.
- 1.4.11. I carried out an USI on 7 August 2019 to familiarise myself with the site and surrounding area and to support the Examination [[EV-003](#)]. I visited a number of locations and viewed the Site from up close and further afield. All locations were publicly accessible. A site note providing a procedural record of the USI can be found in the Examination Library under the above reference.
- 1.4.12. I also held an ASI on 1 October 2019 [[EV-008](#)] to familiarise myself with the Site and look at the physical features that can be seen on, or from it. This included visiting land over which CA powers are sought. The itinerary for the ASI can be found in the Examination Library under the above reference.
- 1.4.13. I have regard to the information and impressions obtained during my site inspections in all relevant sections of this report.

Hearing Processes

- 1.4.14. Hearings are held in PA2008 Examinations in two main circumstances:
- To respond to specific requests from persons who have a right to be heard - in summary terms:
 - where persons affected by CA and/ or TP proposals (APs) request a Compulsory Acquisition Hearing (CAH) to be held; and/ or
 - where IPs request to be heard at an Open Floor Hearing (OFH).
 - To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically

because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

- 1.4.15. I held a number of hearings to ensure the thorough examination of the issues raised by the Application.
- 1.4.16. Issue Specific Hearings (ISHs) under s91 of the PA2008 were held at The Ashbourne Hotel, Vicarage Lane, North Killingholme, North Lincolnshire, DN40 3JL, a location close to the application site and reasonably accessible to the majority of IPs.
- 1.4.17. ISHs were held on the subject matter of the draft Development Consent Order (dDCO) on:
- ISH1, 2 October 2019 [[EV-006](#)];
 - ISH3, 4 December 2019 [[EV-012](#)].
- 1.4.18. An ISH was held on Environmental Matters on:
- ISH2, 3 October 2019 [[EV-007](#)].
- 1.4.19. Two CAHs were held under s92 of the PA2008 at The Ashbourne Hotel, Vicarage Lane, North Killingholme, North Lincolnshire DN40 3JL on:
- CAH1, 2 October 2019 [[EV-005](#)]; and
 - CAH2, 4 December 2019 [[EV-013](#)].
- 1.4.20. All APs were provided with an opportunity to be heard. I also used these hearings to examine the Applicant's case for CA and TP more generally.
- 1.4.21. An OFH was held under s93 of the PA2008 at The Ashbourne Hotel, Vicarage Lane, North Killingholme, North Lincolnshire, DN40 3JL on the evening of 1 October 2019 [[EV-004](#)] following a request by an IP. All IPs were provided with an opportunity to be heard on any relevant subject matter that they wished to raise. However, none of the IPs present wished to raise any matters of concern and the hearing was closed.

Written Processes

- 1.4.22. Examination under the PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the [Examination Library](#) (Appendix A) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this report does not contain extensive summaries of all documents and representations, although full regard has been had to them in my conclusions and I have considered all relevant matters arising from them.
- 1.4.23. Key written sources are set out further below.

Relevant Representations

- 1.4.24. Twenty-four (24) RRs were received by the Planning Inspectorate [[RR-001 to RR-024](#)]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered and the issues they raise are dealt with in Chapters 4 to 9 below.

Written Representations and Other Examination Documents

- 1.4.25. The Applicant and IPs were provided with opportunities to:
- make written representations (WRs) (Deadline 2);
 - comment on WRs made by the Applicant and other IPs (Deadline 3);
 - summarise their oral submissions at hearings in writing (Deadlines 4 and 5); and
 - make other written submissions requested or accepted by the ExA.
- 1.4.26. I have fully considered all WRs and other examination documents. The issues that they raise are considered in Chapters 4 – 9 of this report.

Local Impact Reports

- 1.4.27. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited by, and submitted to, the ExA under s60 of the PA2008.
- 1.4.28. LIRs were received from the following local authorities:
- North Lincolnshire Council (NLC) [[REP2-033](#)]; and
 - North East Lincolnshire Council (NELC) [[REP2-040](#)]
- 1.4.29. They have been taken fully into account in all relevant Chapters of this report.

Statements of Common Ground

- 1.4.30. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them.
- 1.4.31. By the end of the Examination, the following bodies had concluded a SoCG with the Applicant:
- NLC [[REP6a-005](#)].
 - NELC [[REP2-013](#)].
 - Environment Agency (EA) [[REP2-014](#)].
 - Natural England (NE) [[REP4-011](#)].
 - Highways England Co Ltd (Highways England) [[REP2-017](#)].
 - Historic England [[REP2-018](#)].
 - Able Humber Ports Limited [[REP7-009](#)].
- 1.4.32. I have taken all of the SoCG listed above into account in all relevant Chapters of this report.

- 1.4.33. A draft SoCG was submitted between the Applicant and Hornsea 1 Limited, Optimus Wind Limited, Breesea Limited, Sonningmay Wind Limited and Soundmark Wind Limited [[REP2-020](#)]. This remained unsigned at the close of the Examination and, consequently, I have afforded it only limited weight.
- 1.4.34. Similarly, a draft SOCG was submitted at Deadline 2 between the Applicant and National Grid Gas Plc (NGG) and National Grid Electricity transmission Plc (NGET) (hereinafter together referred to as "National Grid") [[REP2-016](#)]. In response to my first set of written questions, National Grid confirmed that the draft SOCG does incorporate their position and comments on the Electricity Connection and the Gas Connection as well as the capacity at feeder number 9 [[REP2-030](#)]. I have therefore had regard to it when considering these matters.

Written Questions

- 1.4.35. I asked 2 rounds of written questions (ExQ):
- First set of written questions (ExQ1) [[PD-007](#)] and procedural decisions were set out in the Rule 8 letter [[PD-006](#)], dated 15 August 2019.
 - Second written questions (ExQ2) [[PD-008](#)] were issued on 24 October 2019.
- 1.4.36. The following requests for further information and comments under Rule 17 of the EPR were issued on:
- 24 October 2019 [[PD-009](#)] where further updates were sought on progress on CA and TP matters; and
 - 9 January 2020 [[PD-011](#)] where I invited the Applicant and all Statutory Undertakers (SUs) with objections outstanding to submit their cases on the tests in s127 and s138 of the PA2008. In addition, the Applicant was asked to provide further information on how the amended emissions target contained in the Climate Change Act 2008 (2050 Target Amendment) Order 2019 affected the assessments made in the Application.
- 1.4.37. All responses to the my ExQs have been fully considered and taken into account in all relevant Chapters of this report.

Requests to Join and Leave the Examination

- 1.4.38. There were no requests to join the Examination by persons who were not already IPs at or after the PM.
- 1.4.39. During the Examination, as a consequence of ongoing discussion with the Applicant, the following APs wrote to inform me that their issues were settled and their representations were withdrawn:
- **Air Products (BR) Limited** withdrew their representations as they had entered into a crossing agreement with the Applicant [[REP6a-009](#)].

- **Able Humber Ports Limited** withdrew their representations having agreed protective provisions (PPs) for the benefit of both themselves and the Applicant [[REP7-013](#)].
- **National Grid** withdrew their representations [[REP7-015](#)] after agreeing PPs and other commercial agreements. I consider the agreed PPs in Chapters 8 and 9 of this report.
- **Highways England** did not make a relevant representation. However, they confirmed during the Examination that they had agreed a SoCG [[REP2-017](#)] with the Applicant which set out their views on a number of matters. They also confirmed that they had no objection to the Proposed Development [[REP7-014](#)]. Transport and traffic issues arising from the Proposed Development are considered further in Chapter 5 of this report.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

- 1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.5.2. In June 2018, the Applicant submitted a scoping report to the SoSHCLG under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2263) (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion) [[APP-075](#)]. It follows that the Applicant is deemed to have notified the SoS under Regulation 8(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the Project.
- 1.5.3. In July 2018, the Planning Inspectorate provided a Scoping Opinion [[APP-076](#)]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES [[APP-029](#) _ [to APP-106](#)].
- 1.5.4. On 4 July 2019, the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of the PA2008 and Regulation 16 of the EIA Regulations had been complied with [[OD-003](#)].
- 1.5.5. Consideration is given to the adequacy of the ES and matters arising from it in Chapters 4 to 7 of this report.

1.6. HABITATS REGULATIONS ASSESSMENT

- 1.6.1. The Proposed Development is development for which a HRA report has been provided.
- 1.6.2. Consideration is given to the adequacy of the HRA report, associated information and evidence and the matters arising from it in Chapters 6 and 7 of this report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.7.1. By the end of the Examination, there were no matters subject to any separate undertakings, obligations and/ or agreements that are important or relevant considerations for the SoS for Business Energy and Industrial Strategy (SoSBEIS). All relevant considerations are addressed in this report as bearing on the Development Consent Order (DCO).
- 1.7.2. Nevertheless, at the close of the Examination, discussions were ongoing between the Applicant and a number of APs in relation to the Applicant's proposed CA and TP powers within the dDCO. The SoSBEIS may wish to seek further updates from the Applicant and the APs affected before making a decision on the Application. Further details can be found in Chapters 8 and 9 of this report.

1.8. OTHER CONSENTS

- 1.8.1. The application documentation [[APP-019](#)] and questions during this Examination have identified the following consents that the Proposed Development has obtained or must obtain, in addition to Development Consent under the PA2008. The latest position on these is recorded below:
- **An Electricity Generation Licence** under the Electricity Act 1989 will be required at the operational stage of the Proposed Development in relation to generating activities.
Regulator: The Office of Gas and Electricity Markets (OFGEM).
Position: Application to be submitted in Quarter 2, 2020.
 - **A Greenhouse Gas Permit** under the Greenhouse Gas Emissions Trading Scheme Regulations 2012 will be required for the emission of CO² from the Proposed Power Station.
Regulator: The EA.
Position: Application to be submitted prior to commissioning of the Proposed Power Station.
 - **An Environmental Permit** under the Environmental Permitting (England and Wales) Regulations 2016 is required to operate the OCGT Power Station.
Regulator: The EA.
Position: Permit issued on 22 November 2019².
 - **A Bilateral Connection Agreement** with NGET will be required for the Proposed Electrical Connection to the NGET substation.
Position: Application to be submitted Quarter 2, 2020.
 - **A Planning and Advanced Reservation of Capacity Agreement** from NGG for the reservation of gas from the National Transmission System ('NTS') may be required.
Position: NGG to advise applicant in due course.
 - **An Environmental Permit (for discharge to surface water)** under the Environmental Permitting (England and Wales) Regulations 2016 may be required for discharge of uncontaminated surface water

² EP Reference EPR/NP3005PR.

from the construction site if this lasts for more than 3 continuous months.

Regulator: The EA.

Position: The EA specify that the application should not be earlier than 3 months prior to when it is required during construction.

- **Land Drainage Consent** under s23 and s66 of the Land Drainage Act 1991 (prohibition on obstructions etc. in watercourses) from the North East Lindsey Internal Drainage Board.
Position: Application to be submitted prior to the start of construction.
- **A Pipeline Safety Notification** under Regulation 20 of the Pipeline Safety Regulations 1996 will be required in connection with the Gas Connection.
Regulator: The Health and Safety Executive (HSE).
Position: HSE must be notified a minimum of 6 months prior to commencement of the Gas Connection.
- **A Gas Safety Case** as required by Regulation 3 of the Gas Safety (Management) Regulations 1996 in connection with the Gas Connection must be prepared and submitted to HSE for approval prior to gas being conveyed.
- **A Notification of Construction Works** under the Construction (Design and Management) Regulations 2015 must be provided to HSE prior to the start of construction.
- **Construction Noise Consent** under s61 of the Control of Pollution Act 1974 may be required from NLC. If necessary, this would be applied for during the construction phase of the proposed development.
- **A Permit of Transport of Abnormal Loads** under the Road Vehicles (Authorisation of Special Types) (General) Order 2003 or the Road Traffic Act 1988 will be sought from the Vehicle Certification Agency, Highways England and local highway authorities once the number and type of abnormal loads has been established.
- **A Fire Notice** under the Regularity Reform Fire Safety Order 2005 will be required from the local fire and rescue authority. An application would be submitted prior to the start of construction.
- **Building Regulations Approval** under the Building Regulations Act 2000 will be required from NLC in respect of buildings and structures forming part of the Proposed Development. This would be sought prior to and during the construction phase.
- **A European Protected Species Licence** under the Conservation of Habitats and Species Regulations 2017 may be required from NE depending on the outcome of further surveys undertaken during pre-construction. If so, an application would be submitted prior to the start of construction.

1.8.2. In relation to the outstanding consents recorded above, I have considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, conclude that there are no apparent impediments to the implementation of the Proposed Development, should the SoSBEIS grant the Application.

1.8.3. In accordance with s83(1)(b)(i) and (ii) of the PA2008, this report sets out my findings and conclusions in respect of the application and my

recommendation to the SoSBEIS on the decision to be made on the Application.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoSBEIS' decision.
- **Chapter 4** identifies the planning issues that arose from the application and during the Examination.
- **Chapter 5** sets out my findings in relation to the planning issues identified in Chapter 4.
- **Chapter 6** considers effects on European sites and HRA.
- **Chapter 7** sets out the balance of planning considerations arising from Chapters 4, 5, and 6 in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 8** sets out my examination of CA and TP proposals.
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the DCO.
- **Chapter 10** summarises all relevant considerations and sets out my recommendation to the SoSBEIS.

1.9.2. This report is supported by the following:

- **Appendix A** – the Examination Library.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – the Recommended DCO (rDCO).
- **Annex A** – Recommended changes to the rDCO where agreements have been signed by the Applicant and Phillips 66 Limited.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

- 2.1.1. The Applicant submitted an application for development consent under the PA2008 for a gas fired OCGT power station with a gross electrical output of up to 299MW at land to the north of, and in the vicinity of, VPI Immingham Power Station, Rosper Road, South Killingholme, North Lincolnshire DN40 3DZ. The location of the Site is shown on the Location Plan [[APP-010](#)].
- 2.1.2. The application indicates [[APP-033](#)] that the Proposed Development would not run continuously but intermittently, during periods of low electricity supply or high demand. However, there is no restriction included in the dDCO and as its operation would be driven by demand, it could run for longer periods, at any time of day up to the maximum allowed under its Environmental Permit (EP).

The Proposed Development

- 2.1.3. Schedule 1 of the dDCO sets out the formal description of the elements that comprise the project. These are summarised in paragraph 1.1.2 above and shown on the Works Plans [[APP-012](#)]. Further detail can be found in Chapter 4 of the ES [[APP-033](#)].
- 2.1.4. However, all aspects of the final design have not yet been determined. This includes the provider of the turbine (and therefore the dimensions of the structures and buildings), the final stack location within the OCGT Power Station Site and which of the two Gas Connection routes proposed would form the final route of the new gas pipeline. However, those which have been determined include the selection of a single gas turbine, electricity grid and service connections and a maximum stack height.
- 2.1.5. In order to ensure a robust assessment of the likely significant environmental effects of the Proposed Development, the application presents a worst-case assessment of potential environmental effects. Wherever an element of flexibility is maintained, alternatives have been assessed and the worst-case impacts have been reported in the ES. Further details can be found in Chapter 4 of the ES [[APP-033](#)] which includes details of the maximum building and fixed design parameters. These are included in the dDCO at Schedule 12 (design parameters) and secured under Requirement 5.

Associated Development

Gas Connection

- 2.1.6. The Gas Connection is associated development and would comprise an underground or overground gas pipeline of up to 600 millimetres (nominal internal diameter) for the transport of natural gas from the Existing Gas Pipeline to the OCGT Power Station.

- 2.1.7. The Applicant is not seeking consent to carry out works on the Existing Gas Pipeline. Instead a new pipeline will be connected at the existing Above Ground Installation (AGI) which supplies gas to the Existing VPI CHP Plant.
- 2.1.8. Two gas connection routes are identified in the application. The first runs along the northern boundary of the Existing VPI CHP Plant Site to a point adjacent to the southern tip of the OCGT Power Station Site before turning south east through the central part of the Existing VPI CHP Plant Site to the Existing AGI. This route is approximately 600m in length.
- 2.1.9. The second is a route following the internal roadway of the Existing VPI CHP Plant to the east and south of the main infrastructure to the Existing AGI. This route is approximately 640m in length.
- 2.1.10. The selection of the final route is dependent on the outcome of technical discussions with VPI Immingham LLP who own and operate the Existing VPI CHP Plant and the landowner, Phillips 66. The Works Plans [[APP-012](#)] and Indicative Gas Connection Plan [[APP-015](#)] show the two potential routes for the Gas Connection and the connection locations.
- 2.1.11. Further details can be found in the Gas Connection & Pipeline Statement submitted with the application [[APP-025](#)].

Electrical Connection

- 2.1.12. The Proposed Development includes a new connection to the electricity grid to enable the export of electricity from the OCGT Power Station. It would connect to the NGET substation located within the Existing VPI CHP Plant and consist of either an overhead or below ground cable connection (or a combination of both), with a total length of approximately 300m.
- 2.1.13. The physical connection would be made at the Humber Refinery 400kV substation which is located in the northern part of the Existing VPI CHP Plant Site. Power would be exported from the NGET substation on the existing overhead transmission lines into the NGET transmission network.
- 2.1.14. The Works Plans [[APP-012](#)] and Indicative Electrical Connection Plan [[APP-016](#)] show the route for the cables (Work No. 5) and the connection locations. Further details can also be found in the Grid Connection Statement submitted with the application [[APP-024](#)].

Utilities and Services Connections

- 2.1.15. Utilities and connections for essential services would be made between the OCGT Power Station Site and the Existing VPI CHP Plant Site. These are necessary to ensure safe operation and control and include water and compressed air, electrical and control cable connections, telecoms, and fire and security systems. A water connection is also proposed between the existing water main in Rosper Road and the OCGT Power Station Site.

2.1.16. Further details can be found in the Indicative Utilities and Services Connection Plan [[APP-017](#)].

2.2. THE SITE

2.2.1. The Site is located on Rosper Road, South Killingholme, North Lincolnshire on land immediately to the north of the Existing VPI CHP Plant Site. 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 around 500m north and the Humber Oil Refinery (HOR) is located approximately 500m to the south. The villages of South Killingholme and North Killingholme are located approximately 1.4km and 1.6km away, and the town of Immingham is located approximately 1.8km to the south east. The nearest residential property comprises a single house off Marsh Lane, located approximately 650m to the east of the Site.

2.2.2. The Site comprises the following main parts - which correlate to the areas upon which the Work Nos.1 - 6 would be undertaken:

- OCGT Power Station Site (Work No.1);
- Access Site (Work No.2);
- Temporary Construction and Laydown Area (Work No.3);
- Gas Connection Site (Work No.4);
- Electrical Connection Site (Work No.5); and
- Utilities and Services Connections Site (Work No.7).

2.2.3. The Site is located entirely within the boundary of the administrative area of NLC, a unitary authority. The different parts of the Site are illustrated in the Works Plans [[APP-012](#)].

2.2.4. In addition to the Site, the application includes provision for the use of the Existing Gas Pipeline to provide fuel (gas) to the Proposed Development. The Existing Gas Pipeline runs from the Existing AGI to an existing tie in with the NG Feeder No.9 located to the west of South Killingholme.

2.2.5. The Site and the Existing Gas Pipeline together comprise the Order land for the DCO application. However, as set out in Chapter 1 above, the Applicant is not seeking consent to carry out any works to the Existing Gas Pipeline. It is included in the Order land as the Applicant is seeking to acquire rights to use, operate and maintain the Existing Gas Pipeline in order to supply fuel to the Proposed Development.

2.2.6. A more detailed description of the Site is provided in Chapter 3 of the ES [[APP-032](#)].

2.3. THE SURROUNDING AREA

2.3.1. The Site is located in an area comprising a mix of industrial and agricultural uses. The land to the east of the Site and on the other side of Rosper Road comprises agricultural fields extending approximately 1km toward the Humber Estuary. Industrial activities associated with the

storage and export of gas and oil and other port activities commence along the banks of the Estuary itself, approximately 1.4km from the Site at its closest point.

- 2.3.2. To the west of the Site is an area of land that benefits from Planning Permission granted by NLC (reference PA/2018/918) to a sister company of the Applicant for a 49.9MW output capacity gas fired power station.
- 2.3.3. The nearest urban areas are the villages of South Killingholme and North Killingholme, and the town of Immingham, all located between 1.4km and 1.8km from the Site at their closest points.
- 2.3.4. The Site is bounded to the north by the current car park and access to TLOR. To the south of the Site, beyond the Existing VPI CHP Plant Site, is an area of vacant land and a railway spur serving TLOR.

2.4. OTHER DEVELOPMENTS

- 2.4.1. The Site is located in an existing industrial area in close proximity to the existing VPI Immingham CHP Plant, the TLOR and the HOR.
- 2.4.2. In addition, there are a number of other NSIPs located nearby which have either been completed or are in the process of being implemented. Those which are likely to result in an interface with the Proposed Development are detailed below.

Able Marine Energy Park DCO

- 2.4.3. The Able Marine Energy Park Development Consent Order 2014 (the Able DCO) was made by the SoS for Transport (SoST) on 18 December 2013 and at the close of this Examination was the subject of a non-material change application. The variations sought do not affect or alter the proposed works within, or powers applying to, Rosper Road. The energy park site is located to the east and north east of the Site and comprises a facility to provide for the manufacture and transportation of offshore energy infrastructure ("the Able Development").
- 2.4.4. There are areas of overlap between the Order limits of the Able DCO and the one applied for in this application. In particular, there are three small sections of land within and immediately adjacent to Rosper Road – these are identified in Appendix 2 of the Planning Statement which accompanied the application [[APP-020](#)].
- 2.4.5. There is therefore the potential for the two Orders and the relevant powers to conflict, albeit that the sections that interact do not comprise primary parts of either development or form part of the operational land of the Able Development.
- 2.4.6. PPs have been agreed between Able and the Applicant to govern the interaction of the two projects and the powers in each DCO. The Applicant has also proposed an amendment to the Able DCO to provide similar protection to the Applicant. These provisions are included in the dDCO (at Articles 37 and 41, Part 8 of Schedule 9 and Schedule 13). As a

result, Able has withdrawn its objection [[REP7-013](#)] and agrees with the Applicant that subject to these provisions being included, both projects can be carried out simultaneously (if necessary), and then co-exist in the future [[REP7-009](#)].

- 2.4.7. The approach adopted by the Applicant to deal with these interactions is similar to that adopted in relation to the Millbrook Gas Fired Power Station Order 2019, where part of the land required for that Order overlapped with land which is the subject of the Rookery South (Resource Recovery Facility) Order 2011. For the same reasons as those set out in the [SoSBEIS' decision letter](#) on the Millbrook DCO, I consider the SoS has the necessary powers to adopt the Applicant's proposed approach.

Hornsea One

- 2.4.8. There are a number of areas of interface between the DCO applied for and the Hornsea One Offshore Windfarm Order 2014. These relate mainly to powers of CA included in the dDCO and their impact on Hornsea One's existing infrastructure. I consider these matters further in paragraph 4.2.17 and Chapters 8 and 9 below.

Hornsea Two

- 2.4.9. Similarly, there are also a number of areas of interface between the DCO applied for and Hornsea Two Offshore Windfarm Order 2016. As with Hornsea One, these relate mainly to powers of CA included in the dDCO and their impact on the future interactions between these NSIPs. I consider these matters further in paragraph 4.2.18 and Chapters 8 and 9 below.

2.5. THE APPLICATION AS EXAMINED

- 2.5.1. A number of changes were made to the application documents during the Examination, including the wording of the dDCO. These changes are intended to address my questions as well as points raised by IPs. They seek to improve the clarity of the drafting and address any omissions, discrepancies and other matters which were raised during the Examination.
- 2.5.2. The Applicant also submitted a number of revisions to the application documents as well as supplementing them with additional information, details of which can be found in the Application Guide submitted at Deadline 7 [[REP7-001](#)]. This provides a guide to all documents submitted as part of the application and was updated at each Deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination.
- 2.5.3. The dDCO clearly defines the Order limits and draws a distinction between them and the Order land. The Order limits are tightly defined to that which is shown on the Works Plans [[APP-012](#)]. In contrast, the Order land is defined more broadly to include all land which is required for, to facilitate, is incidental to or is affected by the authorised

development. This would include all land upon which all other powers sought by the Applicant would be exercised including CA of land and rights for the Gas Connection and the Electrical Connection as well as those powers affecting the Existing Gas Pipeline. The Order land is shown on the Land Plans [[REP4-004](#)].

- 2.5.4. I have remained aware throughout the Examination of the need to consider whether changes to the application documents have changed the application to a point where it became a different application and whether the SoSBEIS would have power therefore under s114 of the PA2008 to make a DCO having regard to the development consent applied for.
- 2.5.5. 'Planning Act 2008: Guidance for the Examination of applications for development consent' (March 2015), provides guidance at paragraphs 109 to 115 in relation to changing an application post Acceptance. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made.
- 2.5.6. Having considered this context throughout the Examination, it is clear that the changes to the application (primarily consisting of document updating) have not resulted in significant change to that which was applied for. The changes taken into account in reaching this conclusion are documented in the application Guide submitted at Deadline 7 [[REP7-001](#)] and in the chapters below.
- 2.5.7. It follows that the SoSBEIS has the power to make the DCO as discussed in Chapter 9 and provided in Appendix C to this report.

2.6. RELEVANT PLANNING HISTORY

- 2.6.1. The existing access roads within the northern section of the Site were developed some time ago under the terms of planning permission 2006/0506 granted by NLC in 2006 to service the TLOR.
- 2.6.2. The Existing VPI CHP Plant, sections of which fall within the boundary of the Site, was consented under s36 of the Electricity Act 1989 (as amended) in November 2000. The consent provides for the construction and operation of a combined heat and power combined cycle gas turbine generating station. It was subsequently amended in 2006 to allow the Existing VPI CHP Plant to be extended, including increasing its capacity by 470MW.
- 2.6.3. The remainder of the Site is not subject to any known planning permissions, although parts of it have been utilised for the placement of spoil associated with other development in the vicinity.
- 2.6.4. The Existing Gas Pipeline was consented under planning permissions granted by NLC (Reference: 2000/1284) and NELC (Reference: DC/893/00/IMM) in 2001 under the Town and Country Planning Act 1990 (as amended). The pipeline was then constructed in the years that followed.

- 2.6.5. As noted above, the land immediately to the west of the OCGT Power Station Site benefits from planning permission granted by NLC in 2018 (Reference: PA/2018/918) to a sister company of the Applicant for the development of a 49.9MW gas-fired power station.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

3.1.1. Chapter 5 of the ES [[APP-034](#)] provides an overview of the legislative and policy context for the Proposed Development. The application also includes a Planning Statement [[APP-020](#)], which aims to demonstrate how the Applicant has taken this into account and the extent to which the Proposed Development complies with it. Additional information on local planning policies is provided by NLC and NELC in their LIRs [[REP2-033](#) and [REP2-040](#)].

3.2. THE PLANNING ACT 2008

3.2.1. The application is for a DCO under the PA2008 for an OCGT generating station with an electrical output of up to 299MW. The components of the Proposed Development are set out in Chapter 1 of this report.

3.2.2. This application is for an NSIP as it falls within s14(1)(a) of the PA2008 and includes "the construction or extension of a generating station" with a gross electrical output in excess of 50MW, that meets the provisions set out in s15(2) of the PA2008.

3.2.3. S104 of the PA2008 applies:

"[...]in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates."

3.2.4. Section 104(3) requires the SoS to decide the application in accordance with any relevant National Policy Statements (NPS) that have effect in relation to this application, subject to certain exceptions as specified in subsections 104(4) to (8). Details of the specific NPS that apply to this project are set out in section 3.3 below.

3.2.5. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) are any relevant NPS, any LIRs, any appropriate marine policy documents, any matters prescribed in relation to the development, and any other matters the SoS considers are both relevant to the decision.

3.2.6. Section 104(3) requires the SoS to decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions in subsections (4) to (8) applies. The exceptions are that SoS is satisfied that:

- deciding the application in accordance with any relevant NPS would lead to the United Kingdom being in breach of any of its international obligations;
- deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her/ him by or under any enactment;

- deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- the adverse impact of the proposed development would outweigh its benefits; and/ or any condition prescribed for deciding an application otherwise than in accordance with the NPS is met.

3.2.7. This report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of the PA2008.

3.3. NATIONAL POLICY STATEMENTS

3.3.1. The NPS set out Government policy on different types of national infrastructure development. The NPS relevant to this application are:

- [EN-1](#): Overarching National Policy Statement for Energy;
- [EN-2](#): Fossil Fuel and Electricity Generating Infrastructure;
- [EN-4](#): Gas Supply Infrastructure and Gas and Oil Pipelines; and
- [EN-5](#): Electricity Networks Infrastructure.

3.3.2. These were produced by the Department for Energy and Climate Change (DECC), which is now the Department for Business, Energy and Industrial Strategy (BEIS). The NPS were designated by the SoS for Energy and Climate Change on 19 July 2011.

3.3.3. These four NPS form the primary policy context for the Examination. There is no relevant marine policy statement as the Proposed Development is not within, and does not affect, a marine area. The purpose and broad content of these NPS is summarised here. However, particular and subject specific consideration of policy arising from them is provided where necessary in the remainder of this report below, particularly in Chapter 5.

NPS EN-1: Overarching National Policy Statement for Energy

3.3.4. NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects and provides the primary basis for decision making by the SoS. In particular, it states that "*the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions*"³.

3.3.5. This includes fossil fuel electricity generating plants such as the Proposed Development. It also states that applications for development consent should be assessed 'on the basis that the Government has demonstrated that there is a need for those types of infrastructure'⁴. In light of this, I do not consider that the choice of technology is an issue that I should address in the Examination.

³ Paragraph 3.1.1.

⁴ Paragraph 3.1.3.

- 3.3.6. Fossil fuel generation is recognised as playing a vital role in providing reliable energy supplies and flexibility in respect to changes in supply and demand as well as diversity in the energy mix. NPS EN-1 recognises that fossil fuel plants produce carbon dioxide⁵, with coal producing about as much as gas, per unit of electricity generated. It sets a requirement that new plant with a generating capacity of over 300MW should be constructed carbon capture ready (CCR) so that carbon capture and storage (CCS) can be retrofitted to the plant at a later date if required⁶. However, the Proposed Development seeks a maximum gross generating capacity of 299MW and as such, neither CCR nor CCS are required as part of the Proposed Development.
- 3.3.7. Likewise, NPS EN-1 recognises the contribution that combined heat and power (CHP) can make to reducing emissions⁷. It requires that applicants either include CHP in the project of present evidence in the application that the possibilities for CHP have been fully explored⁸. Where a proposal is for thermal generation without CHP, an applicant should explain why CHP is not economically or practically feasible, provide details of any potential future heat requirements in the area that the station could meet and detail the provisions in the proposed scheme for ensuring that any potential heat demand in the future can be exploited⁹.
- 3.3.8. It also sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. Generic impacts of particular relevance to this application include impacts on air quality and emissions, biodiversity, historic environment, landscape and visual amenity, traffic and transport, environmental, social and economic benefits as well as adverse impacts at national, regional and local levels.
- 3.3.9. NPS EN-1¹⁰ also requires account to be taken of:
- the potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and
 - potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.

NPS EN-2: Fossil Fuel and Electricity Generating Infrastructure

- 3.3.10. NPS EN-2 sets out the factors which influence the development of sites for fossil fuel power stations and the criteria which Government expects applications to meet when applying for them. These include explanations of the Government's approach to subject matters raised by this

⁵ Paragraph 3.6.3.

⁶ Paragraph 3.6.6.

⁷ Paragraph 4.6.3.

⁸ Paragraph 4.6.6.

⁹ Paragraph 4.6.8.

¹⁰ Paragraph 4.1.3.

application, including the selection of gas combustion technology, CHP, climate change adaptation and consideration of good design.

- 3.3.11. In terms of the impacts of gas generating stations, NPS EN-2 reiterates the policy in NPS EN-1 and adds the need to consider impacts of air emissions, landscape and visual amenity, noise and vibration and water quality and resources.

NPS EN-4: Gas supply infrastructure and gas and oil pipelines

- 3.3.12. NPS EN-4 provides guidance on the assessment of applications for new gas and oil pipelines. The Proposed Development includes a new gas pipeline connection to the Existing Gas Pipeline which connects to the NTS for gas. The new gas connection does not represent a NSIP in its own right, but it is included as 'associated development'.
- 3.3.13. Technology specific considerations for gas pipelines include proximity to sensitive land uses (eg. residential development and schools) when planning routes; pipeline safety; noise and vibration; biodiversity; landscape and visual amenity; water quality and resources; and soils and geology.

NPS EN-5: Electricity networks infrastructure

- 3.3.14. NPS EN-5 outlines the principles which should be applied to applications for new electricity transmission lines as well as associated infrastructure. The Proposed Development would involve an electricity cable connection to the existing NGET substation at the Existing VPI CHP Plant Site. These works are included as associated development.
- 3.3.15. Technology specific considerations to be taken into account for such works include biodiversity and geological conservation, landscape and visual amenity, noise and vibration and the impacts of electric and magnetic fields.

3.4. EUROPEAN LAW AND RELATED UK REGULATIONS

- 3.4.1. The UK left the European Union as a member state on 31 January 2020. The European Union (Withdrawal Agreement) Act 2020 gives effect to the transition arrangements until the 31 December 2020. This provides for EU law to be retained as UK law and also to bring into effect obligations which may come in to force during the transition period.
- 3.4.2. This report has been prepared on the basis of retained law and references in it to European terms such as Habitats have also been retained for consistency with the Examination documents. It will be a matter for the SoSBEIS to satisfy themselves as to the position on retained law and obligations at the point of the decision.

The Air Quality Standards Regulations 2010

- 3.4.3. The Air Quality Standards Regulations 2010 give statutory effect to the Air Quality Directive¹¹ (AQD) and transpose it into UK law. It requires the SoS, as the competent authority, to assess ambient air quality for the presence of Sulphur Dioxide (SO₂), nitrogen dioxide (NO₂) and mono-nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide. It sets limit values (LVs) for compliance and establishes control actions where the LVs are exceeded.
- 3.4.4. The Applicant has included relevant assessments on air quality impacts as part of the ES. I consider these further in section 5.3 below

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

- 3.4.5. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 gives effect to Council Directive 2011/92/EU which defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision-making body before consent is granted for a development. It sets thresholds for projects that require an EIA and outlines the impacts on the environment that need to be assessed.
- 3.4.6. Further consideration is given to EIA and the contents of the ES in Chapters 4 to 7 of this report.

Environmental Permitting (England and Wales) Regulations 2016

- 3.4.7. The Environmental Permitting (England and Wales) Regulations 2016 (the EP Regulations) apply to all new installations and transpose the requirements of the EU Industrial Emissions Directive (IED)¹² into UK law. As the Proposed Development includes combustion activities falling within Part 2 of Schedule 1 of the EP Regulations, an EP would be required before the Proposed Development commences operation.
- 3.4.8. Under the EP Regulations, the operator of an installation such as the one proposed is required to employ Best Available Techniques (BAT) for the prevention or minimisation of emissions to the environment, to ensure a high level of protection of the environment.

The Conservation of Habitats and Species Regulations 2017

- 3.4.9. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) came into force on 30 November 2017 and gives effect to the Habitats Directive¹³ and Wild Birds Directive¹⁴.

¹¹ Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

¹² Directive 2010/75/EU on industrial emissions (integrated pollution and prevention control).

¹³ Directive 92/43/EEC.

¹⁴ Directive 2009/147/EC.

- 3.4.10. The Applicant provided a report under the Habitats Regulations, which concluded that there would be no significant effects from the Proposed Development. This is considered further in Chapter 6 of this report.

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WER)

- 3.4.11. The WER gives effect to the Water Framework Directive¹⁵ (WFD) which establishes a framework for water policy, managing the quality of receiving waters. The WER are concerned with water management and seek to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface and groundwater bodies by progressively reducing pollution and by restoration.
- 3.4.12. NPS EN-1 states¹⁶ that an ES should describe existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics; and any impacts of the proposed project on water bodies or protected areas.
- 3.4.13. ES Chapter 11 [[APP-040](#)] assesses the effects of the Proposed Development on water quality. This is discussed further in section 5.4 of this report.

3.5. OTHER LEGAL AND POLICY PROVISIONS

Climate Change Act 2008

- 3.5.1. The Climate Change Act 2008¹⁷ sets legally binding targets for Green House Gas (GHG) emission reductions in the UK against a 1990 baseline. At the time of submission these were set at 80%. Following the submission of the application, the Government confirmed its commitment to cutting greenhouse gases to net zero by 2050 compared to 1990 levels and introduced a legally binding target of 100%¹⁸.
- 3.5.2. In response to a request for further information, the Applicant confirmed that they did not consider that the net zero target has any effect on the assessments undertaken as part of the ES [[REP6a-003](#)]. I discuss this further in Chapter 5 below.

The Paris Agreement

- 3.5.3. The UK is a signatory to the Paris Agreement under the United Nations Framework Convention on Climate Change. This provides a framework to keep global warming below 2°C, pursuing efforts to limit the temperature increase to 1.5°C.

¹⁵ Directive 2000/60/EC.

¹⁶ Paragraph 5.15.3.

¹⁷ As amended.

¹⁸ Climate Change Act 2008 (2050 Target Amendment) Order 2019.

3.5.4. I have taken this into account when considering the Proposed Development's impact on climate change in Chapter 5 below.

National Planning Policy Framework

3.5.5. The National Planning Policy Framework (NPPF)¹⁹ sets out the Government's planning policies for England and how these are expected to be applied. The NPPF does not contain specific policies for NSIPs which are determined in accordance with the decision-making framework set out in the PA2008 and relevant NPS for major infrastructure, as well as any other matters that are considered relevant (which may include the NPPF). The NPPF contains guidance on promoting sustainable transport; requiring good design; promoting healthier communities; conserving and enhancing the natural and historic environment; and meeting the challenges of climate change. It sets out particular issues to take into account in determining planning applications and I have had regard to it in my consideration of this application.

3.5.6. National Planning Practice Guidance (PPG) was published in 2014 to replace previous guidance documents and support the application of the NPPF. It is updated on a rolling basis. Relevant PPG guidance was taken into account by the Applicant in preparing the ES. I do not consider that any changes to PPG published during the course of the Examination is important or relevant in terms of this application.

Natural Environment and Rural Communities Act 2006

3.5.7. The Natural Environment and Rural Communities Act 2006 made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, Sites of Special Scientific Interest (SSSIs), National Parks and the Broads. It includes a duty that every public authority must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of conserving biodiversity. In complying with this duty, Ministers of the Crown and government departments must in particular have regard to the United Nations Environment Programme Convention on Biological Diversity of 1992.

The Wildlife and Countryside Act 1981 (as amended)

3.5.8. The Wildlife and Countryside Act 1981 (as amended) (WCA) is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is NE.

3.5.9. The WCA provides for and protects wildlife; nature conservation, countryside protection and National Parks; and public rights of way. If a

¹⁹ 2019.

species protected under the Act is likely to be affected by development, a protected species licence will be required from NE.

The Planning (Listed Buildings and Conservation Areas) Act 1990

- 3.5.10. The Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA Act) sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.
- 3.5.11. Section 66 of the LBCA Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. By virtue of s1(5) of the Act a listed building includes any object or structure within its curtilage.
- 3.5.12. The ES Chapter 13 [[APP-042](#)] assesses the impact on heritage assets located in proximity to the Proposed Development. This is discussed further in section 5.8 below.

The Control of Pollution Act 1974

- 3.5.13. Section 60 and s61 of the Control of Pollution Act 1974 (CoPA) provide the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted.
- 3.5.14. Section 61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires that Best Practicable Means be adopted for construction noise on any given site.

Water Resources Act 1991, Flood and Water Management Act 2010, Water Act 2003 and 2014, Land Drainage Act 1991

- 3.5.15. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures; discharge and pollution; and for drainage management related to non-main rivers.
- 3.5.16. Further consideration is given to these matters in Chapter 5 below.

The Equalities Act 2010

- 3.5.17. The Equalities Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA

in the conduct of this Examination and in reporting and to the SoS in terms of decision-making.

United Nations Environment Programme Convention on Biological Diversity 1992 ("the Convention")

- 3.5.18. The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.19. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the Convention in my consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation.

Noise Policy Statement for England

- 3.5.20. The Noise Policy Statement for England²⁰ (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The statement sets out the long-term vision of the Government's noise policy which is to:

"promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development".

- 3.5.21. The Explanatory Note within the NPSE provides further guidance on defining significant adverse effects and adverse effects using the concepts:
- No Observed Effect Level (NOEL) - the level below which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established;
 - Lowest Observable Adverse Effect Level (LOAEL) - the level above which adverse effects on health and quality of life can be detected; and
 - Significant Observed Adverse Effect Level (SOAEL) - the level above which significant adverse effects on health and quality of life occur.
- 3.5.22. When assessing the effects of the Proposed Development on noise matters, the aims of the development should firstly avoid noise levels above the SOAEL; and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

²⁰ [The Noise Policy Statement for England](#) (March 2010), DEFRA.

3.5.23. The potential noise impacts of the Proposed Development are considered in Chapters 5 and 6 of this report.

3.6. MADE DEVELOPMENT CONSENT ORDERS

3.6.1. The Applicant has cited as precedent the following made DCOs:

- The Eggborough Gas Fired Generating Station Order 2018 (SI 2018/1020).
- The Millbrook Gas Fired Generating Station Order 2019 (SI 2019/578).
- The Progress Power (Gas Fired Power Station) Order 2015 (SI 2015/1570).
- The Meaford Gas Fired Generating Station Order 2016 (SI 2016/779).
- The Wrexham Gas Fired Generating Station order 2017 (SI 2017/766).
- The Hirwaun Generating Station Order 2015 (SI 2015/1574).
- The Knottingley Power plant Order 2015 (SI 2015/680).
- The Silvertown Tunnel Order 2018 (SI 2018/574).

3.6.2. The York Potash Harbour Facilities Order 2016 (SI 2016/772) was referred to by one IP, Phillips 66 [[REP2-024](#), [REP3-017](#) and [REP4-018](#)].

3.6.3. At ISH1 [[EV-006](#)], I drew the Applicant's attention to the Abergelli Power Gas Fired Generating Station Order 2019 (SI 2019/1268) ("the Abergelli Order").

3.6.4. There is also some overlap between the Order land and other made Development Consent Orders namely the:

- Able Marine Energy Park Development Consent Order 2014 (SI 2014/2935);
- Hornsea One Offshore Windfarm Order 2014 (SI 2014/3331); and
- Hornsea Two Offshore Windfarm Order 2016 (SI 2016/844).

Details on how these orders interact with the proposed DCO can be found in section 2.4 above.

3.6.5. I have had regard to all of the abovementioned orders where relevant.

3.7. LOCAL IMPACT REPORTS

3.7.1. Section 104 and s105 of the PA2008 state that in deciding the application the SoS must have regard to any LIR within the meaning of s60(3) of the PA2008.

3.7.2. LIRs have been submitted by NLC and NELC [[REP2-033](#) and [REP2-040](#)]. Each LIR provides further details on the local policy context with the relevant administrative area, a summary of which is set out in section 3.8 below. In addition, the LIRs set out the principal local planning policies and other policies relevant to the Proposed Development and identify areas of concern.

3.8. THE DEVELOPMENT PLAN

- 3.8.1. Paragraph 4.1.5 of NPS EN-1 states that planning policies outside of the NPS can be relevant considerations to the SoS's decision and that these may include development plan documents or other documents in the local development framework.
- 3.8.2. The relevant planning policies adopted by NLC are set out in its LIR [[REP2-033](#)]. These include policies contained within the North Lincolnshire Core Strategy (2011) (CS), the saved policies of the North Lincolnshire Local Plan (2003) (LP) and the North Lincolnshire Housing and Employment Land Allocations Development Plan Document (2016) (HELAD).
- 3.8.3. The CS identifies the Site as lying within the South Humber Bank Strategic Employment Site (SES). CS Policy CS12 deals with the SES and is generally supportive of industrial and port-related activities within the designated area. There are also similar, supportive policies within the LP and the HELAD.
- 3.8.4. The Site is also situated within the 'South Humber Bank Landscape Indicative Area' under LP Policy LC20 which covers much of the wider South Humber Bank Area. The policy sets out a number of measures for the area, which include softening and screening, habitat conservation and creation, and field boundary management.
- 3.8.5. NLC confirm in the LIR [[REP2-033](#)²¹] that it is content that the proposal generally complies with the development plan and that it has no objections on policy grounds to the granting of consent for the proposed development.
- 3.8.6. The development Plan for North East Lincolnshire is the North East Lincolnshire Local Plan (2018). NELC also identify a number of policies in their LIR [[REP2-040](#)] which are of relevance to the Proposed Development. These include policies which are intended to protect the countryside and those living and working there, the landscape and the natural environment while promoting the Humber Estuary as a focus for energy generation related uses.
- 3.8.7. NELC also confirm in their LIR [[REP2-040](#)²²] that they support the Proposed Development.

²¹ Paragraph 2.5.1.

²² Paragraph 16.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. My initial assessment of the principal issues based on my consideration of the application documents and RRs received was circulated prior to the PM [[PD-005](#)]. These were discussed at the PM and kept under review throughout the Examination. As a result of matters arising out of my written questions, climate change was added as an additional issue.

4.1.2. The main issues are set out below. They are listed in alphabetic order and should not be taken to imply an order of importance.

Climate Change, including issues related to:

- GHG emissions;
- Impact on flood risk; and
- Net zero target.

Compulsory Acquisition, including issues related to:

- the need for the land to be subject to compulsory acquisition;
- the need to establish a compelling case in the public interest; and
- financial arrangements.

Design and Layout, including issues related to:

- the design of the power station and associated development.

The DCO, including issues related to:

- powers acquired through the DCO;
- requirements;
- protective provisions; and
- relationship with other DCOs.

Economic and Social Impacts, including issues related to:

- the effect on the local economy and employment during construction and operation;
- the effect on surrounding communities including on businesses and nearby residents, during construction and operation.

Environmental Impact Assessment, including issues related to:

- the assessment of the potential impacts of the Proposed Development;
- cumulative impacts; and
- mitigation measures.

Environmental Issues including issues related to:

- airborne emissions and air quality, including potential cumulative impact;
- water quality and flooding;

- landscape and visual impacts;
- ground conditions; and
- noise and vibration.

Habitats, Ecology and Nature Conservation, including issues related to:

- effects on European and other protected sites and species; and
- effects on habitats and on biodiversity.

Historic Environment, including issues related to:

- effects on designated and non-designated heritage assets.

Infrastructure, including issues related to:

- effects on existing transmission and distribution facilities;
- effects on other infrastructure;
- environmental permits; and
- operational effects including the height and location of the proposed stack.

Transport and Traffic, including issues related to:

- construction traffic movement; and
- road safety.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. No representations were received from local residents.

4.2.2. Representations were received from Centrica Plc (Centrica) which has a gas pipeline running underneath Rosper Road within the highway boundary [[RR-018](#)]. Centrica were seeking to ensure that the Proposed Development would not adversely impact on the pipeline. PPs were subsequently agreed between the Applicant and Centrica, and Centrica withdrew its representations [[REP6a-011](#)].

4.2.3. West Lindsey District Council (WLDC) made representations in relation to the impact on heritage assets, in particular those situated at Brocklesby Park [[RR-016](#)]. They also raise concerns regarding the impact of construction traffic on nearby settlements. I consider these matters further in Chapter 5 of this report.

4.2.4. National Grid identified two overhead electricity transmission lines (2AD and 2AJ), a 400kv electricity substation (Humber Refinery), a high pressure gas transmission pipeline (Feeder Main 9 (Paull to Hatton)) and an above ground installation (Thornton Curtis 'A' AGO) as lying within or in close proximity to the Order limits [[RR-005](#) and [REP2-030](#)]. National Grid were concerned that its rights to retain and access this equipment should not be restricted. PPs and other commercial arrangements were subsequently agreed and National Grid withdrew its representations [[REP7-015](#)].

- 4.2.5. Representations were also received from the Ministry of Defence (MOD) [[RR-006](#)]. While it raised no safeguarding objections, it requested that the stack was fitted with aviation warning lights and that a requirement was included in the DCO covering the provision of information relating to air safety. During the Examination, the Applicant did not accept that there was a need for aviation warning lights or the need for further requirements arguing that the maximum height stack height proposed, at 56m²³, was considerably below the threshold for requiring such lighting set by Article 219 of the UK Air Navigation Order 2009²⁴.
- 4.2.6. Furthermore, it was pointed out that the stack proposed would be lower than many other structures in the area, including structures located on the Existing VPI CHP plant and the HOR. As part of ExQ1 and ExQ2, I asked the MOD to expand on the justification for the above request setting out why, in view of the proposed height, aviation warning lights were necessary. No responses were received. Based on the information available at the close of the Examination, and noting the maximum proposed stack height, I do not consider there is any robust justification for requiring aviation warning lights or other requirements in respect of air safety. However, the SoSBEIS may wish to request further information from the MOD prior to making a decision.
- 4.2.7. Representations were received from the North East Lindsey Internal Drainage Board (NELIDB) [[RR-010](#)] asking to be kept informed of any changes to the method of surface water disposal or flood risk assessment. No changes were made during the Examination.
- 4.2.8. The application, ES and supporting documents were reviewed by the EA and representations received requesting changes to Requirements 10 and 11 of the dDCO [[RR-008](#)]. Changes were subsequently agreed by the Applicant and the EA confirmed that they were satisfied that all matters that fall within their remit had been adequately assessed and/ or appropriate mitigation will be secured through the requirements in the dDCO. A SoCG was agreed by the EA and the Applicant which confirms that there are no outstanding areas of concern [[REP2-014](#)]. Following ISH1, further representations were received from the EA in relation to operational noise [[REP3-022](#)]. These are discussed further in section 5.7 below.
- 4.2.9. NE initially noted that there was insufficient evidence to establish that there will be no impact on wintering birds on the Humber Estuary Special Protection Area (SPA) and Ramsar site [[RR-014](#)]. However, these concerns were resolved during the course of the Examination and a SoCG was agreed by the Applicant and NE which noted that there were no outstanding issues between the parties [[REP4-011](#)]. In addition, a Statement to Inform Appropriate Assessment was agreed between the parties [[REP4-009](#)]. This is discussed further in Chapter 6 of this report.

²³ above ordnance datum.

²⁴ 150m or more above ground level.

- 4.2.10. A SoCG between the Applicant and Highways England was submitted covering matters relating to access, traffic and transport covered in the ES [[REP2-017](#)]. It was agreed that the assessment of these issues in the ES was appropriate and that the mitigation measures proposed were adequate in their nature and scale to address potential issues. PPs were subsequently agreed between the Applicant and Highways England to protect Highways England's interest in the Strategic Road Network [[REP6-003](#)]. These are included in Schedule 9, Part 12 of the dDCO.
- 4.2.11. The Humberside Fire and Rescue Service (HFRS) made representations in relation to access and water supplies for firefighting [[RR-002](#)]. In response, the Applicant drew attention to the inclusion of fire water storage tanks in Work No.1 and confirmed that it would comply with the stated requirement for access and water supplies as part of the detailed design stage of the Proposed Development [[REP2-010](#)]. Requirement 5 of the dDCO secures the submission of further design details in accordance with the parameters set out in Schedule 12. These include details of the firewater tank included in Work No.1. Further detail on the access would also be secured under Requirement 5. No further representations were made by HFRS and I see no reason that these matters cannot be adequately considered as part of the detailed design.
- 4.2.12. Public Health England were satisfied with the methodology used to undertake the ES and noted that emissions could be adequately controlled as part of the EP [[RR-015](#)].
- 4.2.13. Representations were received from Phillips 66 Limited (as owner and operator of the HOR) objecting to the inclusion of CA powers in the dDCO in respect of its land interests, including those in relation to the Existing Gas Pipeline [[RR-023](#), [REP2-024](#), [REP3-017](#), [REP3a-007](#), [REP4-018](#), [REP5-009](#), [REP6-009](#), [REP6a-007](#) and [REP7-011](#)]. These are considered in further detail in Chapters 8 and 9 of this report.
- 4.2.14. Representations were received from Able Humber Ports Ltd (Able) in relation to the areas of overlap between the Order limits of the Able DCO and those included in this application [[RR-017](#)] (see also Chapter 2 above). An SoCG between the Applicant and Able was provided at Deadline 7 [[REP7-009](#)] which confirms that PPs have been agreed to govern the interaction of the two projects and the powers in each DCO. These protections are included in Articles 37 and 41, Part 8 of Schedule 9 and Schedule 13 of the dDCO submitted at Deadline 7. As a result, Able withdrew its objection to the proposal [[REP7-013](#)].
- 4.2.15. CLH Pipeline System Limited (CLH) made representations seeking to ensure that the Proposed Development would not adversely impact on its existing pipeline which runs in close proximity to the Site [[RR-019](#)]. Although the Applicant and CLH were negotiating a Protective Provisions Agreement throughout the Examination, agreement had not been reached at the close of the Examination. However, the Applicant has included PPs in the dDCO submitted at Deadline 7. I consider these further in Chapters 8 and 9 of this report.

- 4.2.16. Representations were received from TLOR [[RR-012](#) and [REP2-039](#)] raising concerns with the impact that the Proposed Development would have on its existing gas pipelines. In addition, concerns were raised about the impact that the proposed CA of land and rights would have on its risk profile under the Control of Major Accident Hazards Regulations 2015. Although the Applicant and TLOR were in discussions throughout the Examination on the protections necessary to assuage TLOR's concerns, at the close of the Examination agreement had not been reached. The Applicant has, however, included PPs in the dDCO submitted at Deadline 7. I consider these further in Chapters 8 and 9 of this report.
- 4.2.17. Representations were received from Hornsea One Limited (Hornsea One) who identified a number of areas of interface between the DCO applied for and the Hornsea One Offshore Windfarm Order 2014. These relate mainly to rights of CA and potentially conflicting rights and powers as well as interference with Hornsea One's property interests, infrastructure and works [[RR-009](#), [REP2-035](#), [REP2-036](#) and [REP3-018](#)]. Throughout the Examination, the Applicant and Hornsea One were in discussions to agree PPs for inclusion in the dDCO and a separate crossing agreement to regulate the future interaction between the two developments. However, at the close of the Examination, agreement had not been reached and there are a number of unresolved matters. These matters are considered further in Chapters 8 and 9 of this report.
- 4.2.18. Representations were also received the Hornsea Two Companies in relation to areas of interface between the DCO applied for and the Hornsea Two Offshore Windfarm Order 2016. These relate mainly to rights of CA and potentially conflicting rights and powers as well as interference with the Hornsea Two Companies' property interests, infrastructure and works [[RR-011](#), [REP2-037](#), [REP2-038](#) and [REP3-020](#)]. Throughout the Examination, the Applicant and the Hornsea Two Companies were in discussions to agree PPs for inclusion in the dDCO and a separate crossing agreement to regulate the future interaction between the two developments. However, at the close of the Examination, agreement had not been reached and there are a number of unresolved matters. I consider these further in Chapters 8 and 9 of this report.
- 4.2.19. Representations were made by Network Rail Infrastructure Limited (NR) [[RR-020](#) and [REP2-022](#)] who were concerned about the impact that the CA of rights over their land would have on their undertaking. NR confirmed at Deadline 7 that PPs had been agreed with the Applicant. These are included in the dDCO. However, at the close of the Examination, related property agreements had not been completed. I consider these matters further in Chapters 8 and 9 of this report.
- 4.2.20. Air Products (BR) Limited (Air Products) made representations seeking to ensure that the Proposed Development would not adversely impact on its existing business operations or its existing infrastructure which runs in close proximity to the site. In addition, concerns were raised in relation to CA powers contained within the dDCO, their justification and the

adequacy of the consultation exercise carried out by the Applicant [[RR-007](#), [REP1-003](#), [REP2-025](#) and [REP3a-008](#)]. A crossing agreement was subsequently entered into by the Applicant and Air Products following which Air Products withdrew its representations [[REP6a-009](#)].

4.2.21. Highways England did not make a relevant representation. However, it confirmed during the examination that it had agreed a SoCG [[REP2-017](#)] with the Applicant which set out its views on a number of matters. It also confirmed that agreement had been reached with the Applicant on the terms of PPs to overcome any inappropriate or uncontrolled impacts as a consequence of the wide application of CA and other powers contained in the dDCO. These are included in Schedule 9, Part 12 of the dDCO.

4.2.22. Highways England also confirmed that, at the close of the Examination, they had no objection to the Proposed Development [[REP7-014](#)]. Transport and Traffic issues arising from the Proposed Development are considered further in Chapter 5 of this report.

4.2.23. SoCG were agreed between the Applicant and the following parties:

- NLC [[REP6a-005](#)].
- NELC [[REP2-013](#)].
- EA [[REP2-014](#)].
- NE [[REP4-011](#)].
- Highways England [[REP2-017](#)].
- Historic England [[REP2-018](#)].
- Able Humber Ports Limited [[REP7-009](#)].

4.2.24. These have been taken into account in the chapters below.

4.2.25. In addition, as set out in Chapter 1 above, a draft SoCG was submitted at Deadline 2 between the Applicant and National Grid [[REP2-016](#)]. In response to ExQ1, National Grid confirmed that the draft SoCG incorporates their position and comments on the Electricity and Gas Connections as well as capacity at feeder number 9 [[REP2-030](#)]. I have therefore had regard to this when considering these matters.

4.2.26. Representations were also received from Nottinghamshire County Council [[RR-001](#)], the Coal Authority [[RR-003](#)], NATS Ltd [[RR-004](#)] Boston Borough Council [[RR-024](#)], all of whom either supported the proposal or had no comment to make.

4.3. ISSUES ARISING IN LOCAL IMPACT REPORTS

4.3.1. The main issues identified as potential areas of concern to NLC and NELC in their LIRs relate to air quality, landscape and visual impact, traffic, operational noise and the impact on non-designated heritage assets [[REP2-033](#) and [REP2-040](#)]. I consider these further in Chapter 5 below.

4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS

- 4.4.1. As noted above, the Proposed Development qualifies as an NSIP under s14(1)(a) and s15(2) of the PA2008 and consideration of the proposal is subject to the general considerations in NPS EN-1 as well as specific guidance on Electricity Generating Infrastructure in NPS EN-2, Gas Supply Infrastructure and Gas and Oil Pipelines in NPS EN-4 and Electricity Network Infrastructure in NPS EN-5.
- 4.4.2. The Applicant has provided an ES [[APP-029 to APP-106](#)] which I am satisfied meets the requirements of the PA2008 and the EIA Regulations in terms both of scope and methodology. It also covers specific issues and mitigation measures to address adverse effects as identified in the NPS.

4.5. CONFORMITY WITH LOCAL PLANNING POLICY

- 4.5.1. Details of the Development Plans for North Lincolnshire and North East Lincolnshire are set out in Chapter 3 above.
- 4.5.2. A number of local planning policies have been identified by NLC, NELC [[REP2-033](#) and [REP2-040](#)] and the Applicant [[APP-020](#) and [APP-034](#)] which are considered relevant to this application. These have been taken into account in my consideration of the main issues. However, in doing so I have noted that NLC and NELC have acknowledged that the proposal complies generally with those policies and have raised no objections on planning policy grounds. No other IPs have raised any matters in relation to compliance with local planning policies.

4.6. ENVIRONMENTAL PERMITTING REGIME

- 4.6.1. As stated above in Chapter 3, the Proposed Development falls within Schedule 1 Part 2 (Combustion Activity) of the Environmental Permitting (England and Wales) Regulations 2016. An EP would be required before the Proposed Development commences operation. An application for an EP is made separately and independently to the EA, who are the competent authority to issue and regulate EPs.
- 4.6.2. The EA in its RR [[RR-008](#)] confirmed that an EP is required and that the EA would be including the following key areas of potential harm as part of its assessment:
- Management, including general management, accident management, energy efficiency, efficient use of raw materials and disposal/ recovery of waste.
 - Operating activities and techniques including the use of BAT for design and management.
 - Emissions to air and discharges to water, land and groundwater along with odour, noise and vibration.

- 4.6.3. The EA provided updates throughout the Examination as to progress on the EP and subsequently confirmed at Deadline 6a [[REP6a -010](#)] that a permit had been issued on 22 November 2019.

4.7. ENVIRONMENTAL IMPACT ASSESSMENT

- 4.7.1. An ES accompanied the application [[APP-029 to APP-106](#)], and minor updates were made during the Examination in respect of Appendix 13E (Framework Written Scheme of Investigation [[REP4-006](#)]).
- 4.7.2. The changes to the ES outlined above occurred as a result of the representations made by NLC in their local impact report in respect of non-designated heritage assets. This is considered further in Chapter 5 below. However, in examining the changes proposed, I am satisfied that they are not important and relevant.
- 4.7.3. Chapter 2 of the ES sets out the methodology used [[APP-031](#)]. Its objective is to anticipate the changes or impacts that may occur to the receiving environment as a result of the Proposed Development, and to compare to the existing environmental conditions (the baseline) and those that would occur in absence of the Proposed Development (future baseline).
- 4.7.4. The EIA process involves identification of sensitive receptors that may be affected by impacts resulting from the Proposed Development and assesses the extent to which these receptors may experience significant environmental effects as a result. Where significant effects are identified, the ES proposes mitigation measures to avoid, reduce and offset the significance of the effect, expressed as residual effects after taking account of mitigation.
- 4.7.5. My assessment of the Proposed Development undertaken in Chapter 5 of this report will report on the environmental effects from the identified stages as set out in the ES listed.
- 4.7.6. Schedule 11 of the dDCO sets out the documents proposed to be certified in the ES post-examination. Subject to my proposed amendments set out in Table 5 below (see chapter 9), I accept the list to be correct and reflective of the documents which comprise the ES. The ES is, in my view, sufficient to enable the SoSBEIS to take a decision in compliance with the EIA Regulations.

4.8. HABITATS REGULATIONS ASSESSMENT

- 4.8.1. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and hence is subject to HRA. A separate record of considerations relevant to HRA has been set out in Chapter 6 of this report below.
- 4.8.2. However, at this point in this Chapter it is necessary to record that I have considered all documentation relevant to HRA as required by section 4.3 of NPS EN-1, and have taken it into account in the conclusions reached here and in the Planning Balance (Chapter 7 below). Further, project

design and mitigation proposals included in the ES and secured in the dDCO have been fully considered for HRA purposes.

- 4.8.3. Overall, I am satisfied on the adequacy of the data provided such that it does allow the SoSBEIS to act as the competent authority to undertake an appropriate assessment.
- 4.8.4. These issues are considered in further detail in Chapters 5, 6 and 7 below.

5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

5.1. INTRODUCTION

5.1.1. This chapter sets out my findings and conclusions in relation to the main planning issues and environmental impacts of the Proposed Development. The principal issues considered are:

- the principle of development;
- air quality;
- water quality, flooding and ground conditions;
- landscape and visual amenity;
- ecology;
- noise and vibration;
- cultural heritage;
- transport and traffic;
- public health and amenity;
- economic and social impacts;
- climate change; and
- cumulative and combined effects.

5.1.2. Other generic impacts listed in NPS EN-1 including matters relating to waste management, land use (including open space, green infrastructure and green belt), odour, artificial light, smoke, steam and insect infestation are not considered as important or relevant factors in the consideration of this application and, as such, are not dealt with in detail below.

5.2. PRINCIPLE OF DEVELOPMENT

Need

5.2.1. A Planning Statement [[APP-020](#)] accompanied the application which sets out the Applicant's case for the need for the Proposed Development. This broadly relies on NPS EN-1 which recognises that the UK is highly dependent on natural gas for electricity generation and that gas will continue to play an important part in the UK's fuel mix for many years to come²⁵. It also makes clear²⁶ that there is an urgent need for new energy NSIPs to be brought forward as soon as possible.

Consideration of alternatives

5.2.2. NPS EN-1 and EN-2 do not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, applicants are required to include in their ES information about the main alternatives they have studied and include an indication of the main reasons for the choice of site, taking into account

²⁵ Paragraph 3.8.1.

²⁶ Paragraph 3.3.15.

the environmental, social and economic effects including where relevant commercial feasibility²⁷. Furthermore, Para 4.4.3 of EN-1 advises that the consideration of alternatives should be carried out in a proportionate manner.

Location

- 5.2.3. Details of the Site and the surrounding area are provided in Chapter 2 above.
- 5.2.4. The site is located within the SES where uses such as the one proposed are supported by CS Policy CS12. The application sets out (in various places including [[APP-001](#), [APP-021](#) and [APP-033](#)]) the reasons that the site has been selected by the Applicant as opposed to other potentially available sites. These include:
- that it is currently vacant, brownfield land located in an area immediately surrounded by major, large scale industry and other power generation facilities;
 - that the site benefits from existing electrical grid, gas and transport links;
 - its remoteness from major cities in an area of low sensitivity;
 - that the Applicant has the benefit of a lease option agreement on the OGCT Power Station Site; and
 - its location adjacent to the Existing VPI CHP Plant allows use to be made of existing infrastructure, workforce, services and utilities.
- 5.2.5. In response to ExQ1 [[PD-007](#)], the Applicant explained that a site selection exercise was undertaken at a scale relative to the feasibility and advantages of the Site when considering its use as a power station. They state that *"when considering the feasibility of the site and the long history of power generation at the adjacent Existing VPI CHP Plant, it was considered that there were unlikely to be any more viable alternative sites"* [[REP2-009](#)].
- 5.2.6. I accept that the Site's location within the SES, an industrial area where energy generation is common, weighs positively in favour of the Proposed Development. Similarly, the reuse of vacant, previously developed land which benefits from access to nearby electrical, gas and transport links would deliver a number of clear benefits including the ability to utilise existing infrastructure. Likewise, there are clear commercial benefits to the Applicant in being able to make use of existing agreements and utilise an existing workforce and infrastructure.
- 5.2.7. However, taking into account both my site inspections and the evidence presented in the Examination, I consider the location of the Site also has a number of potential disadvantages including its proximity to nearby European sites and the presence of existing apparatus, some of which belongs to SUs.

²⁷ Paragraph 4.4.2.

- 5.2.8. Nevertheless, subject to my detailed consideration of these potential disadvantages in the remainder of this report, I am satisfied that sufficient information has been provided to explain the reasons for the Applicant's choice of Site.

Generating plant

- 5.2.9. The Applicant states that technical and commercial assessments of various alternatives were considered at an early stage of the project development, including different technologies and fuels [[PD-007](#)]. This included multiple smaller OCGTs, auto-derivative turbines or gas engines [[APP-033](#)]. As a result of various factors including capital and operating costs, electrical output and efficiency, the Applicant concluded that a single large OCGT was the most appropriate.
- 5.2.10. As noted in Chapter 3, NPS EN-1 recognises the contribution that CHP can make to reducing emissions. It requires that applicants either include CHP in the project or present evidence in the application that the possibilities for CHP have been fully explored. Where a proposal is for thermal generation without CHP, applicants should explain why CHP is not economically or practically feasible, provide details of any potential future heat requirements in the area that the station could meet and detail the provisions in the proposed scheme for ensuring that any potential heat demand in the future can be exploited.
- 5.2.11. The Applicant has provided a report on the feasibility of operating the development as a CHP plant [[APP-026](#)]. Although this identifies a number of theoretical heat users with a 15km radius of the Proposed Development, it notes 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 in order to allow any future CHP opportunities to be realised, the operating system of the Proposed Development would need to change.
- 5.2.12. I accept that the provision of CHP is not compatible with the short term and intermittent peaking nature of the OCGT. As such, I do not consider that the Proposed Development should be required to be constructed so as to be 'CHP ready'

Gas Connection

- 5.2.13. A new gas connection and pipeline will be required to transport gas from the Existing AGI to the Proposed Development. The physical connection would be made at the Existing AGI and would consist of an overground or underground pipe (or combination of both) of up to 600mm nominal internal diameter, crossing the Existing VPI CHP Plant to the OCGT Power Station Site. This route was refined during the pre-application stage so that it would be routed entirely through the Existing VPI CHP Plant Site, resulting in a shorter section of pipeline.
- 5.2.14. Two Gas Connection routes are currently under consideration and are included in the Application. The first is a route running along the northern

boundary of the Existing VPI CHP Plant Site from the south eastern corner of the OCGT Power Station Site to a point adjacent to the southern tip of that site before turning south east through the central part of the Existing VPI CHP Plant Site to the Existing AGI. This route is approximately 600m in length.

- 5.2.15. The second is a route following the internal roadway of the Existing VPI CHP Plant Site to the east and south of the main Existing VPI CHP Plant infrastructure to the Existing AGI. This route is approximately 640m in length.
- 5.2.16. Selection of the final route is dependent on the outcome of technical discussions with VPI Immingham LLP and the landowner, Phillips 66. The Works Plans [[APP-012](#)] and Indicative Gas Connection Plan [[APP-015](#)] show the two potential routes for the Gas Connection and the connection locations.
- 5.2.17. During the Examination, NGG confirmed that the existing connection at Feeder No. 9 has sufficient capacity to supply gas to the Proposed Development and the Existing VPI CHP Plant [[REP2-016](#) and [REP2-030](#)].

Electricity Connection

- 5.2.18. An electrical connection will be required to export electricity from the Proposed Development to the overhead lines at the Humber Refinery 400kV NGET substation located within the Existing VPI CHP Power Station Site. The Electrical Connection would comprise either overhead or below ground cables, or a combination of both, with a total length of approximately 300m [[APP-024](#)]. Further details can be found on the Works Plan [[APP-012](#)] and the Indicative Electrical Connection Plan [[APP-016](#)].
- 5.2.19. NGET have indicated that suitable progress has been made in terms of obtaining a connection to the electricity grid and that they do not foresee any issues in facilitating the required connection [[REP2-016](#) and [REP2-030](#)].

Design and Layout

- 5.2.20. A design and access statement (DAS) was provided as part of the application [[APP-021](#)]. This explains the design principles and concepts which were applied to the Proposed Development and how the Applicant has taken into account the context of the site and its wider setting. It sets out the design information being provided with the application, describes the approach and evolution of the design process and explains why the Applicant is seeking flexibility in the design of the proposed development. In addition, it identifies the key design principles and components, access arrangements and how the detailed design of the Proposed Development will be in accordance with the design details and parameters upon which the EIA is based.
- 5.2.21. Some aspects of the design that have already been finalised include the selection of a single open cylinder gas turbine, electricity grid and service

connections and an approximate stack height. However, there are a number of parameters of the Proposed Development that are yet to be determined including the provider of the turbine, the dimensions of structures and buildings, the final stack location within the OCGT Power Station Site and the final route of the new gas pipeline for the Gas Connection. As a result, Requirement 5 of the dDCO requires the submission of detailed design information for approval by the local planning authority prior to development commencing on the various works.

- 5.2.22. In order to ensure a robust assessment of the likely significant environmental effects of the Proposed Development, the Applicant has adopted a 'Rochdale Envelope' approach and the application presents a worst-case assessment of potential environmental effects. Schedule 12 of the dDCO sets out the maximum design parameters.
- 5.2.23. The application was accompanied by example layouts [[APP-052](#) & [APP-053](#)] and example elevations [[APP-054](#) and [APP-055](#)]. Although they are indicative, I queried in ExQ1 [[PD-007](#)] why they would include different structures or be designed differently and, in some cases, did not appear to contain the same structures. The Applicant responded that they had been provided by different contractors and that the differences fall within the flexibility of the Rochdale Envelope parameters.

Carbon Capture Readiness

- 5.2.24. NPS EN-1 recognises that fossil fuel plants produce carbon dioxide (CO₂) and sets a requirement that new plant over 300MW have to be constructed CCR so that CCS can be retrofitted to the plant at a later date if required. As the proposed generating station would have a gross maximum electrical output of 299MW it falls below the requisite threshold for CCR. This limit on output is secured in Schedule 1 of the dDCO.

Conclusions on the Principle of Development

- 5.2.25. The need for fossil fuel energy generation is established through the NPS. I consider the Proposed Development would contribute to meeting this need. Furthermore, I accept that the provision of CHP is not compatible with the short term and intermittent peaking nature of the OCGT. As such, I do not consider that the Proposed Development should be required to be constructed so as to be 'CHP ready'.
- 5.2.26. In view of the fact that the capacity of the Proposed Development as defined in the dDCO is below the threshold, I do not consider it necessary for the Proposed Development to be designed to be CCR. In addition, I am satisfied that sufficient consideration has been given to design and layout and sufficient information provided on the consideration of alternatives to satisfy the requirements of NPS EN-1.
- 5.2.27. Accordingly, I consider the Proposed Development meets the general requirements of NPS EN-1 in principle. I consider the specific impacts of the Proposed Development in sections 5.3 to 5.12 below.

5.3. AIR QUALITY

Policy Considerations

- 5.3.1. NPS EN-1 acknowledges that infrastructure development can have adverse effects on air quality. Furthermore, it indicates that air quality considerations should be given substantial weight where a project would lead to deterioration in air quality in an area or lead to breaches of national air quality limits²⁸. However, it also notes that the planning and pollution control systems are separate but complementary and that the Examination should work on the assumption that the relevant pollution control regime will be properly applied and enforced by the relevant regulator²⁹. NPS EN-2 notes that emissions from fossil fuel generating stations are regulated by the EA.

Applicant's Response

- 5.3.2. The Applicant's air quality assessment can be found in ES Chapter 6 (Air Quality) [[APP-035](#)] and ES Chapter 17 (Cumulative and Combined Effects) [[APP-046](#)]. These chapters consider the potential air quality impacts from the Proposed Development on human health and ecosystems during construction, operation and decommissioning as well as the cumulative effects of emissions when taken with other committed developments in the area. They are accompanied by Figure 6.1 [[APP-056](#)] which identifies the study area and ecological receptors and Figures 6.2 [[APP-057](#)] and 6.3 [[APP-058](#)] which show the operational process contribution to long-term and short term NO₂. The air quality assessment is also accompanied by an Air Quality Technical Appendix [[APP-078](#)] which includes details of:
- oxides of nitrogen (NO_x) and (CO₂) emitted from the gas turbines via the stack during operation; and
 - NO_x and particulate matter (PM₁₀ and PM_{2.5}) associated with vehicle movements during construction, operation and decommissioning of the proposed development.
- 5.3.3. Taken together, the application documents listed above identify potential impacts during construction, operation and decommissioning. These include (a) increased particulates and deposited dust from soil and spoil movements and handling, and (b) increased NO₂ and PM₁₀ impacting on human health.
- 5.3.4. While the documentation goes on to conclude that emissions from construction activities and construction road traffic on air quality, and the impact of emissions at human health and ecological receptors, are not likely to be significant, they acknowledge that the operation of the Proposed Development will result in an increase in atmospheric NO_x concentrations which will result in an increase of nitrogen and acid

²⁸ Paragraph 5.2.9.

²⁹ Paragraphs 4.10.2 and 4.10.3.

deposition at surrounding habitats. Furthermore, Tables 6A.19 and 6A.20 [[APP-078](#)] show that some qualifying features of the Humber Estuary Special Area of Conservation (SAC) are also in exceedance of their nitrogen and acid deposition critical load. I consider these matters further in Chapter 6 below.

- 5.3.5. Nevertheless, the assessments on air quality indicate that any residual impacts can be controlled through the use of embedded mitigation in the Construction Environment Management Plan (CEMP). A full list of the mitigation measures proposed can be found in the framework CEMP (fCEMP) which accompanies the application [[APP-077](#)] and includes the use of best practice measures such as the adoption of a 'considerate constructors scheme', avoidance of mechanical roughening or grinding of concrete surfaces, use of water suppression and regular cleaning to control mud on roads and during earth moving activities.
- 5.3.6. These, along with the others set out in the fCEMP, are secured in Requirement 14 of the dDCO [[REP7-002](#)]. Similarly, Requirement 24 of the dDCO requires the submission and agreement of a Decommissioning Environmental Management Plan intended to help ensure that effects on air quality can be similarly controlled and/ or mitigated during decommissioning.

Views of IPs

- 5.3.7. There were no specific concerns expressed by IPs about the performance of the Proposed Development in air quality and emissions terms either on its own or cumulatively/ in combination with other developments.
- 5.3.8. NE advised in its RR [[RR-014](#)] that it was satisfied that there are not likely to be significant air quality impacts on the Humber Estuary SSSI, SPA, SAC or Ramsar site as a result of the project.
- 5.3.9. Operational emissions from the Proposed Development would be controlled by the EA through the EP regime. The EA confirmed that the air quality assessment had been reviewed as part of the EP process and was considered satisfactory [[REP2-027](#)]. The EP for the Proposed Development was issued on 22 November 2019 [[REP6a-010](#)].
- 5.3.10. NLC and NELC confirmed in their respective SOCG [[REP6a-005](#) and [REP2-013](#)] that they considered there would be no unacceptable impacts upon air quality as a result of the Proposed Development.

Examination

- 5.3.11. In ExQ1, I asked the Applicant a number of questions around air quality (Q1.1.1-Q1.1.17). These were intended to seek clarification on various matters including (i) whether the study area for the assessment of construction traffic was limited to residential dwellings, the approach to the assessment of CO, SO₂ Benzene and 1,3-butadiene, and the assumptions applied to assess the effects from construction traffic in the air quality assessment.

- 5.3.12. I also queried why the construction assessment 2021 baseline used a 2015 dataset rather than the more recent 2017 one and raised a number of queries around monitoring data and mitigation and monitoring measures (a full set of questions can be found in ExQ1 [[PD-007](#)]).
- 5.3.13. In response, the Applicant confirmed that while residential receptors were considered the most sensitive, all potential receptors had been considered as part of the assessment. They also provided reasons as to why CO, SO₂, Benzene and 1,3-butadiene had been scoped out of the assessment explaining that impacts from these pollutants are predicted to be insignificant [[REP2-009](#)]. In addition, confirmation was provided that the assumptions applied to assess the effects from construction traffic within the air quality impact assessment had been sourced from Chapter 7 of the ES (Traffic and Transportation [[APP-036](#)]).
- 5.3.14. The Applicant also provided reasons for the construction traffic assessment 2021 baseline utilising a 2015 dataset rather than the more recent 2017 one, explaining that the latter was not available at the time of the assessment. The Applicant noted that the 2017 dataset shows a decrease in pollutant concentrations compared to the 2015 data and, as such, they considered their assessment to be more conservative.
- 5.3.15. The Applicant also noted that all receptors identified for the construction traffic assessment have been assumed to be highly sensitive for the purposes of the assessment and that given the limited number of residential receptors within 400m of the site and the anticipated risk level, quantitative monitoring measures are unlikely to be necessary. Moreover, confirmation was provided that further consideration will be given to appropriate mitigation measures as part of the CEMP.
- 5.3.16. I am satisfied that the Applicant's responses provide the necessary clarification and consider there are no outstanding matters in respect of air quality that need to be addressed.

Conclusions on Air Quality

- 5.3.17. Taking the above matters into account, I conclude that the assessment undertaken adequately assesses impacts on air quality and that no significant effects on air quality are likely to arise. In addition, I am satisfied that the measures secured in Requirements 14 and 24 of the dDCO would ensure that any residual effects on air quality can be suitably controlled and/ or mitigated.
- 5.3.18. Accordingly, I find that the requirements of both the AQD and EN-1 will be met.

5.4. WATER QUALITY, GROUND CONDITIONS AND FLOODING

Policy Considerations

- 5.4.1. Parts of the Site are located in areas of high (Flood Zone 3a) and medium (Flood Zone 2) flood risk as defined by the Environment Agency Flood Map for Planning (FMP).
- 5.4.2. In determining applications, NPS EN-1 advises that the SoS should be satisfied that the proposal meets the requirements of the WFD. In addition, it notes³⁰ that where a project is likely to have effects on the water environment, the Applicant should undertake an assessment of the status of, and the impacts of the proposed project on, water quality, water resources and the physical characteristics of the water environment as part of their ES.
- 5.4.3. Paragraph 5.7.4 of NPS EN-1 advises that all proposals for energy projects located in Flood Zones 2 and 3 should be accompanied by a Flood Risk Assessment (FRA), which should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks would be managed, taking climate change into account.
- 5.4.4. NPS EN-1 also sets out the need for development to pass a sequential test, then an exception test if development is to be considered permissible in a high-risk Flood Zone area. The SoS should not consent to development in Flood Zone 3 unless he is satisfied that the sequential and exception test requirements have been met³¹.
- 5.4.5. The overall aim of the Sequential Test is to steer new development away from areas at highest risk of flooding to those at lowest risk with the aim being to ensure development only takes place in areas at risk from flooding if there are no reasonably available alternatives at locations where the risk is less. It follows that only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.
- 5.4.6. For the exception test to be passed it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk and a site specific FRA must demonstrate that the development will be safe for its lifetime, taking into account the vulnerability of its users and without increasing flood risk elsewhere.
- 5.4.7. NPS EN-2 states that where a project is likely to have effects on water quality or resources, the Applicant should undertake an assessment which should demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts³². Furthermore, it advises that

³⁰ Paragraph 5.15.2.

³¹ Paragraph 5.7.12.

³² Paragraph 2.10.2.

Applicants should demonstrate measures to minimise adverse impacts on water quality and resources.

- 5.4.8. NPS EN-4 notes that the construction of pipelines can create corridors of surface clearance and excavation that can potentially affect watercourses, aquifers, water abstraction and discharge points³³. Potential impacts include interference with groundwater flow pathways, mobilisation of contaminants already in the ground, and introduction of new contaminants. NPS EN-4 also advises that the Applicant should provide an assessment of these impacts.
- 5.4.9. The NPPF considers the vulnerability of different forms of development and infrastructure and provides similar guidance to local planning authorities in relation to water supply, wastewater and water quality, land contamination and flood risk management. Paragraph 066³⁴ of the PPG provides details of flood risk vulnerability classifications setting out the types of development that are appropriate within each Flood Zone.

Applicant's Response

- 5.4.10. The application is accompanied by an FRA [[APP-100](#)] and ES Chapters 11 (Ground Conditions and Hydrogeology) [[APP-040](#)] and 12 (Surface Water, Flood Risk and Drainage) [[APP-041](#)] which assess the likely significant effects on water quality, water resources, ground conditions and flood risk. Consideration is also given to the cumulative impact and combined effects in ES Chapter 17 [[APP-046](#)] and to sustainability and climate change in ES Chapter 15 [[APP-044](#)].

Flood Risk

- 5.4.11. As noted above, parts of the Site are located in areas of high (Flood Zone 3a) and medium (Flood Zone 2) flood risk. However, the Applicant points out that although shown in Flood Zone 3a, the area is in fact protected by existing flood defences. Nevertheless, while Flood Zone 2 is recognised as an appropriate location for essential infrastructure, in Flood Zone 3a, the application of both the sequential and the exception test is required.
- 5.4.12. The FRA [[APP-100](#)] notes that the site is allocated in the LP as an area for employment growth and is identified in the HELAD as suitable for B1³⁵, B2³⁶ and B8³⁷ uses. The Applicant states that on the basis of this allocation it is assumed that the proposed development has passed the Sequential Test. Paragraph 5.7.12 of NPS EN-1 advises that when seeking development consent on a site allocated in a development plan through the application of the Sequential Test, applicants need not apply

³³ Paragraph 2.22.2.

³⁴ Reference ID: 7-066-20140306.

³⁵ Business (including offices (other than those falling within class A2); Research and development of products and processes; and, light industry.

³⁶ General industrial.

³⁷ Storage or distribution.

the Sequential Test, but should apply the sequential approach to locating development within the site. The FRA and ES Chapter 12 indicate that the Applicant has adopted such an approach in this instance.

- 5.4.13. The FRA [[APP-100](#)] also identifies and assesses the risks from all forms of flooding. It notes that the site is identified as part of an area suitable for the proposed use and would deliver a number of wider sustainability benefits to the community that the Applicant considers outweigh the risk. These include meeting the need for additional generating capacity, socio-economic benefits and additional employment opportunities as well as the regeneration of undeveloped land adjacent to an existing power station.
- 5.4.14. In addition, the FRA indicates that the Proposed Development will be safe for its lifetime taking into account climate change over the lifetime of the development and would not increase flood risk elsewhere. It concludes that the Proposed Development passes both the sequential and exception tests. I agree with that assessment.
- 5.4.15. It does, however, acknowledge that when wave height is taken into account the existing defences would not be sufficient to defend the land against higher return period events in the future. It indicates that the modelled 2115 0.1% annual chance scenario for the Site shows that it could experience flood depths in excess of 1.6m with a hazard rating of 'danger for all'.
- 5.4.16. In response to this, the FRA proposes a number of mitigation measures including elevating critical equipment and incorporating flood resilience and resistance measures into the detailed design. It also proposes the submission of a Flood Risk Management Action Plan and Method Statement which will provide details of the emergency flood response to an impending flood.
- 5.4.17. Full details of all of the proposed flood mitigation measures can be found in Table 5A.8 of the fCEMP [[APP-077](#)]. These would be secured by Requirement 11 of the dDCO (which requires the submission and approval of a flood risk mitigation scheme) and Requirement 14 (which makes provision for the submission of the CEMP).

Surface and Foul Water Drainage

- 5.4.18. Chapter 12 of the ES [[APP-041](#)] identifies the key water bodies that may receive runoff or discharges from the Site during construction, operation and decommissioning of the Proposed Development. It includes information on surface and foul water drainage and considers the potential contamination risk to those water bodies as a result - including the Humber Estuary to the east and the land drains identified in Figure 12.1 of the ES [[APP-068](#)].
- 5.4.19. In addition, the FRA [[APP-100](#)] includes a Conceptual Drainage Strategy (CDS) at Annex 5. The CDS represents an outline design to be developed during the detailed design process but includes surface water attenuation measures, advice on sustainable drainage systems, details on foul

drainage as well as on pollution prevention and control. Requirement 10 of the dDCO would secure both temporary and permanent surface water drainage systems and retention and maintenance of the latter throughout the lifetime of the Proposed Development in accordance with the FRA (including CDS).

5.4.20. Chapter 12, also states that:

"a septic tank or bioreactor is likely to be used for treatment of sanitary or domestic wastewater from offices/administration/welfare facilities. Solids from the septic tank will be emptied as required and tankered off site to a waste treatment plant. Clean water from the septic tank or bioreactor will combine with other site clean water including surface water to drain off site via a local land drain".

Ground Conditions and Hydrogeology

5.4.21. Chapter 11 of the ES [[APP-040](#)], together with Appendices 11A - D [[APP-096](#), [APP-097](#), [APP-098](#) and [APP-099](#)], identifies the relevant legal and policy context and describes the existing geological and hydrogeological conditions at the Site. It sets out the significance criteria and describes the assessment methodology employed. It goes on to assess the likely nature and extent of existing sources of contamination which may be present and the potential impacts to the existing geological and hydrogeological conditions likely to arise as a result of the Proposed Development. It considers the potential risks to people, surrounding land uses, ecological receptors, soils and groundwater and identifies the measures required to ensure that sufficient mitigation is put in place to minimise any significant effects.

5.4.22. The Applicant has identified a number of potential impacts during construction, operation and decommissioning including:

- impacts for on-site construction workers as a result of contaminated soil, sediments and ground/ surface water;
- impacts for site workers from gases, vapours and contaminated groundwater;
- impacts to groundwater from spills, runoff and/ or leachates;
- risks associated with imported fill placed on the site;
- the creation of new pathways; and
- potential impacts to flora, fauna and other ecological receptors.

5.4.23. However, a number of mitigation measures are proposed to manage any these potential impacts. These are included in the fCEMP [[APP-077](#)] and are intended to ensure that significant effects on groundwater are unlikely to arise. This is secured in Requirement 14 of the dDCO.

5.4.24. The application is also accompanied by a Phase 2 Geotechnical and Geoenvironmental Interpretative Report [[APP-099](#)], which concludes that there is no risk to human health from the soils on site. Although it identifies trace concentrations of asbestos, it notes that these concentrations are low (<0.001%) and it should be possible to effectively manage this as part of an appropriate CEMP. I have seen nothing in the

evidence which would lead me to conclude otherwise and consider Requirement 14 is sufficient to ensure safeguards are put in place.

- 5.4.25. In addition, the dDCO [[REP7-002](#)] requires the submission of a scheme to deal with land contamination and provides for further consultation with the EA before development commences. This would be secured in Requirement 12, which the EA has indicated is adequate to address the risks associated with contaminated land and groundwater.

Views of IPs

- 5.4.26. No concerns were raised by IP's in respect of flood risk or the assessments carried out by the Applicant in relation to it. Similarly, no concerns were identified in relation to hydrogeology or ground conditions.
- 5.4.27. Neither NLC nor NELC raised concerns regarding surface or foul water drainage in their LIRs.
- 5.4.28. The EA indicated [[REP2-014](#)] that it is satisfied that the Applicant's approach to surface water drainage and the outline pollution prevention measures contained within the CDS in respect of surface water drainage are acceptable. Likewise, NELIDB has indicated that it has no objection to the Proposed Development provided it is constructed in accordance with the details set out in the CDS.
- 5.4.29. In addition, the EA agreed a SoCG with the Applicant at Deadline 2 [[REP2-014](#)] in which they state that the assessment undertaken in respect of surface water, flood risk and drainage is appropriate for the scale, nature and location of the Proposed Development and identifies appropriate mitigation recommendations. Similar views are also expressed by NLC in the LIR [[REP2-033](#)] and SoCG [[REP6a-005](#)].
- 5.4.30. However, the EA did note that the discharge of effluent must be to the public sewerage system whenever it is reasonable to do so and set out a number of reasons as to why the proposed septic tank would not be permitted [[RR-008](#)]. In order to address these concerns, it recommended a number of amendments to Requirement 10 of the dDCO including the separation of surface water and foul water drainage into two separate requirements. It also indicated that the latter should include a requirement to connect to a public mains sewerage system or where it is unfeasible to do so, an alternative strategy for foul water drainage should be submitted to, and approved by, the LPA after consultation with the EA and Anglian Water Services, the relevant sewerage undertaker.

Examination

- 5.4.31. As part of ExQ1, I sought further details on the risks of tidal flooding as a result of climate change, requested confirmation that there were no direct or indirect pathways through which the terrestrial works would directly or indirectly affect surrounding watercourses, and further details on accidental pollution and foul and surface water drainage.

- 5.4.32. In relation to tidal flooding, the Applicant's response noted [\[REP2-009\]](#) that any risks posed would be beyond the anticipated lifespan of the Proposed Development and, as such, would pose no risk to the Proposed Development itself. Furthermore, the EA indicated that around 1.3km of the existing tidal defence where the overtopping consequence arises has extant planning consent for the construction of a quay which, if constructed, would significantly reduce the future consequence of overtopping [\[REP2-027\]](#).
- 5.4.33. The Applicant acknowledged the concerns raised by the EA in relation to the discharge of effluent [\[REP2-009\]](#) and Requirement 10 (Surface and Foul Water Drainage) of the dDCO [\[APP-005\]](#) was subsequently amended and an additional requirement included to deal with foul water drainage (Requirement 25). The EA confirmed at Deadline 2 that these changes addressed their concerns [\[REP2-027\]](#). I am satisfied that that these changes are sufficient to ensure that appropriate schemes in respect of surface and foul water drainage are secured as part of the Proposed Development.
- 5.4.34. In relation to ground conditions, the main water bearing formations below the site are the Burnham Chalk Formation (classified as a Principal Aquifer by the EA) and a number of glacial deposits (classified as Secondary A aquifers by the EA). As the design is not yet finalised, it is not known whether the Proposed Development will require piled foundations. However, the EA and the Applicant have noted (in their agreed SoCG [\[REP2-014\]](#)) that in the event that the foundation design requires piling into the bedrock, further assessment will be required due to the potential for preferential pathways to be created and for contaminants to migrate to controlled waters.
- 5.4.35. Consequently, Requirement 20 of the dDCO requires a written piling and penetrative foundation design method statement to be submitted (including a piling risk assessment) to the local planning authority to ensure that any risks are minimised and the underlying aquifer is protected. The EA agrees that this requirement is fit for purpose and I have no reason to conclude otherwise.
- 5.4.36. NLC indicated that they are satisfied that the approach to contamination set out in ES Chapter 11 is acceptable and that any associated risks can be mitigated by the acceptable discharge of Requirements 12 and 20 [\[REP2-033\]](#) and [\[REP4-010\]](#).
- 5.4.37. There are no outstanding matters in respect of water quality, ground conditions or flooding that need to be addressed.

Conclusions on Water Quality, Ground Conditions and Flooding

- 5.4.38. Taking the above matters into account, I conclude that an appropriate FRA, meeting the requirements of NPS EN-1, has been carried out and that sufficient mitigation would be secured in Requirement 11 of the dDCO to guard against the risk of flooding.

- 5.4.39. Furthermore, I consider that the Applicant has provided sufficient information on flood risk to meet the requirements of NPS EN-1, EN-2 and EN-4, and I am satisfied that no further mitigation in respect of flooding is necessary beyond that set out in the dDCO.
- 5.4.40. In addition, I am satisfied that, subject to the mitigation measures identified in the ES, there should be no adverse effects on water quality and resources from the Proposed Development during construction, operation or decommissioning. As such, I find that the Proposed Development accords with the requirements of the WER and WFD.
- 5.4.41. Accordingly, I conclude that the requirements in respect of water quality, flood risk and ground conditions set out NPS EN-1, EN-2 and EN-4 are met.

5.5. LANDSCAPE AND VISUAL AMENITY

- 5.5.1. The Site is not located in any national or regional designation for landscape protection. It falls 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. Further details on the Site itself and the surrounding area can be found in Chapter 3 of the ES [[APP-032](#)].

Policy Considerations

- 5.5.2. NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting. Furthermore, it recognises that all proposed energy infrastructure is likely to have visual impacts and that it will be necessary to judge whether the visual effects, after allowing for mitigation measures, outweigh the benefits of the project. With this in mind, it advises that the Applicant should include a landscape and visual assessment in the ES.
- 5.5.3. NPS EN-2 notes that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station. It advises that attention should be paid to the design of the generating station so as to reduce visual impacts. Provided that the location is appropriate for the project and it has been designed sensitively, EN-2 indicates that the visibility of a fossil fuel generating station should be given limited weight.

Applicant's Response

- 5.5.4. Chapter 10 of the ES [[APP-039](#)] assesses the landscape and visual effects during all phases of the project based on the maximum extent of the Proposed Development. It identifies the Zone of Theoretical Visibility [[APP-062](#)] based on a stack height of a 56m above ordnance datum (or 50m above ground level). The application is also accompanied by example layouts [[APP-052](#) & [APP-053](#)] and example elevations [[APP-054](#) and [APP-055](#)]. Requirement 5 of the dDCO includes provision for the

submission of detailed design details for approval by the local planning authority.

- 5.5.5. A total of 11 representative viewpoints which the Applicant considers illustrate the typical range of views of the Proposed Development can be found in Figures 10.4 to 10.27 of the ES [[APP-065](#), [APP-066](#), and [APP-067](#)] and are described in Table 10.3 of Chapter 10.
- 5.5.6. While the Applicant's assessment identifies potential for temporary impacts on landscape and visual amenity during construction, it notes that industrial development is a characteristic of the landscape and the Proposed Development would not introduce any new, uncharacteristic landscape elements. Overall, it concludes that due to the existing industrial character of the site and surrounding landscape, the landscape and visual effects during construction, operation and decommissioning would not be significant.
- 5.5.7. Chapter 17 of the ES [[APP-046](#)] considers the cumulative and combined effect of the Proposed Development when taken with other nearby projects before concluding that any such effects would also be negligible.

Views of IPs

- 5.5.8. NLC confirm in their LIR [[REP2-033](#)] that they consider the Proposed Development generally complies with local development plan policy on landscape and visual amenity and that they raise no objection on policy grounds. No other policy related issues were raised by IPs during the Examination.
- 5.5.9. Furthermore, in response to ExQ1 (Q1.8.1) [[PD-007](#)], NLC confirmed that they considered the viewpoints provided reasonably representative views of the Proposed Development [[REP2-032](#)]. They did, however, advise that further consideration should be given to the potential rerouting of a section of footpath along Rosper Road as a result of the Able Development [[REP2-032](#)]. This would result in potential views of the development from what would form part of the English coast path. NLC also raised concerns in their LIR [[REP2-033](#)] about the lack of any requirement for a landscaping scheme to be submitted and approved as part of the dDCO.
- 5.5.10. The proposed development also has the potential to give rise to light pollution during both the construction and operational phases. NLC confirm in their LIR [[REP2-033](#)] that they consider the controls included in Requirement 7 ensure that the proposals will have no significant adverse effects resulting from light nuisance.
- 5.5.11. WLDC noted in their RR [[RR-016](#)] that the Proposed Development could affect views from Brocklesby Park including the wider setting of the

historic park and garden and an Area of Great Landscape Value (AGLV) designated under Policy LP17 of the Central Lincolnshire Local Plan³⁸.

Examination

- 5.5.12. During the Examination, I undertook unaccompanied [[EV-003](#)] and accompanied site inspections [[EV-008](#)] and visited a number of the representative viewpoints identified in the ES. These gave me an appreciation of the site, its surrounding industrial and agricultural context and its relationship within the wider landscape and nearby heritage assets. I agree that the viewpoints in Figures 10.4 to 10.27 of the ES [[APP-065](#), [APP-066](#), and [APP-067](#)] provide representative views of the Site.
- 5.5.13. Although the example elevations [[APP-054](#) and [APP-055](#)] and layout drawings [[APP-052](#) & [APP-053](#)] are indicative, it was clear from my site inspections that the main, lasting, visual impact of the Proposed Development would be as a result of the stack - which would be visible close up and from further afield. However, it would be seen in the context of the existing industrial sites and I observed a number of existing stacks in the near vicinity of the site which were larger than the one proposed. As a result, I do not consider it would appear unduly prominent or out of place.
- 5.5.14. In response to WLCD's concerns, the Applicant noted that a representative viewpoint in the Brocklesby area was identified but subsequently discounted due to a lack of intervisibility. This accords with my own observations.
- 5.5.15. At Deadline 3, the Applicant accepted that the Able Development may result in re-routing of a section of footpath bringing it closer to the Site (around 500m at its closest point) but noted that, in any event, views of the Site would be largely screened by the Able Development [[REP3-007](#)]. No further representations were made on this point and at Deadline 6a, the Applicant agreed a SoCG with NLC in which they agree that the visual effects associated with the Proposed Development are acceptable [[REP6a-005](#)].
- 5.5.16. The Applicant responded to NLC's comments on the lack of a requirement for a landscaping scheme by stating that this could be addressed as part of the Biodiversity Enhancement and Management Plan (BEMP) secured under Requirement 6 [[REP3-008](#)]. This would include a number of biodiversity enhancement measures including additional planting, the creation wildflower grassland in undeveloped areas of the site and long-term management of habitats. While I accept that, in view of the proposed stack height and the scale and mass of the Proposed Development, there are few landscaping opportunities available, the measures set out in the framework BEMP (fBEMP) would provide some further mitigation in terms of visual impact at the detailed design stage.

³⁸ The Central Lincolnshire Local Plan 2012-2036 (adopted April 2017).

- 5.5.17. Nevertheless, while Requirement 5 of the dDCO secures the submission of details including the siting, layout and external appearance of all new buildings and structures providing additional opportunities, it does not include details of landscaping. I consider the inclusion of such details would provide a further opportunity to mitigate the visual impact of the proposed development on its surroundings. I therefore recommend the inclusion of further landscaping details in Requirement 5. I consider the changes necessary to give effect to this in Table 5 of Chapter 9 below.

Conclusions on landscape and visual amenity

- 5.5.18. Taking all of the above matters into account, I am satisfied that an assessment of the landscape and visual effects of the Proposed Development meets the requirements of NPS EN-1. Furthermore, I am satisfied that Requirements 5 and 6 of the dDCO will provide further opportunities to mitigate the visual impact of the Proposed Development on its surroundings.
- 5.5.19. Based on the evidence presented and having viewed the site from a number of representative viewpoints, I am satisfied that the Proposed Development is unlikely to have a significant effect on landscape or visual amenity and meets the requirements of NPS EN-1 and EN-2.

5.6. ECOLOGY

- 5.6.1. The site is located around 1.4km to the west of the Humber Estuary SAC, SPA and Ramsar Site all of which support internationally important populations of wintering birds. These sites are of international conservation value. There are also a number of SSSIs nearby which are of national conservation value as well as locally recognised wildlife sites (LWS). Further details can be found in Chapter 9 of the ES [[APP-038](#)].

Policy Considerations

- 5.6.2. Section 4.3 of NPS EN-1 sets out the policy considerations relevant to HRA. These are considered in Chapter 6 of this report.
- 5.6.3. NPS EN-1³⁹ also sets out the importance of assessing, as part of the ES, the effects of the Proposed Development on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.
- 5.6.4. Furthermore, it states that, as a general principle, development should aim to avoid significant harm to biodiversity and geological conservation interests including through mitigation⁴⁰. It also requires the Applicant to

³⁹ Paragraph 5.3.3.

⁴⁰ Paragraph 5.3.7.

show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

- 5.6.5. Paragraph 5.3.8 advises that the SoS, in taking decisions, should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.
- 5.6.6. Additional policy guidance can be found in the NPPF which espouses a commitment to improving biodiversity, minimising impacts on it and encourages the incorporation of biodiversity improvements in and around developments. Likewise, local planning policy seeks to protect and enhance biodiversity and ensure ecological enhancement through good design.

Applicant's Response

- 5.6.7. Chapter 9 of the ES [APP-038] sets out the study area⁴¹, the significance criteria and describes the assessment methodology employed. It goes on to consider the potential effects of the Proposed Development on ecological features. It is accompanied by a Preliminary Ecological Appraisal [APP-084] along with survey reports on great crested newts (GCNs) [APP-085], wintering birds [APP-086], breeding birds [APP-087], terrestrial invertebrates [APP-088], reptiles [APP-89] and botany [APP-090] – all of which have been identified as either being present in association with the site or potentially within the zone of influence of the Proposed Development.
- 5.6.8. Although the assessment identifies no significant effects on ecological receptors either from air quality, surface water quality, visual disturbance or noise impacts during either operation or decommissioning⁴², it notes that there is potential for impacts during construction to result in significant effects on the qualifying winter bird assemblage of the Rosper Road fields as well as potential effects on LWS and on water vole. However, after carrying out an assessment of the likely impacts, it [APP-038] concludes that as a result of best practice construction measures secured as part of the CEMP, the effects are mostly neutral.
- 5.6.9. It does, however, recognise that the construction of the Proposed Development would result in the permanent loss of approximately 1.03 hectares of Open Mosaic Habitat (OMH) as well as the loss of Semi-improved Neutral Grassland (SING). This is assessed as resulting in a moderate adverse impact which, in the absence of mitigation would result in a significant effect.

⁴¹ 15km radius from the site.

⁴² and notes that the extent of habitat loss likely to result from decommissioning is expected to be much less than at construction and that the resulting effects on ecological features is likely to be lower.

- 5.6.10. The Applicant proposes a number of mitigation and enhancements measures including reinstatement of laydown areas on completion of construction works, replacement OMH/ SING to the south east of the Site, pre-construction surveys for water vole and a GCN strategy in the event that this species is subsequently identified.
- 5.6.11. In addition, it proposes a number of enhancement measures including the creation and management of areas of species rich wildflower grassland in undeveloped areas of the site, creation of log piles, installation of bird nesting boxes on suitable structures and buildings and the planting of native bird species and trees to provide invertebrate habitat and nesting opportunities for breeding birds. The Applicant proposes that all of the above mitigation measures would be secured via the BEMP secured via Requirement 6 of the DCO (and in accordance with the fBEMP [[APP-091](#)]).

Views of IPs

- 5.6.12. NE raised a number of specific concerns in their RR [[RR-014](#)] in relation to the potential for noise from the Proposed Development to impact on the wintering bird assemblage of the Humber Estuary. In particular, they sought further information from the Applicant to enable a more detailed assessment of the likely effects on wintering bird populations using the functionally linked fields between the Proposed Development and the Humber Estuary. Further information was also requested by NE to determine if the residential noise sensitive receptor (NSR) identified provides a representative location for bird species using these functionally linked areas.
- 5.6.13. Concerns were also raised by NE around the potential for piling operations to impact on bird species associated with the SPA and Ramsar site. NE sought to ensure that if piling becomes a future requirement sufficient safeguards are included in the DCO to ensure that additional assessments are undertaken. While NE welcomed the inclusion of biodiversity enhancement measures, they did not believe that they were adequate in terms of creating a net environmental gain and as a result the Proposed Development would result in a net loss of natural resource.
- 5.6.14. NLC and NELC raised no matters of ecological concern and agreed in the respective SoCG that subject to the inclusion of Requirement 6 in the DCO, they consider there would be a net gain in biodiversity as a result of the Proposed Development.

Examination

- 5.6.15. The Applicant submitted a Confirmatory Great Crested Newt Survey prior to the PM which I accepted as an additional submission [[AS-006](#)].
- 5.6.16. In ExQ1, I asked the Applicant a number of key questions in relation to the ecological impacts. These including questions intended to clarify the potential noise impacts on wintering birds using the functionally linked fields, assumptions made, how the assessments would be affected by different stack heights and how the ES takes into account the potential

for piling operations as part of construction. These questions were responded to by the Applicant at Deadline 2 [[REP2-009](#)].

- 5.6.17. Further correspondence between the Applicant and NE (see Appendix 2 [[REP2-009](#)]) was also provided which provides further context for the assessment undertaken in relation to GCN. NE noted in their RR that they were satisfied that sufficient effort has been undertaken to determine the presence of GCN. I agree with NE's view.
- 5.6.18. NE agree that, with the potential exception of piling, the standard control measures outlined in the ES and secured through the CEMP and Requirement 14 of the dDCO should ensure that no significant disturbance impacts would occur on qualifying species using the Rosper Road fields from construction and operation of the Proposed Development. However, while NE and the Applicant agree that rotary and hydraulic piling techniques would not give rise to significant effects on any bird assemblage using the Rosper Road fields, they also agree that the use of impact piling does have the potential to cause disturbance.
- 5.6.19. This matter was discussed further at ISH2. In response, the Applicant stated that in the event that impact piling is required, it would be restricted to times of the year when no wintering bird assemblage would be using the Rosper Road fields. Furthermore, amendments were made to Requirement 14 to require the CEMP to provide information on any proposed piling methods, their approximate duration and timing and the agreement of details relating to it, including the addition of NE as a consultee. In addition, the dDCO also includes a requirement (Requirement 20) which secures the submission and approval of a written Piling and Penetrative Foundation Design Method Statement prior to commencement of Work No.1.
- 5.6.20. As a result, I concur with the views expressed by the Applicant and NE in the agreed SoCG [[REP4-011](#)] that the risks of disturbance on the Humber Estuary bird species have been adequately assessed. Furthermore, subject to compliance with relevant Requirements, I am satisfied that the Proposed Development would not result in any significant adverse effects on these species either during construction or operation, including those using the functionally linked fields off Rosper Road.
- 5.6.21. Turning then to NE's concerns in relation to net biodiversity gain, section 4.9 of the agreed SoCG [[REP4-011](#)] acknowledges that provision is made within the BEMP to allow for net gain in biodiversity and that NE will be afforded an opportunity to comment on the BEMP as part of the discharge of Requirement 6. I note that NE states that it has no further concerns in this respect at this time.
- 5.6.22. Based on the above, I am satisfied that all ecological concerns raised by IPs have been addressed during the Examination and that there are no outstanding issues in respect of ecology.

Conclusions on Ecology

- 5.6.23. Given the evidence presented, I consider that ecological and nature conservation issues have been adequately assessed, and that the requirements of NPS EN-1 are met.
- 5.6.24. I am also satisfied that NE's concerns regarding ecological effects have been dealt with adequately by the Applicant through Requirements 6, 14 and 20 of the dDCO.

5.7. NOISE AND VIBRATION

Policy Considerations

- 5.7.1. NPS EN-1 notes that excessive noise and vibration can result in adverse effects on a range of receptors including impacts on the quality of human life, health, wildlife and biodiversity. Furthermore, it states 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 minimised⁴³. It also advises that the SoS should be satisfied that, where possible, proposals contribute to improvements to health and quality of life through the effective management and control of noise.
- 5.7.2. Where impacts are likely to arise, Paragraph 5.11.4 of NPS EN-1 sets out the matters that an applicant should include in the noise assessment, recognising that the nature and extent should be proportionate to the likely noise impact. It also advises that operational noise, with respect to human receptors, should be assessed using the principles of relevant British Standards (BS).
- 5.7.3. 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 also requires a noise assessment as described in NPS EN-1 to be included as part of the ES. Furthermore, it advises that in making their decision, the SoS should be satisfied that noise will be adequately mitigated through requirements attached to the DCO. Both NPS EN-1 and EN-2 note that the primary mitigation for noise is through good design.
- 5.7.4. As noted in Chapter 3 above, the NPSE seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. It provides guidance on defining 'significant adverse effects' and 'adverse effects' by reference to the NOEL, LOAEL and SOAEL (further details on these can be found at paragraphs 3.5.16 to 3.5.18 above).
- 5.7.5. The NPPF and PPG provide further advice on noise in planning. I have had regard to these in my consideration of this topic.

⁴³ Paragraph 5.11.9.

Applicant's Response

- 5.7.6. ES Chapter 8 (Noise and Vibration) [[APP-037](#)] and ES Chapter 17 (Cumulative and Combined Effects) [[APP-046](#)] consider the potential noise and vibration impacts resulting from the construction (including that caused by vehicles going to and from the site), operation and decommissioning phases of the Proposed Development – as well as the cumulative and combined effects of the Proposed Development with other nearby developments. They set out the study area, the significance criteria and describe the assessment methodology employed. They take into account BS 7445-1:2003, BS 7445-2:1991, BS 5228:2009 (A1:2014), BS 6472:2008, BS 7385:1993 and BS 4142:2014 as well as guidance from the World Health Organisation (WHO) and the Department for Transport.
- 5.7.7. The Applicant's assessment identifies a number of potential impacts including effects due to construction activities at nearby NSRs, potential for abnormal night-time construction traffic and potential for vibration impacts on surrounding buildings.
- 5.7.8. One NSR with the potential to be significantly impacted by the Proposed Development was identified (ES Figure 8.1 [[APP-060](#)]) and an assessment of the likely impacts carried out. It predicts construction sound levels of 47 decibels⁴⁴ (dB) which would be below the 55dB threshold identified in BS 5228 as indicative of a potentially significant effect. It concludes 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 dDCO) to ensure that noise during construction is minimised. Outline details of the measures proposed can be found in the fCEMP included in the application [[APP-077](#)].
- 5.7.9. The ES assessment also considers vibration impacts during construction and indicates that, at around 650m away, the identified NSR is sufficiently distant from the Proposed Development so as not to be significantly affected by construction vibration. As such, it concludes no additional mitigation in respect of vibration is proposed. I have no evidence before me which would lead me to reach a different conclusion.
- 5.7.10. In terms of operational noise, modelling was undertaken by the Applicant based on a worst-case scenario and the results are presented in table 8.16 of ES Chapter 8 [[APP-037](#)]. It identifies representative background sound levels at the NSR as being 49dB and predicts a rating sound level of 50dB, an increase of around +1dB. BS 4142:2014 identifies a difference of around +5dB as likely to be an indication of an adverse impact and notes that the lower the rating level is to the measured background sound level, the less likely it is that there will be an adverse impact or significant adverse impact. As such, the Applicant's assessment concludes that the magnitude of the impact would be very low and would have a negligible effect. As with construction noise, it concludes that

⁴⁴ LAeq,T.

standard noise control measures can be built into the detailed design and, as such, no additional mitigation is required.

- 5.7.11. Chapter 8 of the ES also explains that the Applicant considers noise from decommissioning activities would be comparable to that which would occur during construction [[APP-037](#)]. The Applicant proposes that these would be managed through the use of a Demolition Environmental Management Plan secured under Requirement 24 of the dDCO.
- 5.7.12. Chapter 17 [[APP-046](#)] recognises that there is potential for the NSR to experience cumulative effects generated by the operation of the Proposed Development in combination with the neighbouring VPI Energy Park A site. However, although it identifies a difference of around 5+dB, which BS 4142 recognises as likely to be an indication of an adverse impact, the Applicant notes 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. As a result, the Applicant concludes that the residual noise effects at the nearest NSR during construction, operation and decommissioning would be negligible.

Views of IPs

- 5.7.13. As noted above, NE raised concerns around the potential for noise from the Proposed Development to impact on the wintering bird assemblage using the functionally linked fields between the Proposed Development and the Humber Estuary. As I have noted in paragraphs 5.6.20 to 5.6.24 above, I am satisfied that these concerns have been adequately addressed. I consider the HRA issues that arise further in Chapter 6 below.
- 5.7.14. NLC, in their LIR [[REP2-033](#)], note that operational noise from the Proposed Development has the potential to cause disturbance to local residents. As a result, NLC requested that the restriction on operational noise included in Requirement 19 of the dDCO should be lowered from +5dB above background noise levels to +3dB.

Examination

- 5.7.15. I sought clarification as part of ExQ1 (Q1.13.1-1.13.6) around the selection of the NSR, the assumptions made for effects on buildings and the controls in place to ensure that noise and vibration do not significantly exceed that which has been assessed. I also asked the Applicant to justify their decision not to include ecological receptors as NSRs within the noise assessment and for further information on the circumstances in which piling techniques would be required during construction.
- 5.7.16. In response, the Applicant stated that the NSRs were selected based on a review of residential receptors within 2km of the site and their proximity to the Proposed Development. Furthermore, the Applicant explained that no fixed ecological receptors were identified as being susceptible to noise

impacts within the study area and as a result had not been included as NSRs within the assessment.

- 5.7.17. The Applicant also explained that operational vibration had been scoped out of the noise assessment as no causes of significant vibration associated with the Proposed Development are anticipated and that the rotating equipment within the generator would be constantly monitored for any changes in the vibration level it produces. I note that vibration during construction will be controlled through Requirement 14 of the dDCO which, as noted above, requires the submission and approval of a CEMP including details on any piling methods employed. I am satisfied that this will ensure that vibration levels during construction can be kept below the level expected to give rise to effects in adjacent buildings.
- 5.7.18. NLC's concerns in respect of operational noise were discussed further at ISH2 [[EV-007](#)], during which the EA explained that they intended to include a condition in the EP requiring a further assessment on operational noise emissions prior to the commencement of commissioning. I agree that would help ensure that BAT is included and would provide a further opportunity to assess operational noise effects once the detailed design is known [[REP3-022](#)].
- 5.7.19. Nevertheless, NLC noted that the assessments indicate that background noise levels in the area are already high and argued that allowing an additional +5dB would be unacceptable. It points to BS 4142:2014 which notes that a difference of around +5dB is likely to be an indication of an adverse impact, depending on the context.
- 5.7.20. While I acknowledge that site is in an existing industrial area, I nevertheless note that background noise and ambient noise levels are already above the WHO threshold for sleep disturbance and consider further increases may have unacceptable impacts on the identified residential NSR. Furthermore, the noise assessments undertaken by the Applicant indicate that limiting the increase to +3dB would be achievable.
- 5.7.21. Following further discussions between the Applicant and NLC, the operational noise restriction in Requirement 19 of the dDCO was altered to limit operational noise to a maximum of +3dB above background noise levels. I consider these changes are appropriate to ensure that background noise levels remain within acceptable levels and below the significance threshold set out in the NPSE and NPPF.
- 5.7.22. NLC and the Applicant agreed a SoCG at Deadline 6a [[REP6a-005](#)] which notes that all outstanding matters in respect of noise have now been resolved.
- 5.7.23. In view of the above, I am satisfied that all concerns raised by IPs in relation to noise and vibration have been addressed.

Conclusions on Noise and Vibration

- 5.7.24. Based on the evidence before me, I consider the Applicant's assessment of the noise and vibration impacts likely to arise from the construction,

operation and decommissioning of the proposed development meets the requirements of NPS EN-1 and EN-2.

5.7.25. Furthermore, I am satisfied that the noise resulting from the construction, operation and decommissioning of the proposed development would remain below the significance thresholds as set out in the NPSE and NPPF. The inclusion in the dDCO of Requirements 14, 19 and 24 governing the control of noise during construction and operation provide sufficient safeguards to ensure that the adverse impacts resulting from the Proposed Development would be minimised.

5.7.26. Accordingly, I conclude that the application accords with the Government's policy on noise and vibration as set out in NPS EN-1, EN-2, the NPSE and NPPF.

5.8. CULTURAL HERITAGE

Policy Considerations

5.8.1. Section 5.8 of NPS EN-1 recognises that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment. Furthermore, 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. The paragraph also states that if the evidence before the SoS indicates that a non-designated heritage asset may be affected by the Proposed Development then the heritage asset should be considered subject to the same policy considerations as those which apply to designated heritage assets.

5.8.2. Paragraphs 5.8.8 to 5.8.10 require the Applicant to fully assess the significance of the heritage assets affected by the Proposed Development and ensure that the extent of the impact can be adequately understood from the application and supporting documents.

5.8.3. In terms of decision-making, paragraphs 5.8.11 to 5.8.18 of NPS EN-1 advise that consideration should be given to the significance of any heritage assets and whether the development would affect their setting. Furthermore, they indicate that there should be a presumption in favour of the conservation of designated heritage assets. Loss affecting any designated assets should require clear and convincing justification and any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development.

5.8.4. Similar advice can be found in the NPPF and LP Policies HE2, HE5, HE8 and HE9.

Applicant's Response

5.8.5. ES Chapter 13 sets out the Applicant's assessment of the effects of the Proposed Development on cultural heritage. It includes details of the assessment methodology adopted, significance criteria and the criteria for determining the magnitude of impact [[APP-042](#)]. It provides details of

the extent of the study areas and identifies the designated and non-designated heritage assets within it. The heritage assets identified are described in Appendices 13A to 13C of the ES [[APP-101](#), [APP-102](#) and [APP-103](#)] and their location shown in ES Figures 13.1-13.3 [[APP-069](#), [APP-070](#) and [APP-071](#)].

- 5.8.6. A total of 15 designated heritage assets were identified within the 3km study area. All are located more than 1km from the Site and the assessment identifies no physical impact to designated heritage assets during construction.
- 5.8.7. However, following a selection exercise, three Grade II listed heritage assets were identified as having the potential to be impacted by the visual effects of the Proposed Development. These consist of the Killingholme South Low Lighthouse, Killingholme North Low Lighthouse and Killingholme High Lighthouse. All are located approximately 1.25km to the east of the Site and are of architectural and historic interest of their own right. However, as ES Chapter 13 notes, their significance is increased when viewed as a group.
- 5.8.8. The Applicant has also identified two non-designated heritage assets of archaeological value which will be directly impacted, and which are likely to suffer significant effects from the Proposed Development. The first of these is within the main OCGT site and consists of Iron Age ditches (asset A17 on ES figure 13.1 [[APP-069](#)]) associated with the Iron Age Settlement Site located on the site of the Existing VPI CHP plant (asset A6). The second is located within the temporary construction and laydown area running alongside Rosper Road. It consists of an area of Romano-British settlement features preserved in situ when the neighbouring CHP plant was constructed and is identified on ES figure 13.4 [[APP-072](#)].
- 5.8.9. As the construction works proposed could lead to the destruction of these, mitigation is proposed. In relation to the Iron Age Ditches, the Applicant is proposing a programme of archaeological strip, map and record while continued preservation in situ is proposed for the assets located within the construction and laydown area. Requirement 13 of the dDCO requires the submission of a Written Scheme Of Investigation (WSI) in accordance with the framework WSI (fWSI) submitted with the application [[APP-105](#)].

Views of IPs

- 5.8.10. No representations in respect of the assessment or the impact of the proposal on cultural heritage were received from Historic England.
- 5.8.11. WLDC noted in its RR [[RR-016](#)] the potential for the Proposed 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 outside the study area and over 5km from

the site. Further details of the designated heritage assets at Brocklesby Park can be found in Appendix 13B of the ES [[APP-102](#)].

- 5.8.12. NLC stated in their LIR [[REP2-033](#)] that they 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 archaeological remains located within the main OCGT site were preserved and an adequate archaeological record of the site was made. It proposed further details be included in the fWSI to ensure that the proposed mitigation and protection measures were undertaken prior to construction work commencing. It also sought to ensure that sufficient protection was put in place to safeguard asset A6 and its preservation in situ.

Examination

- 5.8.13. The Proposed Development will result in the erection of tall structures. However, while the Proposed 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. Similarly, while the assessment recognises that the Proposed Development would be visible in key views of the lighthouses from the estuary, again these would be seen in the context of the existing industrial setting of the site. Overall, I concur with NLC that there would be no adverse impact on the setting of these designated heritage assets.
- 5.8.14. As noted in section 5.5 (Landscape and Visual Amenity), there is little intervisibility between the proposed development and the heritage assets located at Brocklesby. As such, I am satisfied that they too would not be impacted by the Proposed Development.
- 5.8.15. NLC's concerns in relation to the archaeological remains were discussed at ISH2 [[EV-007](#)]. The Applicant confirmed that following discussions with NLC, changes to the fWSI had been made in order to clarify the timescales and include the provision of a Method Statement to be agreed by NLC in advance of the archaeological works being carried out. Furthermore, Requirement 14 was updated so that details relating to fencing and protection in accordance with the strategy set out in the fWSI were provided as part of the CEMP. NLC confirmed that this satisfactorily addresses the concerns raised in the LIR in respect of cultural heritage.
- 5.8.16. An updated fWSI was submitted at Deadline 4 [[REP4-006](#)] which incorporates these changes. I am satisfied that this adequately addresses the concerns raised by NLC.
- 5.8.17. There are no other outstanding matters in respect of cultural heritage.

Conclusions on Cultural Heritage

- 5.8.18. Taking the above matters into account, I consider the Applicant has adequately assessed the significance of the heritage assets affected by

the proposal so that the extent of the impact can be understood. In my view, the application meets the requirements of NPS EN-1 in that regard.

- 5.8.19. Based on this information, I concur with the views expressed by the Applicant and IPs that the Proposed Development would not adversely affect any of the designated heritage assets identified in the application documents.
- 5.8.20. Nevertheless, notwithstanding the mitigation measures proposed, the Proposed Development would result in adverse impacts to non-designated heritage assets. This harm would, in my view, be less than substantial. I consider this matter further in Chapter 7 below.

5.9. TRANSPORT AND TRAFFIC

Policy Considerations

- 5.9.1. NPS EN-1⁴⁵ recognises that new energy NSIPs can result in substantial impacts on the surrounding transport infrastructure. It identifies the traffic and transport effects that can arise from energy infrastructure developments and advises applicants to include a transport assessment (TA) using methodologies agreed with the relevant national and local highways and transportation authorities. It also indicates that the SoS should seek to ensure that the application has sought to mitigate impacts, including during the construction phase of the development.
- 5.9.2. 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.

Applicant's Response

- 5.9.3. ES Chapter 7 [[APP-036](#)] sets out the policy context, relevant guidance and considers the transport and traffic impacts of the development during construction, operation and decommissioning. In accordance with the advice set out in NPS EN-1, it considers the feasibility and viability of sustainable transport solutions including rail and water.
- 5.9.4. Section 7.3 sets out the assessment methodology and significance criteria and notes that the site preparation and construction programme is expected to take around 21 months from commencement to commissioning. Table 7.13 of ES Chapter 7 [[APP-036](#)] indicates that the percentage increase⁴⁶ in traffic resulting from the temporary construction traffic would be below 5% on all links. The Applicant notes that this is well below the thresholds for significant impact identified in the assessment which indicate that an increase of less than 30% would result in a negligible impact on traffic volumes. Effects on severance, pedestrian amenity, fear and intimidation, accidents and safety, and driver delay are likewise considered negligible. The evidence indicates that there would be

⁴⁵ Section 5.13.

⁴⁶ Over existing levels.

no impacts of significance to the surrounding highway network during construction.

- 5.9.5. However, notwithstanding the limited effects, 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 to contractors pedestrian and cycle routes to and from the site, providing appropriate facilities for safe storage of cycles, information on local bus connections, car sharing and other shared transport options, identifying designated routes to the site for construction traffic, limiting delivery times for Heavy Goods Vehicles (HGVs), providing wheel cleaning facilities, road condition surveys and the erection of advance warning signs for drivers. These are secured in the dDCO 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. Outline details are included in the framework CWTP (fCWTP) and framework CTMP (fCTMP) included with application documents [[APP-080](#) and [APP-081](#)].
- 5.9.6. ES Chapter 7 also indicates that once operational, the Proposed Development is likely to generate around 15 permanent staff roles resulting in around 30 two-way vehicle movements throughout the day. In addition, there would be some HGV traffic generated by deliveries and maintenance and the assessment assumes a maximum of 3 HGVs a day. Fuel for the proposed development would be natural gas transported to the site via pipeline and result in no direct vehicle movements in relation to the transport of the gas. The assessment concludes that the low levels of vehicle numbers generated are unlikely to have a significant effect.
- 5.9.7. The ES also includes a TA [[APP-079](#)] which assesses the traffic and transport implications of the Proposed Development and concludes that it would be acceptable in highways and transportation terms.
- 5.9.8. Access to the site would be via the existing accesses currently serving the TLOR site and the Existing VPI CHP site. These are identified in the Works Plans [[APP-012](#)] and are designed to accommodate HGVs. The northern site would be shared with TLOR and would provide the main access to the OCGT Power Station site. The southern access would be shared with the Existing VPI CHP Plant and would provide access to other parts of the site for maintenance purposes.
- 5.9.9. Chapter 17 of the ES [[APP-046](#)] considers the cumulative and combined effects including in relation to transport and traffic and does not identify any likely significant adverse impacts associated with the Proposed Development - either on its own or in combination with other developments.

Views of IPs

- 5.9.10. Two IPs referred to traffic and transport impacts in their RRs. WLDC requested [[RR-016](#)] 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 seeking access to the site. In response, [REP2-010], the Applicant explained that construction traffic would approach the site using the 'A' road network and in particular the A160 and A180. Chapter 7 of the ES demonstrates that there would be no significant impact on these roads or further afield.

5.9.11. NLC note in their LIR [REP2-033] that they are satisfied the TA demonstrates that the existing highway network and site accesses are operating within capacity. Furthermore, they acknowledge that while 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.

5.9.12. Both NLC [REP6a-005] and NELC [REP2-013] agree in their respective SoCG that, notwithstanding the predicted increase in traffic during the construction phase, there would be no significant traffic or transport effects.

Examination

5.9.13. I asked a number of traffic and transport related questions as part of ExQ1 [PD-007]. These sought clarification from the Applicant on the assessment methodology, and the views of Highways England on the adequacy of the fCTMP and fCWTP. The responses received at Deadline 2 addressed the matters raised [REP2-009].

5.9.14. Highways England confirmed at Deadline 7 that PPs have been agreed with the Applicant to protect their interest in the Strategic Road Network [REP7-014]. These are included in Schedule 9, Part 12 of the dDCO. Highways England have also agreed a SoCG with the Applicant in which they state that the information submitted with the application demonstrates that the proposed development can be constructed, operated and decommissioned without significant effects on the road network in terms of capacity, functionality and safety [REP2-017].

5.9.15. Highways England is identified as a consultee for both the CTMP and CTWP in Requirements 16 and 17 of the dDCO and I am satisfied that these Requirements contain suitable measures to ensure that construction traffic would be suitably managed and controlled.

5.9.16. I do not consider there to be any unresolved matters in respect of traffic and transportation.

Conclusions on Traffic and Transportation

5.9.17. Taking the above matters into account, I find that the traffic and transport assessment set out in the ES meets the requirements of NPS EN-1. Furthermore, I am satisfied that that no significant traffic or transportation effects are likely to arise from the Proposed Development either alone or in combination with other developments.

- 5.9.18. In addition, I consider the control and management measures contained in the CTMP and CWTP, secured under Requirements 16 and 17 in the dDCO, are sufficient to mitigate any likely adverse effects of the proposal to an acceptable level.
- 5.9.19. Accordingly, I find the requirements of NPS EN-1 in respect of traffic and transportation impacts have been met.

5.10. PUBLIC HEALTH AND AMENITY

Policy Considerations

- 5.10.1. NPS EN-1 recognises that energy production has the potential to impact on the health and well-being of the population. The direct impacts on health can include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests. It also notes that generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them.
- 5.10.2. NPS EN-5 contains guidance on the assessment of the effects of Electromagnetic Fields (EMFs) with reference to the guidelines on exposure of people to EMFs published by the International Commission on Non-Ionizing Radiation Protection.

Applicant's Response

- 5.10.3. Consideration of 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 relevant chapters of the ES.
- 5.10.4. The application is also accompanied by Chapter 16 (Human Health) [[APP-016](#)] which considers the risks associated with EMFs. This concludes that the Proposed Development has the potential for differential rather than whole population impacts. It notes that there are no residential receptors present within the EMF study⁴⁷ area or anticipated to be present in the future and that no significant health effect is predicted for the general public.
- 5.10.5. While it does recognise that there is some potential for exposure to EMFs for construction workers and operational staff, it states that measures will be implemented to protect these workers and operational staff from potential EMF effects associated with the existing substation and the electrical cable in accordance with the appropriate legislation and guidance. It concludes that, with the appropriate precautions in place, no significant health effects in the medium to long-term for construction workers or operational staff are predicted.

⁴⁷ defined as a 50m linear distance from the centre of the cables.

Views of IPs

- 5.10.6. No concerns were raised by IPs in relation to public health effects.
- 5.10.7. Public Health England confirmed in their RR [[RR-015](#)] that they had reviewed the ES and were satisfied that the methodology adopted is acceptable. They raised no areas of concern.

Conclusions on Public Health

- 5.10.8. Taking the above matters into account, I find that the Applicant has had adequate regard to the human health impacts of the proposal. The evidence indicates that no significant impacts on human health are likely to arise from the Proposed Development either alone or in combination with other developments.
- 5.10.9. Accordingly, I am satisfied that the application accords with the guidance set out in NPS EN-1 and EN-5.

5.11. ECONOMIC AND SOCIAL IMPACTS

Policy Considerations

- 5.11.1. NPS EN-1 recognises that the construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at local, regional and national levels. Paragraph 3.2.1 identifies the generally positive socioeconomic effects derived from electricity generation to meet nationally identified energy needs at the national level. Paragraph 5.12.2 advises that where a project is likely to have socio-economic impacts at local or regional level, the Applicant should undertake and include in their application an assessment of these impacts as part of the ES.
- 5.11.2. Paragraph 15.12.6 sets out some of the matters to which the SoS should have regard in decision making. These include the potential socio-economic impacts of new energy infrastructure identified by the Applicant and from any other sources that they consider to be both relevant and important. In addition, Paragraph 15.12.8 advises that the SoS should consider any relevant positive provisions the developer has made or is proposing to make to mitigate impacts.

Applicant's Response

- 5.11.3. Chapter 14 [[APP-043](#)] of the ES contains information on the socio-economic impacts likely to arise from the Proposed Development. It identifies 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.
- 5.11.4. In summary, it identifies no adverse effects during the construction or operation of the Proposed Development and considers the Proposed Development will have an overall positive economic effect on the area.

Views of IPs

- 5.11.5. Both NLC and NELC, in their LIRs [[REP2-033](#) and [REP2-040](#)], acknowledge that the Proposed Development has the potential to support further growth of the construction and energy sectors in their respective areas and provides opportunities to create additional employment in the area. It was also noted that the Proposed Development fits within the overall regeneration/ economic development targets of the Council Partnership.

Examination

- 5.11.6. The Proposed Development is in an area of current industrial activity and would have little impact on the visitor economy of North Lincolnshire. It would, however, 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 impacts on local business. However, these would be small and limited to the 21 months estimated for construction.
- 5.11.7. The dDCO includes a requirement (Requirement 23) which would secure the submission and implementation of an Employment, Skills and Training Plan which would promote employment, skills and training development opportunities for local residents during both construction and operation.
- 5.11.8. There are no outstanding matters in respect of the socio-economic impacts and this matter was not probed further during the Examination.

Conclusions on Economic and Social Impacts

- 5.11.9. I am satisfied that the Applicant has had adequate regard to the socio-economic impacts of the proposal. The evidence presented indicates that there would be some moderate positive socio-economic benefits to the local economy and that the Proposed Development has the potential to support further economic development in the local area.
- 5.11.10. Taking the above matters into account, I consider the application meets the requirements of NPS EN-1 in this respect.

5.12. CLIMATE CHANGE

Policy considerations

- 5.12.1. The Climate Change Act 2008 sets a legally binding target for the UK to reduce its net GHG emissions from 1990 levels. At the time of the Application, this target was 80%. In June 2019, the UK Government altered this target to 100% by virtue of the Climate Change Act 2008 (2050 Target Amendment) Order 2019 ("the 2019 Order").
- 5.12.2. As noted in Chapter 3 above, the UK is a signatory to the Paris Agreement under the United Nations Framework Convention on Climate

Change. This provides a framework to keep global warming below 2°C, pursuing efforts to limit the temperature increase to 1.5°C.

- 5.12.3. NPS EN-1 notes the importance of securing reliable supplies as the UK transitions to a low carbon economy and ensuring a diverse mix of energy generating technologies, including fossil fuels to avoid overdependence on a single fuel type. Furthermore, it recognises 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.
- 5.12.4. NPS EN-2 advises that climate change should be considered by an Applicant in their ES, including how the development would be resilient to higher temperatures.

Applicant's Response

- 5.12.5. Chapter 15 of the ES [[APP-044](#)] considers the potential effects of the Proposed Development on climate change. It provides an assessment of the impact on GHG and considers the Proposed Development's resilience to climate change. It recognises that the Proposed Development would result in GHG emissions both during construction and operation.
- 5.12.6. While it notes that due to the nature of an OCGT power station, there will be residual effects no matter the level of mitigation measures implemented, it indicates that GHG emissions during construction and operation would not be significant, particularly when considered in terms of their contribution towards the UK's Carbon budgets.

Views of IPs

- 5.12.7. No concerns were raised by IPs in respect of climate change.

Examination

- 5.12.8. The Proposed Development would result in a small increase in GHG emissions. NPS EN-1 explicitly recognises⁴⁸ that some of the new generating capacity needed is likely to come from new fossil fuel generating capacity in order to maintain security of supply, and to provide a flexible back-up for intermittent renewable energy. While it recognises that the use of fossil fuels to generate electricity produces atmospheric emissions of CO₂, it also notes that the amount produced depends, amongst other things, on the type of fuel, explaining that coal typically produces about twice as much carbon dioxide as gas.
- 5.12.9. Peaking plants, such as the Proposed Development, are used to rapidly supply electricity to the network when required by National Grid. These plants can be fired up at short notice to help meet periods of high demand or low electricity supply nationally or when required to provide ancillary services to support the National Grid. The peaking nature of the Proposed Development would support the UK's transition to low carbon energy generation. The ability to be started up at short notice to help

⁴⁸ Paragraph 3.6.3.

meet periods of high demand or low supply would positively contribute towards a secure, flexible energy supply and help meet the identified need for additional generating capacity. I am therefore content that the Proposed Development accords with the requirements of NPS EN-1 and the UK's commitments under the Climate Change Act 2008 and the Paris Agreement in that respect.

- 5.12.10. However, as the application had been submitted prior to the Government's adoption of a 100% reduction in GHG by 2050, I asked the Applicant to provide information on how the amended emissions target contained in the 2019 Order affects assessments made in the ES [[PD-011](#)].
- 5.12.11. In response, the Applicant explained that the assessment set out in Chapter 15 of the ES [[APP-044](#)] consisted of a comparison against the 4th and 5th carbon budgets to 2032, for which the emissions of the proposed development equate to less than 1% of the total emissions under each budget. The 6th Carbon budget is not yet published (expected in September 2020) and may require more significant reductions owing to the new target; however, the impact of the Proposed Development on this budget are still anticipated to be of a similar magnitude to previous budgets owing to the small scale of the development in respect of overall emissions. As a result, the Applicant concludes that the amendment has had no effect on the assessments contained in the ES [[REP6a-003](#)]. I am satisfied that this response is sufficiently robust.
- 5.12.12. My examination of the impact of climate change on flood risk has been considered in section 5.4 above. I am satisfied that adequate consideration has been given to minimising the risks posed.

Conclusions on Climate Change

- 5.12.13. The evidence presented indicates that the intermittent peaking nature of the Proposed Development would support the UK's transition to low carbon energy generation. While there would be a small increase in GHG emissions, it would not be significant and is, in my view, outweighed by the contribution that the Proposed Development would have in meeting the UK's carbon commitment and supporting the transition to a low carbon economy.
- 5.12.14. On balance, I am satisfied that the Proposed Development would accord with the guidance in NPS EN-1 and EN-2 and would be in accordance with the UK's commitments under the Climate Change Act 2008 and the Paris Agreement.

5.13. CUMULATIVE AND COMBINED EFFECTS

Policy Considerations

- 5.13.1. The EIA Regulations require an ES to include an assessment of the potentially significant effects of a proposed scheme. Furthermore, NPS EN-1 advises that the SoS should take into account, amongst other

things, any long term and cumulative adverse impacts. It requires applications to include information on how the effects of the proposal would combine and interact with the effects of other development.

Applicant's Response

- 5.13.2. ES Chapter 17 [[APP-046](#)] examines the cumulative and combined effects of the Proposed Development with the other developments within the study area that are likely to contribute to combined or cumulative impacts. These are identified in Figure 17.1 of the ES [[APP-073](#)]. It also defines what is meant by cumulative and combined effects, identifies the methodology and significance criteria adopted and considers the cumulative effects on air quality, traffic and transportation, noise and vibration, and water resources, flood risk and drainage.
- 5.13.3. In summary, it concludes that that there would be no significant cumulative effects arising from the construction or operational phases of the Proposed Development when considered alongside other proposed development nearby. Similarly, the assessment of combined effects does not identify any significant effects.

Views of IPs

- 5.13.4. No IPs raised any concerns on the cumulative and combined effects of the Proposed Development during the Examination.

Examination

- 5.13.5. I sought confirmation from the Applicant, NLC and NELC that they were satisfied that the list of other developments used in the assessment was complete. The Applicant responded that they were not aware of any other projects or plans that should be included in the assessment. Both NELC and NLC agreed in their respective SoCG with the Applicant [[REP2-013](#) and [REP6a-005](#)] that account has been taken of all relevant planned and consented projects. NLC and NELC also confirmed that they consider the cumulative impacts associated with the Proposed Development are acceptable.
- 5.13.6. There are no outstanding matters to be resolved with regard to cumulative effects.

Conclusion on Cumulative and Combined Effects

- 5.13.7. I am satisfied that no long term and cumulative adverse impacts are likely to arise from construction, operation and decommissioning activities. Accordingly, I am satisfied that the requirements of NPS EN-1 are met in this regard.

6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

6.1. INTRODUCTION

- 6.1.1. This Chapter sets out the analysis and conclusions reached relevant to the HRA. This will assist the SoSBEIS, as the competent authority, in performing their duties under the Habitats Regulations.
- 6.1.2. Consent for the Proposed Development may only be granted if, after having assessed the potential adverse effects it could have on European sites⁴⁹, the competent authority considers it acceptable in light of the requirements stipulated in the Habitats Regulations.
- 6.1.3. I have been mindful throughout the Examination of the need to ensure that the SoSBEIS has sufficient information required to carry out their duties as the competent authority. Evidence was sought from the Applicant and the relevant IPs, including NE as the SNCB, through written questions and ISHs.
- 6.1.4. A RIES was not produced for the Proposed Development.

6.2. PROJECT LOCATION

- 6.2.1. As described in Chapter 2 of this report, the Proposed Development comprises the construction and operation (including maintenance) of a gas-fired OCGT power station with a generation capacity of up to 299MW.
- 6.2.2. The Proposed Development is located in an area with existing mixed industrial and agricultural usage, approximately 1.6km west from the villages of North Killingholme and South Killingholme and 1.8km north of the town of Immingham. The Proposed Development is also located approximately 400m west of the Humber Estuary.

6.3. APPLICANT'S ASSESSMENT AND HRA IMPLICATIONS OF THE PROJECT

- 6.3.1. The Applicant provided an HRA No Significant Effects Report (NSER) [[APP-027](#)] which includes Screening Matrices for the identified European sites in accordance with the Planning Inspectorate's Advice Note 10. Section 3 of the NSER identified the following European sites as being

⁴⁹ The term European sites in this context includes Special Areas of Conservation, Sites of Community Importance, candidate SACs, possible SACs, Special Protection Areas, potential SPAs, Ramsar sites and proposed Ramsar sites for which the UK is responsible. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.

relevant considerations in terms of the Habitats Regulations, all located approximately 1.4km north-east of the Proposed Development:

- Humber Estuary SAC;
- Humber Estuary SPA; and
- Humber Estuary Ramsar Site.

6.3.2. Summary information for these European sites, including their qualifying features is provided in Table 3.1 and Annex B of the NSER [[APP-027](#)]. Paragraphs 3.2.5, 3.2.6 and 3.2.7 of the NSER summarise the conservation objectives of the three European sites.

6.3.3. The Applicant provided information as to the potential impact pathways from the Proposed Development to the qualifying features of the European sites. The impacts and pathways identified have been categorised by the Applicant accordingly:

- Changes to surface water quality: Potential pathway for surface water pollution to surrounding drainage regimes which could reach the European sites and potentially affect qualifying species during construction, operation and decommissioning.
- Changes to air quality: Potential pathway for emissions to air during the operational phase causing an increase in the concentrations of NO_x and nitrogen deposition to the European sites.
- Noise Disturbance: Potential pathway for noise emission during construction and operation to impact qualifying features of the Humber Estuary SPA.

6.3.4. The potential for in-combination effects associated with the above impacts are discussed within Section 4.4 of the NSER with supplementary information provided within the ES aspect chapters. Annex C of the NSER lists all the other plans and projects included within the in-combination assessment.

6.3.5. The Applicant stated in their Scoping Report⁵⁰ [[APP-075](#)] that the impacts associated with decommissioning would be the same as those for construction, and that decommissioning would take place approximately 40 years from the start of operation. This approach was agreed by the SoSHCLG within the Scoping Opinion [[APP-076](#)]. As a result, the Applicant's assessment of construction effects has been used as a proxy for decommissioning effects throughout the ES.

6.3.6. NE in their RR [[RR-014](#)] did not raise any issues with the identified European Sites, or state whether any European sites had been omitted

⁵⁰ at Paragraph 3.4.2

from the NSER. NE's RR also raised no objections with the Applicant's list of impacts and pathways to the European sites from the Proposed Development, nor did they suggest any new or different impacts and pathways not already included in the Applicant's NSER. No other IP raised objections in this regard.

- 6.3.7. Paragraphs 4.2.1 to 4.2.3 of the NSER explained that the following impacts were screened out of their assessment:
- Direct habitat loss from physical damage to the European sites during construction, operation and decommissioning.
 - Impacts to groundwater and dependant terrestrial ecosystems at the European sites during construction, operation and decommissioning.
 - Noise and visual impacts to qualifying bird species within the Humber Estuary SPA and Ramsar site during construction, operation and decommissioning.
 - Noise impacts to marine qualifying species within the Humber Estuary SAC and Ramsar site during construction, operation and decommissioning.
- 6.3.8. The NSER identifies that there is no existing direct pathway for surface water to impact the European sites, but also states that there is a potential indirect pathway to the European sites via the surrounding area's drainage regime. I consider both direct and indirect impact pathways from the Proposed Development to the European sites need to be assessed. Irrespective of the categorisation, the Applicant has assessed the effect that any impacts of this sort to surface water may have on the European sites identified.
- 6.3.9. The NSER determined that the location of the Proposed Development relevant to the European sites (1.4km away) restricts the potential for direct impact pathways to bird species within the Humber Estuary SPA and Ramsar site. However, the Applicant did identify potential indirect impacts to qualifying features of the Humber Estuary SPA and Ramsar site at the functionally linked habitat at the Rosper Road fields. The Applicant has provided a full assessment of the noise impacts at these locations and the implications for the European sites. The assessment details are located within the NSER and the Statement to Inform Appropriate Assessment (SIAA) [[REP4-009](#)]. Regardless of the categorisation of the impact pathway, the Applicant has assessed the effect that noise impacts will have on the European sites.
- 6.3.10. The NSER includes an air quality and noise in-combination assessment. These assessments conclude that there will be no significant in-combination effects to the European sites from the Proposed Development with other plans and projects. This is discussed in further detail in Sections 6.5 and 6.7 of this report.
- 6.3.11. No HRA surface water in-combination assessment was completed by the Applicant but a cumulative assessment addressing changes to surface water in connectivity with the European sites was undertaken within ES Chapters 12 [[APP-041](#)] and 17 [[APP-046](#)]. The assessment concludes that:

"with the exception of VPI Immingham Energy Park A, there is a lack of hydrological connectivity between schemes listed in Table 17-2 and the Site".

- 6.3.12. The Applicant states that with the implementation of the drainage measures within the proposed fCEMP [[APP-077](#)], no contaminated/ polluted water would be able to migrate off-site. Therefore, no pathway to the European sites would occur which would result in no cumulative or in-combination effects to the European sites. This is discussed further in Sections 6.5 and 6.7 of this report.
- 6.3.13. NE state in their RR [[RR-014](#)] that *"there are not likely to be significant air quality impacts on the Humber Estuary SPA, SAC or Ramsar site as a result of the project"; and "there are not likely to be impacts on European Protected Species as a result of the project."*
- 6.3.14. However, the RR continues and expresses that in their view *"the Applicant has provided insufficient evidence to establish that there will be no impact on the wintering bird assemblage of the Humber Estuary SPA and Ramsar site"* due to the impact on qualifying bird species using the Rosper Road fields. These sentiments are echoed in the SoCG between the Applicant and NE submitted at D4 [[REP4-011](#)].
- 6.3.15. Although not specifically stated in the application and examination documents, the Proposed Development does not appear to be connected with or necessary to the management of any European site. No information has been put forward during the Examination to suggest otherwise. As such, I am satisfied that the Proposed Development is not connected with or necessary to the management of European sites.

6.4. ISSUES RAISED DURING THE EXAMINATION

Surface water quality

- 6.4.1. During the Examination, I raised concerns regarding the Applicant's approach to preventing the deterioration of surface water quality at the Humber Estuary SAC, SPA and Ramsar. I asked questions (Q1.6.3 and Q1.6.4 [[PD-007](#)]) which focussed on how accidental construction, operation and decommissioning pollution events and the implementation of a drainage scheme for the Proposed Development, would prevent the migration of contaminated/ polluted waters to the surrounding drainage regimes, which in turn, could affect surface water quality at the European sites.
- 6.4.2. The Applicant responded to these questions in [[REP2-009](#)] by amending Requirement 14 of the dDCO [[REP7-002](#)] so that consultation on the final CEMP must be carried out with NE, EA, NELIDB prior to its approval by the local planning authority.
- 6.4.3. The SoCG between the Applicant and NE [[REP2-015](#)] and the EA [[REP2-014](#)] record that all matters relating to the fCEMP, surface water drainage and accidental pollution events have been agreed and are considered resolved. In addition, the EA's Deadline 2 response [[REP2-](#)

[028](#)] states that: “the issues/ concern relating to foul water disposal have now been resolved”. Furthermore, NELIDB confirm in their response at Deadline 2 [[REP2-031](#)] that they are content with the drainage measures stated in the fCEMP. It is also noted that no concerns regarding the deterioration to surface water at the Humber Estuary SAC, SPA or Ramsar site were raised by NE in their subsequent SoCG [[REP4-011](#)] and NE’s RR [[RR-014](#)] records that it is satisfied that there are not likely to be significant water quality impacts on the Humber Estuary SSSI, SPA, SAC or Ramsar as a result of the project.

- 6.4.4. No further issues regarding the potential for the deterioration of surface water to the Humber Estuary SAC, SPA and Ramsar site were raised during the Examination.

Noise

- 6.4.5. NE raised the issue of potential noise emissions during construction and operation of the Proposed Development causing a disturbance to qualifying bird species for the Humber Estuary SPA and Ramsar site (particularly in relation to Rosper Road fields, located adjacent to the Proposed Development) [[RR-014](#)]. NE had specific concern that the peak noise level (LA peak) should be used alongside the LAeq when assessing the impacts on qualifying bird species on the Rosper Road fields. The Applicant complied with NE’s recommendation including the peak noise level in their assessment.
- 6.4.6. The Applicant’s stance as set out in their NSER [[APP-027](#)] was that only noise from piling would impact the qualifying species on the Rosper Road fields due to all other noise sources being below the ambient noise level already occurring at Rosper Road. This is evidenced with reference to the background noise levels stated in the ES Noise chapter and appendices [[APP-037](#), [APP-061](#), [APP-082](#) and [APP-083](#)].
- 6.4.7. I asked the Applicant a series of questions with regard to the assessment of potential noise impacts to qualifying bird species for the Humber Estuary SPA and Ramsar site on the Rosper Road fields functionally linked habitat (Q1.12.4, Q1.12.6, Q1.13.4 and Q1.13.6 [[PD-007](#)]).
- 6.4.8. The Applicant responded to these questions in [[REP2-009](#)] and stated that due to the potential for the bird species to use any part of Rosper Road fields, the NSR at Hazeldene [[APP-060](#)] is representative as a reasonable proxy for the impact on bird species using Rosper Road.
- 6.4.9. I raised these issues again at the ISH2 and the Applicant acknowledged further clarification was required particularly in relation to piling activities. In response the Applicant provided a Piling Note appended to the Written Submission of Oral Case [[REP3-012](#)] and the SIAA [[REP3-014](#)], which was updated at D4 [[REP4-009](#)].
- 6.4.10. The updated SIAA [[REP4-009](#)] provides further information on the noise impacts of piling and sets out assessment criteria in Section 4.1. The SIAA states that the Bird Disturbance Toolkit which is based upon studies around the Humber Estuary indicates that noise levels in excess of 84

dB(A) L_{Amax}⁵¹ result in waterfowl being “flushed away from the source entirely” and noise levels of 55 dB(A) L_{Amax} would result in no effect to the waterfowl⁵². Section 4.1 also states that birds will habituate to regular noise of 70dB(A) L_{Aeq} or below⁵³, with ‘regular noise’ being defined in the SIAA as “most frequently occurring noise level from the activity”.

- 6.4.11. The updated SIAA includes Figures 1, 2 and 3 which depict noise contours applicable to different piling methods on Rosper Road fields and without any form of mitigation. The SIAA states in paragraph 5.13 that implementing the standard mitigation measures stated in British Standard BS5228, would mean that noise from piling would reduce by 5 to 10dB(A). The maximum noise impact to Rosper Road from piling would therefore be below the 84dB(A) threshold and reduce the area of Rosper Road fields that would experience noise above 70dB(A).
- 6.4.12. Furthermore, the updated SIAA states that piling activity could be restricted to the period of April to September to avoid further impacts to the qualifying species for the Humber Estuary SPA and Ramsar site.
- 6.4.13. NE found the information within the SIAA to be adequate and stated in their Deadline 4 SoCG with the Applicant [[REP4-011](#)] that, based on the SIAA and Requirement 14 of the dDCO [[REP7-002](#)]:
- “the risks of disturbance on the Humber Estuary bird species have been adequately assessed and that the Proposed Development would not result in any adverse effects on these species including those using the functionally linked fields of Rosper Road”.*
- 6.4.14. No further objections regarding the impact of piling on the qualifying species using Rosper Road fields were raised by IPs during the Examination.
- 6.4.15. The information and assessments included within the SIAA is addressed in more detail in Sections 6.5 and 6.7 of this report.

Air quality

- 6.4.16. The potential for the Proposed Development to impact the Humber Estuary SAC, SPA and Ramsar site through the emission of NO_x and the deposition of nitrogen was raised in NLC’s RR [[RR-022](#)] and this impact was screened into the Applicant’s NSER (section 4.3 of [[APP-027](#)]).
- 6.4.17. I note that Paragraph 6.2.2 of NLC’s Local Impact Report (LIR) [[REP2-033](#)] states that they agree with the Applicant’s NSER and that the

⁵¹ https://www.tide-toolbox.eu/tidetools/waterbird_disturbance_mitigation_toolkit/

⁵² Cutts N & Allan J. 1999. Avifaunal Disturbance Assessment. Flood Defence Works: Saltend. Report to Environment Agency.

⁵³ Cutts, N., Phelps, A. and Burdon, D. 2009. Construction and waterfowl: Defining Sensitivity, Response, Impacts and Guidance. Report to Humber INCA, Institute of Estuarine and Coastal Studies, University of Hull.

Proposed Development alone or in-combination with other plans and projects is not likely to have a significant effect on the Humber Estuary SAC, SPA and Ramsar. The LIR echoed NE's RR [RR-014] which states:

"Natural England is satisfied that there are not likely to be significant air quality impacts on the Humber Estuary SSSI, SPA, SAC or Ramsar site as a result of the project".

- 6.4.18. The Applicant's approach to the air quality assessment in terms of HRA is based on the assessment set out in ES Chapter 6 and accompanying appendix [APP-035, APP-078]. The ES confirms that emissions from the Proposed Development have been assessed using guidance released by the DEFRA and the EA: Air Emissions Risk Assessment for your Environmental Permit (EA permitting guidance)⁵⁴ as stated in Chapter 6 Paragraph 6.3.53.
- 6.4.19. The Applicant has obtained the air quality critical levels and critical load thresholds for NO_x concentrations and nitrogen deposition by utilising the Air Pollution Information System (APIS) (Paragraph 6.2.5 and Reference 6-1 [APP-035]). The nitrogen deposition critical load differs depending on the type of habitat, and as such, each qualifying feature for the Humber Estuary SAC's critical load threshold is different.
- 6.4.20. Although the Humber Estuary SPA and Ramsar site do not include the estuarine habitats as a qualifying feature, the Humber Estuary SPA and Ramsar site's qualifying features are dependent on these habitats. As such, it is considered that the Humber Estuary SPA and Ramsar site would be indirectly impacted by air quality impacts to the Humber Estuary SAC.
- 6.4.21. The EA permitting guidance which has been applied in the assessment states that emissions are considered to be "insignificant" where the process contributions (PC) of the Proposed Development equate to less than 10% of the short-term or less than 1% of the long-term critical levels respectively for protected conservation areas (SPAs, SACs and Ramsar sites).
- 6.4.22. The Applicant's assessment of air quality emissions as presented within [APP-035 and APP-078] show that the maximum PC and predicted environmental concentration (PEC) for the Humber Estuary SAC, SPA and Ramsar site are all below the 10% short term threshold and the 1% long term threshold. The PEC is calculated from the baseline/ background concentration plus the PC of the Proposed Development.
- 6.4.23. Furthermore, the critical loads of nitrogen deposition for the qualifying features to the Humber Estuary SAC are presented in Table 6A.19 of the Air Quality Technical Appendix [APP-078]. This table shows that the

⁵⁴ Department for Environment, Food & Rural Affairs and Environment Agency (2016). Air emissions risk assessment for your environmental permit. (Available at: <https://www.gov.uk/government/collections/risk-assessments-for-specific-activities-environmentalpermits>)

increase in nitrogen deposition due to the Proposed Development will not result in an increase of more than 0.1% of the nitrogen critical load to all qualifying features of the Humber Estuary SAC.

- 6.4.24. The Applicant acknowledges in [APP-078] that some of the qualifying features of the Humber Estuary SAC are already in exceedance of the nitrogen deposition critical load in terms of the "baseline" conditions. However, the Applicant states that none of the qualifying features already experiencing an exceedance of nitrogen deposition are located in proximity to the Proposed Development. This is expanded on in the NSER [APP-027] which states that the closest dune habitat is 10km from the Proposed Development and the closest Rich Fens and Northern Wet Heath habitat is located west of the Humber Bridge at least 8km from the Proposed Development.
- 6.4.25. The Applicant provides air quality modelling for long-term and short-term NO_x concentrations as presented in Figures 6.2 and 6.3 [APP-057, APP-058] that show that as the distance from the Proposed Development increases, the increase in NO_x concentration decreases. The figures show that outside of an approximate 2km radius from the Proposed Development, the operational PC contributes ≤0.01 to the annual mean NO₂ concentration and the operational PC would not impact the daily mean NO₂ concentration at a distance of over 2km.
- 6.4.26. Taking this into account, the Applicant argues that due to the Proposed Development processes contributions of NO_x and nitrogen deposition⁵⁵, coupled with the distance from the Proposed Development to the qualifying features of the Humber Estuary SAC, the increase in NO_x and nitrogen from the Proposed Development will have an insignificant impact on the qualifying features.
- 6.4.27. The NSER discusses the in-combination impacts of changes to air quality [APP-027] with appendix C including a list of other plans and projects taken into consideration. The Applicant's stance is that the Proposed Development will result in an increase in nutrient nitrogen deposition of 0.06KgN/ha/yr and as the background deposition levels are, according to the APIS, 15 kgN/ha/yr, it would take an increase of approximately 83 times the predicted increase from the Proposed Development to reach the lowest critical load of the nearby saltmarsh, the closest qualifying feature of the Humber Estuary SAC to the Proposed Development.
- 6.4.28. I note that NE agree with the Applicant's air quality assessment and its conclusions in [RR-014], [REP2-015], [REP3-016] and [REP4-011] which all state:

"It is agreed that impacts on European designated sites (including the Humber Estuary) as a result of emissions to air arising from the operation of the Proposed Development, alone or in-combination with other know plans/ projects, have been adequately assessed in the ES

⁵⁵ being below the short term (10%) and long term (1%) thresholds.

and the magnitude of the impact on all ecological receptors are considered to be not significant.”

- 6.4.29. No other IP raised concerns throughout the Examination regarding the potential for the Proposed Development, alone or in-combination, to cause air quality impacts to the European sites; except for NLC’s RR [[RR-022](#)] which was later rescinded in their LIR [[REP2-033](#)].

6.5. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

- 6.5.1. Section 4 of the NSER identifies the potential likely significant effects as mentioned above in Paragraph 6.3.3. Following from the Applicant’s assessment of effects, this section addresses my conclusions in relation to the likely significant effects on European sites during the construction, operation and decommissioning of the Proposed Development.
- 6.5.2. I am satisfied that the Applicant has considered the relevant European sites and no evidence was presented during the Examination that any other European site could be impacted by the Proposed Development.
- 6.5.3. I am also content that there is no direct or indirect impact pathway from the Proposed Development, alone or in-combination, to effect groundwater and groundwater dependent terrestrial ecosystems at the Humber Estuary SAC, SPA and Ramsar site.

Surface Water Quality

- 6.5.4. The Applicant’s NSER identifies potential impacts to surface water quality at the Humber Estuary SAC, SPA and Ramsar site should accidental pollution events occur which allow contaminated water to flow through the existing drainage regime and to the European sites.
- 6.5.5. This position is also reflected in the ES Chapter 12 (Surface Water, Flood Risk and Drainage) [[APP-041](#)] which states that during construction and operation there are potential pathways through the localised drainage regime for pollutants to migrate to the European sites. The document goes on to describe the best practice industry measures that can be used to prevent such incidents from surface runoff, with details of these measures being found within ES Chapter 12, Appendix 12.A Flood Risk Assessment [[APP-068](#)] and the fCEMP [[APP-077](#)].
- 6.5.6. I consider that, without implementation of the surface water drainage measures, significant effects may occur, and that reasonable scientific doubt exists in relation to the Applicants preferred conclusion of no likely significant effect. Furthermore, in light of this conclusion and having regard to the findings in relation to People over Wind⁵⁶, I am of the view that an appropriate assessment (AA) is required.
- 6.5.7. I note that the NSER did not explicitly address in-combination effects in this regard and no separate HRA assessment has been undertaken. However, the “cumulative and in-combination” assessment within the ES

⁵⁶ People Over Wind, Peter Sweetman v Coillte Teoranta (C-323/17).

was undertaken and concluded that there would be no significant cumulative effect. The conclusions stated in ES Chapter 17 (Cumulative and Combined Effects) [APP-046] are established on a similar basis to those above, for example, taking account of measures to avoid or reduce effects. In my view, this conclusion is also based on the implementation of the drainage measures and, as such, I consider an AA is required.

Noise

- 6.5.8. The Applicant identified within the NSER and SIAA [REP4-009] that the Proposed Development has potential to impact qualifying features of the Humber Estuary SPA and Ramsar site which use the Rosper Road fields which act as functionally linked habitat for feeding, roosting and/ or loafing. The Applicant stated that this is because there is no noise impact pathway to the Humber Estuary SAC qualifying features including the estuarine habitats, grey seal, river lamprey and sea lamprey as such, the Humber Estuary SAC has been screened out by the Applicant. I am content with this approach and agree with the conclusion that impacts to the Humber Estuary SAC marine qualifying species will not be significantly affected by noise impacts from the Proposed Development alone or in-combination with other projects.
- 6.5.9. As noted in section 5.6 above (Ecology), Noise impacts to qualifying features utilising functionally linked land at the Rosper Road fields would primarily occur as a result of construction piling. The ambient noise levels for Rosper Road fields range from 51dB(A) to 61dB(A) [APP-027] and the SIAA [REP4-007] states that for wintering bird species to be permanently flushed away from their habitat, a noise level of 84dB(A)⁵¹ is required. The SIAA also states that no effect to bird species are recorded at noise levels below 55dB(A)⁵² and that birds habituate to regular noise (most frequently occurring noise level from the activity) below 70dB(A)⁵³. As such, the SIAA states that the regular noise levels emitted by the Proposed Development below 70dB(A) would not result in significant effects to bird species inhabiting Rosper Road fields.
- 6.5.10. The SIAA provides figures that show the noise impacts at Rosper Road fields arising from piling activities at the Proposed Development have potential to result in a likely significant effect. This is true for the Proposed Development alone and in-combination with other plans and projects and is discussed in greater detail in Section 6.7 of this report. The SIAA argues that the qualifying bird species reacting to noise levels is not necessarily of concern as long as the birds are not permanently flushed away from the habitat. The Applicant also argues that the bird species are likely to move westward in the Rosper Road fields, further away from the Proposed Development, if noise levels rise above the ambient noise level.
- 6.5.11. Notwithstanding this position, the SIAA [REP4-009] includes consideration of the different construction techniques and measures that could be implemented in an effort to reduce or avoid effects to qualifying features of the Humber Estuary SPA and Ramsar. Accordingly, I consider that an AA is required.

Air Quality

- 6.5.12. Chapter 6 of the ES [APP-035] (along with the supporting documentation contained in [APP-056], [APP-057] and [APP-078]) and the NSER [APP-027] acknowledge that the operation of the Proposed Development will result in an increase in atmospheric NO_x concentrations which will result in an increase of nitrogen and acid deposition at surrounding habitats. They also state that the Proposed 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 habitats qualifying features.
- 6.5.13. The ES Chapter 6 [APP-035, APP-078] assessment was undertaken by evaluating the Proposed Development's NO_x process contribution (PC) in comparison to the NO_x critical level, and the Proposed Development's PC for nitrogen and acid deposition in relation to their critical levels. Table 6.21 of ES Chapter 6 [APP-035] shows that the concentration of NO_x at the Humber Estuary SAC is already in exceedance of its critical level. Table 6A.19 and 6A.20 [APP-078] show that some qualifying features of the Humber Estuary SAC are also in exceedance of their nitrogen and acid deposition critical load. The tables show that the Proposed Development would increase NO_x emissions by less than 1% of both the critical level and the nitrogen and acid deposition critical loads. The Applicant argues that since these increases are all below 1% of the critical thresholds, in accordance with the EA guidance, these impacts would not result in a significant effect on the Humber Estuary SAC qualifying features nor indirectly affect the Humber Estuary SPA and Ramsar site.
- 6.5.14. The NSER and Table 6A.19 of [APP-078] state that apart from the *Pioneer, low-mid, mid-upper saltmarshes*, a qualifying feature of the Humber Estuary SAC, located approximately 1.5km west of the Proposed Development, all other qualifying features for the Humber Estuary SAC are located at least 8km from the Proposed Development. Furthermore, the Applicant's air quality modelling provided in Figures 6.1 and 6.2 [APP-056 and APP-057] show the increase to NO_x concentrations is negligible at distances greater than 2km from the Proposed Development. The Applicant's assessment has therefore focused on the *Pioneer, low-mid, mid-upper saltmarshes* qualifying feature of the Humber Estuary SAC.
- 6.5.15. The air quality appendix Table 6A.19 [APP-078] shows that the *Pioneer, low-mid, mid-upper saltmarshes* qualifying feature is currently at 75% of its nitrogen critical load. The Table shows that the PCs from the Proposed Development would only increase the nitrogen deposition at the *Pioneer, low-mid, mid-upper saltmarshes* by 0.01% which would not result in an exceedance of its nitrogen deposition critical load. However, *Pioneer, low-mid, mid-upper saltmarshes* does not appear to be impacted by acid deposition due to its omission from Table 6A.20 [APP-078]. Therefore, the ES Chapter 6 and the NSER determined that this qualifying feature

would not result in likely significant effects. Furthermore, due to the distance (over 2km) from the Proposed Development to the other Humber SAC qualifying features, the Applicant concluded that no likely significant effects to the Humber Estuary SAC (and consequently the Humber Estuary SPA and Ramsar site) would arise from the Proposed Development.

- 6.5.16. However, as the Humber Estuary SAC is already in exceedance of its NO_x critical level, it could be construed that any increase in NO_x concentrations - even a very small one - could worsen the NO_x impact to the Humber Estuary SAC. This impact has the potential to result in a likely significant effect to the Humber Estuary SAC and subsequently the Humber Estuary SPA and Ramsar site.
- 6.5.17. The NSER includes a qualitative air quality in-combination assessment, that states that for *Pioneer, low-mid, mid-upper saltmarshes Humber Estuary qualifying* feature, an increase approximately 83 times the Proposed Development PCs for nitrogen would be required in order to result in an exceedance⁵⁷.
- 6.5.18. The NSER also states that considering the scale and nature of the other plans and projects included in the in-combination assessment, an increase in the Proposed Development's PC of this magnitude is very unlikely and therefore the Proposed Development in-combination with other plans and projects is unlikely to result in significant effects on the *Pioneer, low-mid, mid-upper saltmarshes* and the Humber Estuary SAC and consequently the Humber Estuary SPA and Ramsar. No information has been provided throughout the Examination that contradicts the Applicant's in-combination assessment or its conclusions.
- 6.5.19. However, for similar reasons stated above in paragraph 6.5.16 of this report, as the NO_x concentration at the Humber Estuary SAC is already in exceedance of its critical level, any increase in NO_x concentrations has the potential to result in significant effects. Therefore, the Proposed Development, in-combination with other projects, has potential to result in significant effects to the Humber Estuary SAC and subsequently the Humber Estuary SPA and Ramsar.

6.6. CONSERVATION OBJECTIVES

- 6.6.1. The conservation objectives for the Humber Estuary SAC and SPA are listed in the NSER paragraphs 3.2.5 and 3.2.6 [[APP-027](#)]. For both European sites, the conservation objectives are to ensure the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the favourable conservation status of its qualifying features, by maintaining or restoring the:

- extent and distribution of the qualifying features;

⁵⁷ which, as explained above, is the only qualifying feature within 2km of the Proposed Development and therefore the qualifying feature of most relevance.

- structure and function of the qualifying features;
- supporting process on which qualifying features rely;
- populations of qualifying features; and
- distribution of qualifying features.

6.6.2. No conservation objectives are available for the Humber Estuary Ramsar site, but the Applicant has assumed the objectives would be in line with the objectives of the Humber Estuary SAC and SPA, and I agree that they are a suitable proxy.

6.7. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)

6.7.1. As discussed in Section 6.5 of this report, I am of the opinion that without the reliance on certain measures to minimise or reduce impacts, the Proposed Development could result in the following likely significant effects:

- changes in water quality during construction, operation and decommissioning to the Humber Estuary SAC, SPA Ramsar;
- noise impacts during construction to the qualifying features of the Humber Estuary SPA and Ramsar site; and
- air quality impacts during operation to the Humber Estuary SAC, SPA and Ramsar site.

6.7.2. Therefore, an AA is required. The likely effects on each European site are addressed below individually to determine whether the Proposed Development would result in an adverse effect on the integrity of the European sites taking into account their qualifying features and conservation objectives.

Humber Estuary SAC

6.7.3. To address the potential impacts to surface water quality and the effect on qualifying features of the Humber Estuary SAC, the Applicant has proposed a number of measures set out in the fCEMP Table 5A.7 and Table 5A.8 [[APP-077](#)]. These measures are to be secured through Requirements 10 and 14 [[REP7-002](#)] of the DCO. The measures include for example, stipulations as to how *“the mixing and handling of materials will be undertaken in designated areas away from surface water drains”* and *“that all potential polluted water (including washdown areas, stockpiles and other areas of risk for water pollution) to have separate drainage and to be tinkered away from the Site”*.

6.7.4. During the course to the examination, I questioned the provisions (Q1.6.3 and Q1.6.4 [[PD-007](#)]) in respect of the surface water drainage measures. The EA, NELIDB and the Applicant responded to these questions and they have given me confidence that the measures

proposed are appropriate to prevent the deterioration of the surface water quality at the European sites. I also consider that these measures are appropriately secured through Requirements 10 and 14 of the DCO [[REP7-002](#)].

- 6.7.5. With these measures in place, I am of the view that it is unlikely that polluted/ contaminated water would/ could reach the Humber Estuary SAC. I am therefore content that the Proposed Development would not have an adverse effect on the integrity of the European site alone or in combination with any other plan or project. I am also content that sufficient information has been provided throughout the Examination for an AA to be conducted in this regard.
- 6.7.6. Due to some of the Humber Estuary SAC already being subjected to NO_x concentrations in exceedance of the critical level, I consider that any increase in the NO_x concentration, even a very small one, at the Humber Estuary SAC could result in significant effects.
- 6.7.7. However, as discussed in Section 6.5 of this report, the Proposed Development's PC would increase the NO_x concentration at the Humber Estuary SAC by just 0.5% of its critical level which is less than the 1% increase suggested to be of likely significance by the EA guidance. Furthermore, I note that the increase in NO_x concentrations would be negligible at distances greater than 2km from the Proposed Development as shown in the Applicant's air quality modelling figures [[APP-056](#) and [APP-057](#)].
- 6.7.8. According to the NSER and ES Chapter 6, the only Humber Estuary SAC qualifying feature within 2km of the Proposed Development is *Pioneer, low-mid, mid-upper saltmarshes* and is therefore of greatest interest to this assessment. As discussed in Paragraph 6.5.14 of this report, this feature is only sensitive to nitrogen deposition and the existing load is at 75% (Table 6A.19 [[APP-078](#)]) of the critical load. Table 6A.19 [[APP-078](#)] shows that the Proposed Development will increase the nitrogen deposition at *Pioneer, low-mid, mid-upper saltmarshes* by 0.01% which would not result in exceedance of its critical level and therefore will not significantly affect this qualifying feature.
- 6.7.9. I am therefore content that as *Pioneer, low-mid, mid-upper saltmarshes* will not be significantly impacted by the Proposed Development. All other qualifying features are located over 8km from the Proposed Development. With the Proposed Development's increases in NO_x concentrations, nitrogen deposition and acid deposition all being less than their 1% critical thresholds, I am satisfied that the Proposed Development would not result in adverse impacts to the integrity of the Humber Estuary SAC.
- 6.7.10. Furthermore, I note that no evidence was provided during the Examination by NE or other IPs that raised concerns with the Applicant's argument that as the process contributions to these qualifying features are all <0.1% of the critical load, the actual impact on these features would be insignificant.

- 6.7.11. For the in-combination assessment of air quality, as discussed previously, the NSER states that 83 times the PC of the Proposed Development would be needed to result in the *Pioneer, low-mid, mid-upper saltmarshes* Humber Estuary SAC qualifying features to exceed its critical load threshold. As such, I agree with the Applicant's logic that due to the nature and location of the other plans and projects assessed in the air quality in-combination assessment, the increase in NO_x concentration and the resultant nitrogen deposition level from the Proposed 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*. Therefore, I am content that the Proposed Development, in-combination with other plans and projects, is not likely to adversely affect the Humber Estuary SAC qualifying features.
- 6.7.12. Taking the above into consideration, I am satisfied that no adverse effects on the integrity of the Humber Estuary SAC qualifying features will arise from the Proposed Development alone or in-combination with other plans or projects. I am also content that sufficient information has been provided throughout the Examination for an AA to be undertaken.

Humber Estuary SPA

- 6.7.13. I accept that the reasons supporting the finding of no adverse effects on the integrity of qualifying features in the Humber Estuary SAC apply equally to those qualifying features in the SPA which are dependent upon the affected habitat types. I am also satisfied that the Proposed Development will not result in adverse effects on the integrity of the Humber Estuary SPA in regard to changes in surface water quality and increasing emissions of NO_x, nitrogen and acid deposition. These reasons are not repeated here.
- 6.7.14. The Proposed Development presents noise impacts as those which are discernible and above the ambient noise level at the Rosper Road fields specifically as a result of construction piling. Rosper Road fields is functionally linked to the Humber Estuary SPA and supports qualifying features that utilise the land for "*feeding, roosting and/ or loafing in*" as stated in the NSER. The ambient noise levels recorded at Rosper Road fields range from 51dB(A) to 61dB(A) [[APP-027](#)] and the SIAA [[REP4-007](#)] states that for wintering bird species to be permanently flushed away from their habitat, a noise level of 84dB(A)⁵¹ is required. The SIAA also states that no effect to bird species are recorded at noise levels below 55dB(A)⁵² and that birds habituate to regular noise below 70dB(A)⁵³.
- 6.7.15. Taking these noise levels into account, the Applicant argues that the qualifying bird species reacting to noise levels is not necessarily of concern as long as the birds are not permanently flushed away from the habitat. The Applicant also argues, that the bird species are likely to move westward in the Rosper Road fields, further from the Proposed Development, if noise levels are heard above the ambient noise level.
- 6.7.16. Within the SIAA [[REP4-009](#)], the Applicant provides noise contours for different piling techniques (figures 1, 2 and 3) which show that piling is

likely to have an impact on the bird species, although not an impact of large enough magnitude (noise level of 84dB(A) or higher) to cause the birds to be flushed away from the Rosper Road fields. Furthermore, only a maximum of 5% of Rosper Road fields would experience a noise level above 70dB(A) as stated in SIAA Paragraph 4.4.2 with the implementation of the mitigation measures stated in BS5228, and secured through the fCEMP and Requirements 14 and 20 of the dDCO [[REP7-002](#)].

- 6.7.17. The SIAA also states that with the implementation of the mitigation measures within BS5228 and a seasonal restriction on piling, no discernible effect to the qualifying features at Rosper Road fields is likely as the measures would reduce the noise from piling by a further 5-10dB. This would result in potentially none of Rosper Road fields being impacted by piling noise above 70 dB(A)⁵³, according to SIAA Figure 2. Furthermore, it is noted that NE within its final SoCG with the Applicant [[REP4-011](#)] address piling noise and states that it is content with the proposed measures to avoid or reduce effects secured through Requirements 14 and 20 of the dDCO.
- 6.7.18. An in-combination assessment is included within the NSER and SIAA. The assessment concludes that if piling is used and the measures, as stated above, are implemented then the Proposed Development alone would not result in impacts to Rosper Road fields. Due to the locations of the other plans and projects, no in-combination impacts to the qualifying species at Rosper Road fields would occur.
- 6.7.19. I am therefore of the opinion, based on the information provided in the application and Examination documents, that the Proposed Development would not result in adverse effects to the integrity of the Humber Estuary SPA alone or in-combination with other plans and projects due to noise from piling activities during construction. I am also content that sufficient information has been provided throughout the Examination to enable the SoSBEIS to undertake an AA.

Humber Estuary Ramsar

- 6.7.20. As stated in section 6.6 of this report, the Humber Estuary Ramsar site does not have its own set of conservation objectives. As such, the conservation objectives for the Humber Estuary SAC and SPA have been used as a proxy. I am satisfied that the reasoning presented in the above paragraphs of this report apply to relevant criteria of the Humber Estuary Ramsar site and that the Proposed Development would not result in adverse effects to the integrity of the Humber Estuary Ramsar site alone or in-combination with other plans and projects.

6.8. HRA CONCLUSIONS

- 6.8.1. The principal areas of concern throughout the Examination were the impact the Proposed Development would have on the quality of the surface water, noise impacts and changes to air quality at the Humber Estuary SAC, SPA and Ramsar site.

- 6.8.2. After careful examination of the application and other examination documents, I conclude that with implementation of avoidance and reduction measures specified above and secured through relevant Requirements to the DCO, there will be no adverse effects on the integrity of relevant European sites.
- 6.8.3. As discussed above, I am also of the view that the Proposed Development would not result in impacts of sufficient magnitude to increase NO_x concentration, nitrogen or acid deposition at the European sites sufficient to result in adverse effects to the integrity of the qualifying features of the Humber Estuary SAC and subsequently the Humber Estuary SPA and Ramsar site.
- 6.8.4. Having had regard to these matters, I am satisfied that the Proposed Development would not have any adverse effects on the integrity of the European sites considered, nor would it affect the ability of the conservation objectives for the sites to be delivered. I am also content that the information within the application and examination documents are sufficient for the SoSBEIS to undertake an AA for the Humber Estuary SAC, SPA and Ramsar site if required.

7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1. INTRODUCTION

7.1.1. This Chapter provides an evaluation of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 5 and 6 above. It applies relevant law and policy to the application in the context of the matrix of facts and issues set out in Chapter 5. Whilst the HRA has been documented separately in Chapter 6, relevant facts and issues set out in that Chapter are taken fully into account.

7.1.2. I have taken into account all RRs, WRs and responses to ExQ1 and ExQ2 as well as all other representations made during the course of the Examination including the LIRs from NLC and NELC.

7.1.3. In relation to the granting of development consent, I have reached the following conclusions:

Principle of Development

7.1.4. The need for the Proposed Development is established through the NPS. The Applicant has given sufficient consideration to the design and layout and sufficient information has been given on the consideration of alternatives to satisfy the requirements of NPS EN-1.

7.1.5. Furthermore, I accept that the provision of CHP is not compatible with the short term and intermittent peaking nature of the OCGT and that the capacity proposed is below the threshold to require it to be designed so as to be CCR.

The Environmental Statement

7.1.6. The ES and other information submitted by the Applicant during the Examination, is adequate and meets the requirements under the EIA Regulations. I have taken full account of all environmental information in my consideration of this application.

Air Quality

7.1.7. The air quality assessment undertaken by the Applicant adequately assesses impacts on air quality. I am satisfied that no significant effects on air quality are likely to arise. Residual impacts can be effectively managed through the mitigation measures secured in Requirements 14 and 24 of the dDCO.

7.1.8. I consider the requirements of both the AQD and NPS EN-1 will be met. However, a lack of harm in this respect does not weigh positively in favour of the Proposed Development. The effect is therefore neutral.

Water Quality, Ground Conditions and Flooding

- 7.1.9. I am satisfied that water quality and resources issues arising from the Proposed Development have been adequately addressed and that it accords with the requirements of the WEF and WFD. I am also satisfied that an appropriate FRA, meeting the requirements of the NPS, has been carried out and that sufficient mitigation would be secured in Requirement 11 of the dDCO to guard against the risk of flooding. This consideration is neutral.

Landscape and Visual Amenity

- 7.1.10. The assessments on landscape and visual effects of the Proposed Development meet the requirements of NPS EN-1 and EN-2. Furthermore, I am satisfied that the Proposed Development is unlikely to have a significant effect on landscape or visual amenity. Requirement 5 of the dDCO will ensure that further consideration will be given to the design of the Proposed Development so as to reduce its visual impact. The visual impact is therefore neutral in the planning balance.

Ecology (including HRA)

- 7.1.11. The Proposed Development will cause limited harm in terms of ecology and biodiversity and avoids harm to European sites. Given the evidence presented, I consider the ecological and nature conservation issues have been adequately assessed and the requirements of NPS EN-1 are met. Taking into account the mitigation measures secured in Requirements 6, 14 and 20 of the dDCO, I consider the net effect on ecological receptors would be neutral.

Noise, Light and Vibration

- 7.1.12. Given the evidence presented, I consider that noise and vibration issues have been addressed adequately and meet the requirements specified in 5.11 of NPS EN-1. This aspect is neutral in the planning balance.

Cultural Heritage

- 7.1.13. I have found above that the Applicant has adequately assessed the significance of the heritage assets affected by the proposal so that the extent of the impact can be understood. Furthermore, I make clear that I consider the Proposed Development would not adversely affect any of the designated heritage assets identified in the application documents. In my view, the application meets the requirements of NPS EN-1 in that regard.
- 7.1.14. However, I have also found that the Proposed Development would result in less than substantial harm to non-designated heritage assets. Nevertheless, while I recognise the importance of conserving both designated and non-designated heritage assets, in the present case I am mindful that the significance of the assets can be adequately recorded by the measures secured in the requirements in the dDCO and the fCEMP. Accordingly, I consider the resultant harm would be limited and afford it only moderate weight.

- 7.1.15. In contrast, the Proposed Development would result in a number of public benefits including its contribution to meeting the identified need for additional generating capacity and support for the local economy. After considering the assessment of effects on heritage and historic assets, I am satisfied that, even though the Proposed Development may result in the loss of some archaeological remains, this is clearly outweighed by the public benefits of the proposed development.

Transport and Traffic

- 7.1.16. I am satisfied that the transport and traffic assessment set out in the ES meets the requirements of NPS EN-1. I am also satisfied that no significant traffic or transportation effects are likely to arise from the Proposed Development. While I acknowledge there would be some short-term increase in traffic impacts during construction, the control and management measures included in the dDCO are sufficient to mitigate any negative impacts to an acceptable level. The overall effect in the planning balance is neutral.

Public Health and Amenity

- 7.1.17. The Applicant has had adequate regard to the impact of the Proposed Development on public health and amenity. No significant impacts on human health would be likely to arise from the Proposed Development. I am satisfied the application meets the requirements of NPS EN-1 and EN-5. The effect in the planning balance is neutral.

Economic and Social

- 7.1.18. The evidence presented indicates that the Proposed Development would result in some moderate positive socio-economic benefits to the local economy and has the potential to support further economic development in the local area. This is of moderate public benefit in the planning balance.

Climate Change

- 7.1.19. The intermittent peaking nature of the Proposed Development would help meet periods of high demand or low electricity supply nationally. This would help maintain security and flexibility of supply.
- 7.1.20. While there would be a small increase in GHG emissions, it would not be significant and is, in my view, outweighed by the contribution that the Proposed Development would have in meeting the UK's carbon commitment and supporting the transition to a low carbon economy.
- 7.1.21. On balance, I am satisfied that the Proposed Development would accord with the commitments to reducing GHGs under both the 2019 Order and the Paris Agreement.

Cumulative and Combined Effects

- 7.1.22. The Proposed Development would have no significant cumulative or combined effects from construction, operation or decommissioning activities. The effect in the planning balance is neutral.

7.2. THE PLANNING BALANCE

- 7.2.1. Taking the above factors into account, there are no adverse impacts of sufficient weight to argue against the DCO being made. The Proposed Development would result in less than significant harm to heritage assets and a number of non-significant impacts all of which have been mitigated as required by NPS policy. I conclude that the limited harm done is outweighed by the substantial benefit from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above. I further conclude that there is no breach of NPS policy overall.
- 7.2.2. For the reasons set out in the preceding chapters and summarised above, I find that the Proposed Development is acceptable in principle in planning terms. I carry this conclusion forward to my consideration of CA and TP proposals and objections to these in Chapter 8 and in my consideration of the dDCO in Chapter 9 below.

8. COMPULSORY ACQUISITION AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. The application included proposals for the CA and TP of land and rights over land. This chapter records the examination of those proposals and related issues.

8.2. THE REQUEST FOR CA AND TP POWERS

8.2.1. The application dDCO and all subsequent versions include provision for CA of freehold interests and private rights and the creation of new rights over land. They also contain provisions for the TP of land. None of the land included in the CA request is Crown Land, National Trust Land, Common Land or Open Space.

8.2.2. A Statement of Reasons (SoR) [[APP-008](#)], Funding Statement [[APP-009](#)], Book of Reference (BoR) [[APP-007](#)] and Land Plans [[APP-011](#)] were provided with the application. Further revisions to the BoR and Land Plans were received during the Examination with the most up-to-date versions being those submitted at Deadline 4 [[REP4-003](#) and [REP4-004](#)]. These documents, taken together, form the basis of the analysis in this Chapter. References to the BoR and the Land Plans in this Chapter from this point should be read as references to the latest revisions cited above.

8.2.3. The dDCO distinguishes between the 'Order land' the 'Order limits'. The Order limits are tightly defined by reference to the Works Plan [[APP-012](#)] and consist of the land required for Works 1 – 6.

8.2.4. The Order land comprises a number of areas of land adjacent to and within the Existing VPI CHP Plant Site and the Existing Gas Pipeline corridor. These are described in paragraph 1.5 of the SoR [[APP-008](#)] and identified on the Land Plans [[REP4-004](#)].

8.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

8.3.1. The purposes for which the CA and TP powers are required are set out in the BoR and SoR. In summary, the Applicant states that, in the absence of the powers sought, the Order land may not be assembled, uncertainty will continue and neither the Applicant's objectives nor the Government's policy objectives (as set out in the NPS) will be met.

8.3.2. The Applicant has sought CA and TP powers within the whole of the Order land even where some of that land is within its control. This is to address a number of potential proprietary impediments including the existence of unknown ownerships, rights or restrictions over the Order land, the potential for land agreements not being completed and to overcome any restriction of VPI Immingham LLP sharing the use of the Existing Gas Pipeline.

8.4. THE CA AND TP POWERS SOUGHT

8.4.1. The powers sought are for the acquisition of:

- all interests including freehold over the OCGT Power Station Site (Work No.1) (plot 5), shown edged red and shaded pink on the Land Plans. Article 18 is relied on in respect of this land;
- new rights for access, construction, operation and maintenance of the Gas Connection (Work No.4), Electrical Connection (Work No.5) and Utilities and Services Connections (Work No.6) and new rights for the operation and maintenance of the Existing Gas Pipeline – all of which are shown edged red and shaded blue on the Land Plans. Article 21 of the Order is relied on for the acquisition of these new rights and includes the power to impose restrictive covenants. The purposes for which new rights can be acquired are set out Schedule 6 of the dDCO;
- temporary possession of the land edged red and shaded yellow on the Land Plans. Articles 27 and 28 are relied on and no powers of CA are sought over this land. The land affected by TP is listed in Schedule 8 of the dDCO and includes any other part of the Order land where CA powers have not been exercised; and
- land, rights and apparatus belonging to SUs within the Order land including powers to extinguish and suspend existing rights and to remove and reposition SU apparatus. Article 29 is relied on in respect of this.

8.4.2. Notwithstanding the request for CA and TP powers, the Applicant has conducted negotiations with APs in parallel with the Examination with the aim of acquiring the land by agreement. This is discussed further below.

8.5. LEGISLATIVE REQUIREMENTS

8.5.1. Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the SoS is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or be incidental to the development.

8.5.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, DCLG's guidance on compulsory acquisition ("the CA Guidance") indicates the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

8.5.3. Section 123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:

- that the application for the order included a request for CA of the land to be authorised - s123(2); or

- that all persons with an interest in the land consent to the inclusion of the provision – s123(3); or
 - that the prescribed procedure has been followed in relation to the land - s123(4).
- 8.5.4. The application included a request for CA of the land to be authorised and, as such, I am satisfied that the condition set out in s123(2) of the PA2008 has been met.
- 8.5.5. Section 127 of the PA2008 applies to SU land. S127(2) and (3) state that an order granting development consent may include provision authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of the PA2008 provide for the inclusion of provisions in respect of the CA of rights belonging to SUs only to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of SUs have land interests within the Order limits.
- 8.5.6. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the Proposed Development, this section of the PA2008 is relevant to SUs with land and equipment interests within the Order limits.
- 8.5.7. TP powers are also capable of being within the scope of a DCO by virtue of Paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole: only capable of proceeding if the primary development is justified.
- 8.5.8. The Neighbourhood Planning Act 2017 includes a number of provisions related to the temporary possession of land including notice requirements, the service of counter notices and compensation. These provisions are not yet in force and are described as technical changes in the Explanatory notes that accompany the Act. While it is not necessary to assess the proposal against these provisions, they provide a useful indication of how parliament considers these matters should be addressed and how a balance can be struck between acquiring authorities and those whose interests are affected by the use of such powers. As a result, I have had regard to the general principles that they espouse.

8.5.9. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also have to be addressed including:

- whether all reasonable alternatives to CA have been explored;
- whether the Applicant has a clear idea of how it intends to use the land subject to CA powers;
- whether the Applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- whether the SoS is satisfied that the purposes stated for the CA and TP are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

8.5.10. I have taken all relevant legislation and guidance into account in my reasoning below and relevant conclusions are drawn at the end of this Chapter.

8.6. EXAMINATION OF THE CA AND TP CASE

8.6.1. In examining the application, I considered all written material in respect of CA and TP. I asked questions of both the Applicant and APs in ExQ1 and ExQ2 and made a number of Rule 17 requests for further information and updates on the parties' respective positions. In addition, I held 2 CAHs [[EV-005](#) and [EV-013](#)] where the issues were explored in further detail. I also undertook an ASI where I visited parts of the CA land subject to objections and the land over which TP powers are sought. I describe these processes in further detail below.

Written Processes

8.6.2. In ExQ1 [[PD-007](#)] (Q1.2.1 – Q1.2.8) I sought further information on land ownership identification, how discussions with APs were progressing, conclusions reached in respect of Category 3 persons and the costs estimates identified by the Applicant in the Funding Statement.

8.6.3. Further updates were requested from all APs with objections outstanding following CAH1 [[PD-009](#)] and updates were provided by the Applicant at regular intervals by way of a CA Schedule [[REP2-011](#), [REP3-013](#), [REP3a-002](#), [REP4-008](#), [REP6-007](#), [REP6a-004](#), [REP7-008](#)].

8.6.4. ExQ2 included a number of additional questions (Q.2.2.1 – Q2.2.35) arising out of the written evidence, from the responses to my ExQ1 and the matters discussed at CAH1. These included requests for updates on discussions between the Applicant and APs, potential risks to securing the necessary funding to construct the project, the effects on SUs, potentially unaccounted for rights, clarification on the extent of the rights being sought, the suitability of PPs being offered by the Applicant and whether consideration has been given to alternative dispute mechanisms.

Hearings

- 8.6.5. During the Examination, I held 2 CAHs (CAH1[EV-005] and CAH2 [EV-010]) at which I asked a number of questions of the Applicant and APs (and/ or their representatives). These provided an opportunity for APs to be heard and comment on the process and on the rights sought and provisions proposed in the dDCO.
- 8.6.6. My oral questions sought information and/ or clarification on a number of matters including:
- matters not clear from the written evidence;
 - the need for, and approach to, TP rights;
 - funding;
 - progress on negotiations with APs;
 - the need to acquire rights and alternatives;
 - updates to the BoR and Land Plans;
 - PPs in relation to SUs and others; and
 - whether there is a compelling case in the public interest.

Accompanied Site Inspection

- 8.6.7. As noted in Chapter 1, I undertook an ASI on Tuesday 1 October 2019 prior to which APs were invited to put forward suggested locations for inspection. During the ASI, I visited a number of sites affected by the Applicant's CA and TP proposals. This provided me with an understanding of the location of those plots as well as above ground infrastructure in situ. Full details of the sites visited can be found in the ASI Itinerary [EV-008].

The Applicant's case

- 8.6.8. The Applicant's case for seeking CA and TP powers is set out in the SoR [APP-008]. In summary, the Applicant seeks CA and TP powers on the basis that the proposal meets an urgent need for new energy infrastructure, is suitable in its context, minimises or mitigates adverse impacts to an acceptable degree and is compliant with the NPS. They point to the contribution the Proposed Development would make towards addressing the identified need for new electricity generating capacity and to the security, diversity and resilience of UK electricity supply. Attention is also drawn to the contribution it would make in supporting the UK's transition to low carbon electricity generation.
- 8.6.9. VPI Immingham LLP (the Applicant's sister company) benefits from an option agreement with TLOR which permits a lease of the OCGT power station site together with other rights which can be drawn down by other parties (including the Applicant). However, the Applicant states that this option does not cover all of the necessary land or rights and so has included the land upon which it proposes to build the OCGT power station. The Applicant explains in the SoR that this is because there is no certainty that the option agreement will be completed when required. The Applicant also states that these powers would only be used in the

event that the freehold owner was unable or unwilling to complete the lease under the terms of the Option Agreement.

- 8.6.10. In addition, the use of CA and TP powers is sought to secure the land and other interests necessary to enable the Applicant to construct, operate and maintain the Proposed Development within a reasonable timeframe. They have therefore included powers to create new rights over land in respect of Work No.2, Work No.4, Work No.5 and Work No.6 as well as rights to use, access, operate and maintain the Existing Gas Pipeline.
- 8.6.11. Furthermore, Article 21 includes powers to impose restrictive covenants in relation to land over which new rights are acquired. The Applicant states in paragraph 6.9 of the SoR [[APP-008](#)] that this power is justified and proportionate in the circumstances in order to protect and preserve the integrity of the relevant parts of the Proposed Development and ensure they cannot be interfered with. They also assert that the use of the land would be sterilised if the land above the pipes or cables had to be acquired.
- 8.6.12. While I note the Applicant does not provide a specific justification for each of the individual plots over which the power is being sought, it does provide some details as to the types of restrictions likely to be imposed including restrictions to protect the apparatus from becoming exposed, damaged or built over; preventing operations which may obstruct, interrupt or interfere with apparatus and the exercise of new rights required; ensure that access for future maintenance can be facilitated; and to ensure that land requirements are minimised so far as possible. They also point to the Wrexham Gas Fired Generating Station Order 2017 and the Millbrook Gas Fired Generating Station Order 2019, both of which contain similar provisions.

Alternatives

- 8.6.13. The Applicant considers that a 'do nothing' scenario is not appropriate given the established national need for new energy generation and that such a scenario would be disadvantageous to the local economy [[APP-008](#)].
- 8.6.14. The Applicant has not considered an alternative location for the new generating station. They state in the SoR that:
- "The proximity of the Proposed Development to the Existing VPI CHP Plant and proposed shared use of services connections and utilities, represents a very efficient approach and helps in reducing the need for compulsory acquisition powers".*
- 8.6.15. The SoR [[APP-008](#)] indicates that consideration was given during pre-application consultation to two other potential routes for the Gas Connection - both of which, the Applicant contends, would have resulted in the construction of a new AGI and the acquisition of additional land. The final routes chosen are set within the curtilage of the Existing VPI CHP Plant site and requires less third-party land than the alternatives considered.

- 8.6.16. Consideration was not given to alternative routes for the Existing Gas Pipeline. The Applicant explains that this is because the Existing Gas Pipeline is already in place.
- 8.6.17. The Applicant states in the SoR that they have been seeking to acquire the relevant freehold interests, rights and temporary use of land by private agreement both prior to, and during, the Examination. Discussions with APs have been ongoing throughout the Examination and agreement has been reached to acquire the necessary land and rights with a number of them. I consider these matters in further detail below.
- 8.6.18. In summary, the Applicant's position on alternatives is that none of the alternatives considered would provide the same level of benefits or would involve additional environmental impacts or result in the need to compulsorily acquire a greater amount of land.

Issues raised by APs

- 8.6.19. Phillips 66 Limited objected on the basis that the Applicant has failed to consider alternative locations for the OCGT or the Existing Gas Pipeline [[REP2-024](#), and [REP3-017](#)]. It argues that the Applicant has simply sought to compulsorily acquire the rights which are most commercially advantageous to it and that no regard has been had to alternative sites or alternative means of delivering the gas.
- 8.6.20. In response, the Applicant points to the advantages of the site and sets out the various steps it has taken to avoid having to rely on CA powers in respect of the Order land [[REP3-007](#)].
- 8.6.21. In respect of site selection, the Applicant's approach to the consideration of alternative sites is set out in section 5.2 above. In summary, it has proceeded on the basis that other sites are unlikely to have similar advantages to those of the proposed site including its location, ability to utilise existing infrastructure and its limited environmental impact. Furthermore, the Applicant states that the use of the Existing Gas Pipeline is logical, more sustainable and likely to have less of an environmental impact than building a new pipeline. They argue that the construction of an alternative pipeline would be likely to require additional land resulting in greater CA powers being sought.
- 8.6.22. I find these arguments compelling. No alternative sites have been identified as being available to the Applicant and it is reasonable to assume that building a new pipeline instead of making use of an existing one would involve the acquisition of additional land and rights. In such a scenario, the extent of the CA powers sought would also likely be greater.
- 8.6.23. In response to its consultation, the Applicant has considered a range of options for the Gas Connection and chosen one which it considers to be the most viable both economically and environmentally. In addition, the Applicant has sought to secure the necessary land interests by agreement and has included PPs for SUs and others in the dDCO in the event that terms cannot be reached. Discussions are ongoing and the

Applicant has demonstrated throughout the Examination a commitment to securing the necessary rights by agreement where possible.

- 8.6.24. Consequently, I consider that all reasonable alternatives to CA have been explored. Accordingly, I find the application accords with the CA Guidance in this respect.

Availability and Adequacy of funds

- 8.6.25. The capital costs of the project, including the CA costs will be met by the release of funds by VPI Holding Ltd (the holding company for the VPI group of companies of which the Applicant forms part) to the Applicant. A Funding Statement [[APP-009](#)] accompanies the application which includes details of the latest audited accounts for VPI Holding Limited.
- 8.6.26. The Funding Statement indicates that the Applicant has the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any land and rights and the payment of compensation, including in the case of a claim for blight.
- 8.6.27. The adequacy of funding for CA was not raised by any IP during the course of the Examination. As part of ExQ1, I sought clarification on the anticipated costs of CA. In response, the Applicant provided an estimate of £1.922 million. Based on the information provided, I am satisfied that the necessary funds are available to the Applicant.
- 8.6.28. The dDCO includes provisions in Article 43 which require the SoSBEIS to approve a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the provisions for CA can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

8.7. MATTERS RAISED IN THE EXAMINATION/ OBJECTIONS TO CA AND TP.

- 8.7.1. At the start of the Examination, the following APs objected to CA and TP proposals:
- Air Products (BR) Limited
 - Cadent Gas Limited
 - NR
 - Phillips 66 Limited
 - NGET
 - NGG
 - Hornsea 1 Limited
 - The Hornsea 2 Companies
 - TLOR
 - Able
 - CLH
 - Centrica

- 8.7.2. I was kept updated throughout the Examination on how matters were progressing with the abovementioned parties by means of a CA Schedule.
- 8.7.3. Formal notification of withdrawal of objections were received from Air Products [[REP6a-009](#)], Centrica [[REP6a-011](#)], National Grid [[REP7-015](#)], and Able [[REP7-013](#)]. I am satisfied that these objections are now withdrawn and that PPs have been agreed which offer the necessary protections for these APs. There are no outstanding issues or circumstances which would indicate that the CA powers sought in relation to the affected plots should not be granted. As a result, I do not consider them further below (except insofar as they are relevant to my consideration of the specific provisions of the dDCO in Chapter 9 below).
- 8.7.4. At the close of the Examination, the following APs still had objections outstanding:
- Cadent Gas Limited
 - NR
 - Phillips 66 Limited
 - Hornsea 1
 - The Hornsea 2 companies
 - TLOR
 - CLH
- 8.7.5. Table 1 below sets out details of the plots affected by the outstanding objections and the provides links to the representations received from APs.

Table 1: Objections to CA and TP outstanding at close of the Examination

AP	Plots Affected	Representations
Cadent Gas Limited SU (S127/138 PA 2008 apply)	78, 79, 80, 86, 99, 107, 108, 109, 110, 111	RR-013 , REP2-026 REP3a-009 REP4-012 REP-6-010 REP6a-008 AS-007
Network Rail Infrastructure Limited	41, 104, 105, 106	RR-020 REP2-022

SU (S127/138 PA 2008 apply)		REP3a-005 REP4-016 REP6-008 REP6a-006 REP7-012
Hornsea 1 SU (S127/138 PA 2008 apply)	59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, 92	RR-009 REP2-035 REP2-036 REP3-018 REP3-019, REP3a-011 REP4-014 REP6-011 REP6a-012
Hornsea 2 Companies SU (S127/138 PA 2008 apply)	59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, 92	RR-011 REP2-037 REP2-038 REP3-020 REP3-021 REP3a-012 REP4-015 REP6-012 REP6a-013
TLOR	1, 2, 3, 4, 5, 6, 7	RR-012 REP2-039 REP3a-013

		REP7-016
CLH Pipeline Systems Limited	5, 6, 108, 109, 110	RR-019 REP1-004
Phillips 66 Limited	7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58	RR-023 REP1-002 REP2-024 REP3-017 REP3a-007 REP4-018 REP5-009 REP6-009 REP6a-007 REP7-011

8.8. OBJECTIONS OUTSTANDING

Cadent Gas Limited (Cadent)

- 8.8.1. Cadent objected in its RR to the inclusion of all of the plots within which it has an interest as set out in Table 1 above. All of the plots identified are affected by the CA powers sought to use, operate and maintain the Existing Gas Pipeline.
- 8.8.2. During the examination, discussions between the Applicant and Cadent continued and plots 111 and 107 were found not to be required. In addition, the boundary of plot 109 was relocated so that it falls outside the fence line of Cadent's operational land. Subsequent Land Plans [[REP4-004](#)] and an updated BoR [[REP4-003](#)] were submitted at Deadline 4 to give effect to these changes.
- 8.8.3. Cadent's central objection to the inclusion of the remaining plots (plot Nos. 78, 79, 80, 86, 99, 108, 109 and 110) is that it has infrastructure situated below ground and without suitable PPs it cannot be satisfied that there would not be serious detriment to its undertaking. It argues that the broad scope of the new rights being sought are akin to usual construction activities permitted pursuant to a DCO and, as such, its standard PPs should be included.

- 8.8.4. Having considered the details set out in the Land Plans and BoR, I am satisfied that the CA powers sought over Plots 78, 79, 80, 86, 99, 107, 108, 109, 110 and 111 are required to facilitate and/ or are incidental to the Proposed Development. I am therefore satisfied that the powers sought meet the condition set out in s122(2) of the PA 2008.
- 8.8.5. I have considered all representations made in respect of CA by both Cadent and the Applicant. While I note that no works are proposed to the Existing Gas Pipeline or in close proximity to Cadent's interest/ apparatus, the rights sought are broadly defined and include rights to carry out works to the Existing Gas Pipeline, including its relocation, removal alteration and replacement. The exercise of these rights has the potential to interfere with Cadent's apparatus and their undertaking. In the circumstances, I consider the inclusion of PPs in the DCO is reasonable and warranted.
- 8.8.6. Nevertheless, while I accept there will be some private loss to Cadent, the need for the development is already established by the NPS and has been accepted in this Examination. EN-1 advises that this should be given substantial weight when considering applications for development consent under the PA2008.
- 8.8.7. In my view, this outweighs the private loss to Cadent and I therefore consider that there is a compelling case in the public interest for acquiring the rights sought compulsorily. Accordingly, I find the test set out in s122(3) is met.
- 8.8.8. Discussions between Cadent and the Applicant on the wording of appropriate PPs continued throughout the Examination. I was kept updated on progress. However, at the close of the Examination, a number of matters remained outstanding, namely in relation to insurance, indemnity and arbitration provisions. However, in my view, the parties' cases are sufficiently well set out that I am able to come to a view on any necessary amendments that may be required to address the remaining matters in dispute.
- 8.8.9. Overall, the PPs provide a range of protections to ensure use of the CA powers are restricted to those required to carry out the development and that do not result in serious detriment to Cadent's undertaking. They include a restriction on the use of CA powers without Cadent's consent and provide protections in respect of Cadent's apparatus including a restriction on the use of the powers contained in Article 29 of the dDCO.
- 8.8.10. Furthermore, I am mindful that rights to access and maintain the Existing Gas Pipeline already exist in favour of VPI Immingham LLP. There is nothing which would indicate that the maintenance of the Existing Gas Pipeline has had any material impact on Cadent's undertaking to date.
- 8.8.11. I am therefore satisfied that, subject to the inclusion of suitable PPs in the rDCO (the specific details of which I consider further in Chapter 9 below), the inclusion of CA powers in respect of the plots identified would not result in serious detriment to the carrying on of Cadent's

undertaking. Furthermore, I am also satisfied that the inclusion of powers in respect of the extinguishment of rights are necessary for the purpose of carrying out the development. As such, I consider the tests set out in s127 and s138 of the PA2008 are met.

Network Rail Infrastructure Limited

- 8.8.12. The CA powers sought in relation to NR relate to the operation and use of the Existing Gas Pipeline.
- 8.8.13. NR's objection is set out in the representations listed in Table 1 above. In summary, NR object to the inclusion of CA powers in the dDCO on the basis that there is no compelling case in the public interest and that the new rights and restrictions included in the dDCO cannot be created without serious detriment to NR's undertaking. It sought agreements with the Applicant which would restrict the use of CA powers over its land and which would regulate the manner in which the CA Powers could be exercised. It also sought to include PPs in the dDCO to safeguard the safety and integrity of the operational railway land.
- 8.8.14. I have considered the parties submissions carefully. In my view, the rights sought, while broad, are necessary to operate and maintain the Existing Gas Pipeline. I am therefore satisfied that these rights are required to facilitate the development and, as such, the test in respect of S122(2) is met.
- 8.8.15. Furthermore, while I acknowledge there would be some loss to NR in having such a broad set of rights exercisable over its land, no works are proposed, and similar rights already exist in favour of VPI Immingham LLP. Subject to appropriate protections, there is no reason that the rights sought should materially affect NR's existing use of its land.
- 8.8.16. In contrast, the Proposed Development would provide public benefits in the form of additional energy generating capacity, security and flexibility of supply. NPS EN-1 indicates that this should be given substantial weight. In addition, there would be increased employment opportunities and support for the local economy. While modest, in my view these benefits should be afforded moderate weight.
- 8.8.17. On balance, I consider the public benefits that would result from this additional energy generation outweighs the private loss to NR that would result from the creation of these rights compulsorily. Accordingly, I consider there is a compelling case in the public interest for CA powers to be included in respect of the identified plots and that the test set out in s122(3) is also met.

Section 127 and s138 PA 2008 tests

- 8.8.18. NR confirmed at Deadline 7 [\[REP7-012\]](#) that PPs had been agreed with the Applicant. These are set out in Schedule 9, Part 10 of the dDCO (version 5) [\[REP7-002\]](#). They provide a range of protections for NR to ensure use of the CA powers are restricted to those required to carry out the development. They include a restriction on the use of CA powers

without the consent of NR, ensure NR's control over access to railway land is maintained and provide protections in respect of NR's existing rights and apparatus, including a restriction on the use of the powers contained in Article 29 of the dDCO.

- 8.8.19. Furthermore, I am mindful that rights to access and maintain the Existing Gas Pipeline already exist in favour of VPI Immingham LLP. There is nothing which would indicate that the maintenance of the Existing Gas Pipeline has had any material impact on NR's undertaking to date.
- 8.8.20. I am therefore content that the inclusion of CA powers in respect of the plots identified would not result in serious detriment to the carrying on of NR's undertaking. Furthermore, I am also satisfied that the inclusion of powers in respect of the extinguishment of rights are necessary for the purpose of carrying out the development. As such, I consider the tests set out in s127 and s138 of the PA2008 are met.
- 8.8.21. Nevertheless, at the close of the Examination, the related property agreements had not been completed. However, the Applicant indicated in its Deadline 7 response [[REP7-007](#)] that the drafting was agreed and that the parties were close to agreeing the final commercial matter.
- 8.8.22. The SoSBEIS may therefore wish to seek confirmation from the Applicant and NR that the related property agreement has been completed. However, even if such confirmation is not provided, or such an Agreement has not been signed at the point confirmation is sought, I am satisfied the SoSBEIS can be confident that the PPs included in the dDCO are sufficient to ensure that there would be no serious detriment to NR's undertaking.

Total Lindsey Oil Refinery

- 8.8.23. The Applicant has the benefit of an option for lease agreement with TLOR which permits a lease of the OCGT Power Station Site (Plot 5) together with other rights. However, it seeks powers to compulsorily acquire the freehold of the OCGT power station site (plot 5) due to uncertainty on when the option will be completed. The SoR states that these powers will only be relied on in the event that the freehold owner of the land could not or would not complete the lease under the option agreement. In addition, the Applicant seeks powers to create new rights in respect of plots 2, 6 and 7.
- 8.8.24. TLOR's objection is set out in the representations listed in Table 1 above. In summary, they are concerned that the construction, use and maintenance of the Gas Connection and Existing Gas Pipeline could result in detrimental impacts to the safe operation of their own infrastructure. They also raise concerns with the proximity of Work No.1 to the canteen building which they consider would make the building vulnerable in the event of a major accident at the proposed OCGT facility.
- 8.8.25. Although the Applicant and TLOR were in discussions throughout the Examination on the protections necessary to assuage TLOR's concerns, at the close of the Examination agreement had not been reached. TLOR's

objection remains outstanding. However, the Applicant has included PPs in the dDCO submitted at Deadline 7.

- 8.8.26. I consider the CA powers sought in respect of plot 5 are required for Work No 1. In my view, there a clear need for all of the land included in plot 5 to be subject to permanent acquisition in order to carry out the specified works and provide suitable mitigation for the environmental impacts. In the absence of CA powers in the DCO, there is no certainty that the Proposed Development would proceed or that the proposed mitigation would be realised.
- 8.8.27. In addition, I am content that the rights sought over Plots 2, 6 and 7 are required for the operation and maintenance of the Existing Gas Pipeline and to facilitate the Proposed Development. Accordingly, I am content that the conditions set out in s122(2)(a) and (b) of the PA 2008 are met.
- 8.8.28. Turning then to s122(3), I acknowledge the risks inherent in the carrying out of Work No.1 in close proximity to TLOR's existing infrastructure. However, the PPs included in Schedule 9, Part 9 of the dDCO require the Applicant to submit plans (and other such particulars as TLOR may reasonably require) to TLOR for approval before any works which would have an effect on the operation or maintenance of TLOR's pipelines are carried out. This goes some way to ensuring that the likelihood of any damage to TLOR's pipeline is minimised.
- 8.8.29. I have given careful consideration to TLOR's request to require the relocation of the Canteen. I acknowledge that during construction there would be some disturbance to users of that facility. However, many of these impacts would be temporary.
- 8.8.30. Furthermore, although I acknowledge that an increase in TLOR's risk profile would negatively impact on TLOR, I accept that the design of gas infrastructure is well governed. There is no evidence to indicate that the proposed OCGT facility would not be operated and maintained to the required standards or that it would pose any material risk to the TLOR's canteen on an ongoing basis. I therefore consider any loss in this sense would be limited.
- 8.8.31. In contrast, the need for additional energy generating capacity is already established by the NPS and has been accepted in this Examination. The Proposed Development would provide considerable public benefits in the form of additional energy generation and provide flexibility in terms of supply. These benefits are considerable and I afford them substantial weight. In addition, I have already noted the employment opportunities and other economic benefits that would result.
- 8.8.32. On balance, I consider the private loss to TLOR which would be likely to result from the exercise of the CA powers sought is outweighed by the public benefits that would arise. Accordingly, I consider that there is a compelling case in the public interest for the granting of CA powers in respect of those plots and that the s122(3) test is met.

TP Powers

- 8.8.33. The Applicant also seeks TP powers under Articles 27 and 28 of the dDCO in respect of plots 1, 3 and 4. I consider these provisions further in Chapter 9 below. However, while the TP powers sought in relation to these plots are not subject to the same tests as the CA powers discussed above, they form part of the proposed Work No. 3 (temporary construction and laydown area) and I am satisfied that they are required to facilitate the Proposed Development.

CLH Pipeline Systems Limited (CLH)

- 8.8.34. CLH is not a SU for the purposes of the Examination but owns and operates a high-pressure pipeline, part of which is located in Plots 5 and 6. The Applicant seeks CA powers in respect of these plots in order to carry out Work No.1 (the OCGT Power Station) and Work No.6 (Utilities and Services Connection). In addition, the pipeline crosses the Existing Gas Pipeline Site at plots 108, 109 and 110 and the Applicant seeks CA powers to create new rights to operate and maintain the Existing Gas Pipeline in respect of these plots.
- 8.8.35. CLH's objection is set out in the representations listed in Table 1. In summary, it objects to the inclusion of CA powers in the dDCO on the basis that, in the absence of suitable protections being in place, construction works near or over the pipeline could result in damage to this asset. It argues that any interruption to its operation will have a significant impact on CLH's business of fuel supply and will have serious financial consequences for CLH.
- 8.8.36. CLH stated in its Deadline 1 response [[REP1-004](#)] that it did not propose to attend any of the hearings and was seeking to agree PPs with the Applicant. Discussions between the Applicant and CLH continued throughout the Examination and I was kept updated on progress by the Applicant. However, although the Applicant confirmed at Deadline 7 that the parties were continuing to negotiate a Protective Provisions Agreement and that there were only a few matters outstanding [[REP7-008](#)], agreement was not reached before the close of the Examination and CLH's objections remain extant.
- 8.8.37. I acknowledge CLH's concerns in respect of their existing pipelines. However, the CA powers sought in respect of plot 5 are required to carry out Work No 1. Likewise, the creation of new rights in respect of plot 6 are required for Work No 6. Furthermore, although the rights sought in respect of plots 108, 109 and 110 are broad, they are necessary to operate and maintain the Existing Gas Pipeline which is already in situ. I am therefore satisfied that CA powers sought in respect of these plots are required for or to facilitate the proposed development and accordingly that conditions (a) and (b) of s122(2) are met.
- 8.8.38. Turning then to s122(3), the PPs included in Schedule 9, Part 6 of the dDCO require the Applicant to submit plans (and other such particulars as CLH may reasonably require) to CLH for approval before any proposed

works which would have an effect on the operation or maintenance of the CLH pipeline are carried out. This, in my view, goes some way to ensuring that the likelihood of any damage to CLH's pipeline or interruption to CLH's business operations is minimised.

- 8.8.39. The need for the Proposed Development is already established by the NPS and has been accepted in this Examination. In addition, I have already noted that NPS EN-1 indicates that the SoS should give substantial weight to the contribution that projects would make towards satisfying this established need. Furthermore, I am mindful of the other public benefits, albeit modest, which would arise including additional employment opportunities and support for the local economy. While I accept that the CA powers would result in some private loss to CLH, on balance, I consider such loss would be outweighed by the public benefits that would arise.
- 8.8.40. Accordingly, I consider that there is a compelling case in the public interest for the granting of CA powers in respect of CLH's plots and that the condition set out in s122(3) is satisfied.

Hornsea 1 Limited

- 8.8.41. Hornsea 1 Limited is a SU and the developer of the Hornsea One Offshore Windfarm and its associated onshore transmission infrastructure, a NSIP in its own right. The Applicant is seeking powers of CA over the plots identified in Table 1 above which includes the creation of rights to operate and maintain the Existing Gas Pipeline as well as broad powers to extinguish or suspend rights or restrictions and to remove or reposition apparatus belonging to SUs.
- 8.8.42. Details of Hornsea 1's objection can be found in the representations listed in Table 1. In summary, the main concerns raised relate to the potential for the CA powers being sought to extinguish, override or otherwise interfere with the rights and powers necessary for the construction, operation and maintenance of the Hornsea 1 Offshore Windfarm (ie the powers sought under Article 29 of the dDCO). In particular, it notes that the plots affected contain electricity supply cables and other associated apparatus which connect the offshore generating station with the onshore infrastructure. They state that without appropriate PPs and a crossing agreement, the inclusion of CA powers in the DCO in respect of the affected plots could lead to serious detriment to Hornsea 1's undertaking.
- 8.8.43. I have given detailed consideration to the various points raised by the parties. As I have already indicated above, I consider the rights sought, while broad, are necessary to operate and maintain the Existing Gas Pipeline located in the affected plots. I am satisfied that these rights are required to facilitate the development and, as such, the conditions in respect of S122(2) are met.
- 8.8.44. Furthermore, I consider the public benefits in the form of additional energy generating capacity should be given substantial weight. In

contrast, while I acknowledge the concerns of Hornsea 1 in having such a broad set of rights exercisable over its land, no works are currently proposed and similar rights already exist to operate the Existing Gas Pipeline. There is nothing to suggest that the existence of these rights has materially impacted upon Hornsea 1's ability to carry out their undertaking or has jeopardised the Hornsea 1 project.

- 8.8.45. Draft PPs were submitted into the Examination by the Applicant at Deadline 6 [[REP6-004](#)] and subsequently included in the dDCO submitted at Deadline 7. No specific concerns were identified by Hornsea 1 in respect of these provisions and they go some way to mitigating any resultant impact on Hornsea 1. Subject to their further consideration in Chapter 9 below, there is no reason that, with suitable PPs in place, the rights sought should materially affect Hornsea 1's existing use of the land affected.
- 8.8.46. On balance, I consider the public benefits that would result from this additional energy generation outweighs the private loss to Hornsea 1 that would result from the creation of these rights compulsorily. As such, I consider there is a compelling case in the public interest for CA powers to be included in respect of the identified plots and that the test set out in s122(3) is also met.

Section 127 and s138 PA 2008 tests

- 8.8.47. Discussions continued throughout the Examination between Hornsea 1 and the Applicant with a view to agreeing suitable PPs and a crossing agreement which would regulate future interactions between the Existing Gas Pipeline and Hornsea 1's infrastructure. I received regular updates throughout the Examination as to the progress being made.
- 8.8.48. Hornsea 1 confirmed at Deadline 6a [[REP6a-012](#)] that the PPs and crossing agreement were close to being finalised. This was reiterated by the Applicant in its Deadline 7 response [[REP7-007](#) and [REP7-010](#)] which also state that the PPs included in Schedule 9, Part 12 of the final dDCO are believed to be in an agreed form [[REP7-008](#)].
- 8.8.49. The PPs included at Schedule 9 Part 14 of the dDCO in favour of Hornsea 1 limit the exercise of CA powers and provide a range of protections which aim to ensure that the exercise of those powers would not result in serious detriment to Hornsea 1's undertaking. They include provisions which restrict the Applicant's ability to exercise CA powers (including extinguishment) in respect of Hornsea 1's land interests, require written approval from Hornsea 1 before any works are commenced within 20m of its apparatus and measures to ensure that access to Hornsea 1's infrastructure is maintained.
- 8.8.50. Taken together, the PPs provide a considerable amount of protection to ensure that Hornsea 1's infrastructure and apparatus is protected in the event that works are required to operate or maintain the Existing Gas Pipeline. Furthermore, they considerably limit the Applicant's ability to extinguish or relocate Hornsea 1's apparatus without Hornsea 1's

consent. This will, in my view, ensure that the powers of extinguishment sought under Article 29 would only be exercised where necessary for the carrying out of the Proposed Development.

- 8.8.51. In light of this, I am content that the inclusion of CA powers in respect of the plots identified would not result in serious detriment to the carrying on of Hornsea 1's undertaking. Furthermore, I am also satisfied that the inclusion of powers in respect of the extinguishment of rights are necessary for the purpose of carrying out the development. As such, I consider the tests set out in s127 and s138 of the PA2008 are met.
- 8.8.52. At the close of the Examination, the related Crossing Agreement had not been completed. However, the Applicant indicated in its Deadline 7 Response [[REP7-007](#)] that the form of the agreements is well advanced and that they anticipate reaching agreement with Hornsea 1 imminently.
- 8.8.53. The SoSBEIS may therefore wish to seek confirmation from the Applicant and Hornsea 1 on whether the crossing agreement has been completed. However, even if such confirmation is not provided, or such an Agreement has not been signed at the point confirmation is sought, I am satisfied the SoSBEIS can be confident that the PPs included in the rDCO are sufficient to ensure that there would be no serious detriment to Hornsea 1's undertaking.

The Hornsea 2 Companies

- 8.8.54. The Hornsea 2 Companies are the developers of the Hornsea Two Offshore Windfarm and its associated onshore transmission infrastructure, a NSIP in its own right. The project is now in the construction phase. It is intended that it will be completed and operational by 2022. Construction works have commenced under option agreements with landowners along the approximately 40km onshore cable route.
- 8.8.55. The Hornsea 2 Companies have property interests in the plots listed in Table 1 above. The SoSBEIS will note that these are identical to those set out above in respect of Hornsea 1. It also has development, access and CA rights within certain of these plots pursuant to the Hornsea Two Offshore Wind Farm Order 2016.
- 8.8.56. The concerns raised by the Hornsea 2 Companies are essentially the same as those raised by Hornsea 1. They point to the potential for the CA powers sought to extinguish, override or otherwise interfere with rights and powers necessary for the construction, operation and maintenance of the Hornsea 2 project. They state that unless the Applicant's exercise of CA powers over these plots is controlled, there is the potential for damage to their apparatus and/ or restricted access for construction and necessary maintenance/ repair. They seek to have suitable PPs included in the DCO and a separate crossing agreement with the Applicant to ensure that the Proposed Development does not jeopardise the Hornsea 2 project.

- 8.8.57. The Applicant's response is essentially the same as described above in respect of Hornsea 1. PPs are offered in the form set out in Schedule 9, Part 15 of the dDCO which include provisions which restrict the Applicant's ability to exercise CA powers (including extinguishment) in respect of Hornsea 2's land interests other than by agreement. They also require written approval from the Hornsea 2 Companies before any works are commenced within 20m of their apparatus and include measures to ensure that access to Hornsea 2's infrastructure is maintained. No specific concerns were identified by the Hornsea 2 Companies in respect of these provisions.
- 8.8.58. For similar reasons to those set out in paragraphs 8.8.43 - 8.8.46 above, I consider the conditions set out in s122(2) are met and that there is a compelling case in the public interest for the granting of CA powers in respect of the plots set out in Table 6. Furthermore, I am satisfied that the PP's included in the dDCO provide sufficient protections to ensure that the tests set out in s127 and s138 of the PA2008 are met.
- 8.8.59. As recommended in paragraph 8.8.53 above, the SoSBEIS may wish to seek confirmation from the Applicant and Hornsea 2 on whether the crossing agreement with the Hornsea 2 Companies has been completed. However, as in the case of Hornsea 1, even if such confirmation is not provided, or such an Agreement has not been signed at the point confirmation is sought, I am satisfied the SoSBEIS can be confident that the PPs included in the rDCO are sufficient to ensure that there would be no serious detriment to Hornsea 2's undertaking.

Phillips 66 Limited

- 8.8.60. Phillips 66 Limited (P66) owns and operates the HOR, a nationally significant enterprise which makes an important contribution to the UK's road fuel and other petroleum products. The Existing Gas Pipeline runs immediately adjacent to, under and through a part of the HOR which contains a series of tanks which store the petroleum-based products refined there.
- 8.8.61. P66 describe the HOR as "a critical component of the country's economy" and considers any prejudice to its ongoing operation "would be contrary to the public interest" [[REP2-024](#)].
- 8.8.62. The Applicant seeks CA powers over the plots identified in Table 1 above. P66, in its WR [[REP2-024](#)], has usefully grouped the rights being sought into four separate packages. These are set out below:
- Package A: these relate to plots 33, 39, 40, and 42-48. The rights sought are identified in Schedule 6 of the dDCO and, in summary, consist of rights to access, use, operate and maintain the Existing Gas Pipeline.
 - Package B: these rights relate to plot 17 and are sought to facilitate Work No. 4 (Gas Connection) and Work No.3 (Utilities and Services

Connection). The connections proposed would cross P66's existing overground pipelines.

- Package C: these rights relate to plots 16, 20, 23, 24, 28-30 and 35 and are sought for the purposes of running electricity and gas connections across the Existing VPI CHP Site to connect to the proposed OCGT power station.
- Package D: these relate to plots 7 to 15, 18, 19, 21, 22, 25 to 27, 31, 32 and 34 to 38. These are required for access, other service connections or temporary use.

8.8.63. I consider the rights sought in respect of Packages A-D above are required for the Proposed Development. They are either required for the specific works identified on the Works Plans or are necessary to facilitate or are incidental to those works. Similarly, the ability to use, operate, access and maintain the Existing Gas Pipeline is an integral part of the development proposed. I am therefore satisfied that the requirements of s122(2) are met. The central question is therefore whether there is a compelling case in the public interest.

8.8.64. P66's representations can be found in Table 1 above. In summary, it argues that the potential adverse impacts on its business at the HOR outweigh the public benefits of the Applicant's proposal. It points to, amongst other things, the potential business interruption of the HOR, what they consider would be an unacceptable increase in the risk profile, the disproportionate acquisition of rights, and the adverse impact on the future development of the HOR.

8.8.65. P66 confirm in their Deadline 6 submissions [[REP6-009](#)] that they are content with the drafting of the PPs in so far as they relate to their hydrocarbon pipelines and that they now achieve the effect sought. Although I note these rights may be available on a voluntary basis, at the close of the Examination there was no agreement in place to secure this and considerable uncertainty remains over whether this can be secured. In the absence of any other suitable arrangements in place, I consider the PPs provide adequate protection for P66 in respect of the CA of rights sought over plot 17.

8.8.66. On balance, I consider the resultant loss would be limited and clearly outweighed by the public benefits of increased energy generation and flexibility of supply offered by the Proposed Development. Accordingly, I find that there is a compelling case in the public interest for including the CA powers sought in respect of Package B.

8.8.67. In response to P66's other concerns, the Applicant proposed additional PPs at Deadline 4 [[REP4-007](#)] which relate to the manner in which the Applicant may exercise the specified rights over the plots included in Package A, Package C and Package D.

8.8.68. I have given careful consideration to P66's representations. I accept that unfettered rights such as those originally sought in earlier versions of the dDCO raise legitimate concerns for P66. They have the potential to cause

business interruption and considerable damage to its infrastructure. However, while I acknowledge the difficulty in providing PPs for all eventualities, the risks result from the acquisition of rights to lay services and connections and to operate, use and maintain the Existing Gas Pipeline. The Existing Gas Pipeline is already in place and rights currently exist, albeit via a lease arrangement, which enable its safe use, operation and maintenance. There is therefore no reason in principle that similar mitigation cannot be secured in the present case. Likewise, there is no reason that, with suitable protections, the laying of service connections should result in any material harm.

- 8.8.69. Furthermore, while I note P66's objection to the principle of including such provisions in the DCO, the powers conferred by s120 of the PA2008 are broad and the matters listed in Schedule 5 are wide ranging. I see no reason in principle why PPs cannot be used to regulate the manner in which the rights acquired are exercised, particularly as they include the right to carry out a broad range of maintenance works. While I note P66's general concerns regarding enforcement of the provisions, I see no reason that the PPs proposed would be any less enforceable or should be treated any differently from other PPs included in this, or any other, DCO.
- 8.8.70. Moreover, I am mindful that there is no requirement for the PPs to directly or indirectly replicate the Existing Arrangements in place with VPI Immingham LLP. While these provide a useful yardstick against which to judge the extent of protections offered, the central question is whether the PPs included are adequate to ensure that were the powers to be relied on, the impacts on P66's private interests would either not arise or be significantly limited.
- 8.8.71. In the present case, I consider that the SoSBEIS can be satisfied that they are. The PPs include requiring the undertaker to submit details to P66 prior to any work being undertaken, the undertaker having to take all reasonable and proper precautions to limit damage to property, the works being carried out under the supervision of an engineer, reinstatement of land, obligations for the apparatus to be kept in good and substantial repair, indemnities, and other restrictions on how the specified rights can be exercised. In addition, they provide for the diversion of the pipeline where P66 wish to carry out any development of their land. While I am mindful that they may be overly detailed, on balance they considerably reduce the potential risks to P66 and ensure that the use of CA powers is proportionate.
- 8.8.72. I am therefore satisfied that the PPs offered in version 5 of the dDCO are, subject to my detailed consideration in chapter 9 below, adequate to ensure that any private losses to P66 resulting from the CA powers sought would be limited. In my view, those risks are clearly outweighed by the public benefits which would result from increased energy generating capacity and the flexibility in supply that would result from the Proposed Development. As such, I find that there is a compelling case in the public interest for the inclusion of CA powers in respect of the

plots listed in packages A, C and D above and that the condition set out in s122(3) of the PA 2008 is also satisfied.

8.9. HUMAN RIGHTS ACT 1998 AND EQUALITIES ACT 2010 CONSIDERATIONS

- 8.9.1. The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law. Schedule 1 of the Act sets out the Articles. Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) are engaged.
- 8.9.2. In relation to Article 6, the Applicant states that there has been opportunity to make representations during the preparation of the application and owners of land had been consulted. There has also been the opportunity to make representations during the course of the Examination. At CAH1 and CAH2 I provided all APs who wished to be heard, an opportunity to be heard fully, fairly and in public. I consider this is sufficient to meet the obligations set out in Article 6.
- 8.9.3. In the SoR [[APP-008](#)], the Applicant noted that it had sought to minimise the amount of land over which it required CA and TP powers. In the Applicant's view, any infringement of human rights as a result of the inclusion of CA and TP powers in the DCO is proportionate and legitimate and in accordance with national and European law. It considers that there would be a significant public benefit from the grant of the DCO outweighs the effects on persons who own property within the Order land.
- 8.9.4. I agree. I have found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, I am satisfied that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.
- 8.9.5. The Equalities Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. I have had regard to this duty throughout the Examination and in my consideration of the issues raised in this report.

8.10. CONCLUSIONS

- 8.10.1. Having considered all of the material submitted to the Examination, I have reached the following conclusions:
- The application site has been appropriately selected.
 - All reasonable alternatives to CA have been explored.
 - The dDCO provides a clear mechanism for whereby the necessary funding can be guaranteed.
 - There is a clear need for all the land included in plot 5 to be subject to permanent acquisition.

- There is a need to secure the land and rights required to construct the development within a reasonable commercial timeframe, and the development represents a significant public benefit to weigh in the balance.
- The private loss to those affected has been mitigated through the selection of the land; the choice of Gas Connection; and the minimisation of the extent of the rights and interests proposed to be acquired.
- The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.
- The CA powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.

9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1. INTRODUCTION

9.1.1. The application dDCO (version 1.0) [[APP-005](#)] and EM [[APP-006](#)] were submitted by the Applicant as part of the application for development consent. An updated EM was submitted at Deadline 2 [[REP2-005](#)]. The EM explains the purpose and effect of the provisions contained in the dDCO as originally submitted, with each of its articles and schedules.

9.1.2. Version 1.0 of the dDCO consists of 43 articles and 13 schedules. It is broadly based on the Model Provisions (MPs) (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) but departs from those clauses to draw upon drafting used in made Orders for similar development under the PA2008.

9.1.3. This chapter:

- comments on the structure of the dDCO;
- reports on the processes that I used to examine the dDCO and its progress through the Examination;
- briefly summarises changes made to the dDCO during the Examination up to Deadline 7 that were not the subject of contention (where, following consultation and dialogue as necessary, the Applicant and relevant IPs supported the changes);
- reports in more detail on those changes that were the subject of contending submissions in WR and/ or Hearings;
- addresses the provision of a defence against nuisance in the DCO; and
- sets out my conclusions.

9.2. THE STRUCTURE OF THE DCO

9.2.1. The content of the dDCO (version 5.0) is listed on its face. I am content that the structure of the DCO is fit for purpose and I do not recommend any changes to the structure as set out.

9.3. EXAMINATION OF THE DCO

9.3.1. ExQ1 contained a number of questions regarding the dDCO submitted with the version 1.0 of the dDCO [[APP-005](#)] and the EM [[APP-006](#)]. In addition, I held two separate hearings, ISH1 and ISH3, where I asked further questions and invited oral submissions on various matters raised in the RRs and WRs. I also received regular updates on the ongoing discussions between the Applicant and IPs on proposed amendments. I have had regard to all of these in my consideration of the matters discussed below.

9.3.2. The Applicant updated the dDCO several times during the Examination, responding to issues raised by IPs and by myself. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes

from the previous clean copy version. A table was also provided detailing the change and the reasoning.

9.3.3. Table 2 sets out the key documentation and versions of the dDCO throughout the Examination.

Table 2: Key documentation in relation to dDCO

Version	Deadline	Examination Library Reference/link
1.0	-	[APP-005]
2.0	2	[REP2-003] (clean copy) [REP2-004] (tracked changes) [REP2-005] (revised EM) [REP2-006] (explanation of changes made)
3.0	3	[REP3-003] (clean copy) [REP3-004] (tracked changes) [REP3-005] (table of changes made)
4.0	5	[REP5-003] (clean copy) [REP5-004] (tracked changes) [REP5-005] (table of changes made)
5.0	7	[REP7-002] (clean copy) [REP7-003] (tracked changes) [REP7-004] (table of changes made)

9.3.4. No comments were received from any local resident or community-based IPs on any revision of the DCO.

9.4. CHANGES DURING EXAMINATION

9.4.1. The following tables list the changes to the dDCO during the Examination:

- **Table 3** sets out the amendments made to the dDCO during the Examination and which were non-contentious at the close of the Examination or had otherwise been agreed. These have been included in the rDCO.
- **Table 4** sets out the provisions included within version 5 of the dDCO to which there were still objections outstanding at the close of the Examination and my recommendations in respect of them.
- **Table 5** sets out the amendments I consider necessary and have made to version 5 of the dDCO to form the rDCO.

Table 3: Non-contentious/agreed changes to the DCO in the Examination

Provision	Reason/Examination Issue	Resolution
Article 2 (Interpretation)	Various changes were proposed by the Applicant in versions 2.0, 3.0 and 4.0 of the dDCO. These included the insertion of new and/ or updated definitions. They were generally minor in nature.	No representations were received from IPs. The amendments are included in the rDCO.
Article 7 (Benefit of Order)	The Applicant and National Grid agreed to include notification provisions in favour of National Grid for any transfers of undertaking.	Amendments accepted at Deadline 2 and included in subsequent versions of the dDCO.
Article 27 (Temporary use of land for carrying out the authorised development)	The ExA suggested changes to better reflect the arrangements in s20 of the Neighbourhood Planning Act 2017. Although not yet in force, these arrangements are considered desirable.	Amendments were agreed by the Applicant at ISH3 on 4 December 2019 [EV-012]. These were included in version 3.0 of the dDCO. No representations were received from IPs.

Provision	Reason/Examination Issue	Resolution
Article 28 (Temporary use of land for maintaining the authorised development)	As for Art 27 above.	As for Art 27 above.
Article 28(11)	ExA identified error in respect of 'maintenance period'.	Amendment made by Applicant in version 2.0 of the dDCO.
Article 33 (Protective works to buildings) Schedule 2 Requirement 6 Requirement 8 Requirement 12 Requirement 22	Version 1.0 of the dDCO referred to the date on which the authorised development is first brought into commercial use and other undefined trigger dates. The Applicant proposed replacing these with the defined term 'date of final commissioning'.	No representations were received from IPs. I accept that the amendment does not change the substance of the timing of relevant trigger dates and obligations. These amendments were included in version 3.0 of the dDCO and in subsequent versions.
Article 38 (Procedure in relation to certain approvals)	ExA proposed changes to the wording to improve clarity.	These were accepted by the Applicant and included in version 2.0 of the dDCO [REP2-009 – ExQ1.3.9].
Article 42 (Arbitration)	ExA was concerned that, as drafted, the Article could potentially apply to the SoS or other statutory bodies.	Applicant made changes to confirm that these provisions would not apply to the SoS.
Schedule 2 Requirements 3 & 4	Updates made by the Applicant in the interests of clarity,	No representations were received from IPs.

Provision	Reason/Examination Issue	Resolution
(Commencement and notice)	consistency and to avoid repetition.	These amendments were included in version 3.0 of the dDCO and in subsequent versions.
Schedule 2 Requirement 6(1) (BEMP)	Amended by Applicant at the request of NE. It requires that the approval of the BEMP by the relevant planning authority must be following consultation with NE.	Included by the Applicant in version 3.0 of the dDCO.
Schedule 2 Requirement 9 (Means of enclosure)	Initially updated to provide additional clarity in response to ExQ1.3.15. At ISH1, the ExA drew attention to Requirement 5 of the Abergelli Order and suggested that there was potential for the wording to be aligned.	Requirement 9 of the dDCO was updated at version 3.0 to more closely align with the wording of Requirement 5 of the Abergelli Order. Submission of permanent means of enclosure now tied to the 'date of final commissioning'.
Schedule 2 Requirement 10 (Surface water drainage)	EA requested (in its RR [RR-008] and WR [REP2-028]) that Requirement 10 was amended so that it only refers to surface water drainage (see Chapter 5 for further details). EA also requested new separate requirement to cover foul water drainage (see also Requirement 25 below).	The changes requested by the EA were incorporated in versions 2.0 and 3.0 of the dDCO. They are included in the rDCO.

Provision	Reason/Examination Issue	Resolution
	Additional changes were requested by the EA for its removal as a consultee on the surface water drainage plans.	
Schedule 2 Requirement 11(6) (Flood risk mitigation)	The EA noted in their RR [RR-008] that it does not comment on the Flood Emergency Response Plan and requested that they be removed as a consultee.	Requirement for EA to be consulted removed by Applicant in version 2.0 of the dDCO.
Schedule 2 Requirement 12 (Contaminated land and groundwater)	The ExA queried missing reference to ES in 12(2).	Wording of 12(2) updated by Applicant at version 2.0 to refer to Chapter 11 of the ES. Other updates included tying trigger date to 'date of final commissioning'.
Schedule 2 Requirement 14 (CEMP)	NE requested amendments to address its concerns on piling and its effect of the qualifying species of the Humber Estuary SPA and Ramsar site. These also address concerns raised by the ExA. NE also requested inclusion as a consultee on the CEMP. NLC requested amendments for CEMP to include details on fencing and protection	Requirement 14 was updated in Version 2.0 to include NE as a consultee. Further amendments were made in version 3.0 to address the concerns raised in relation to piling methods. NE agreed a SoCG with the Applicant at Deadline 4 which confirmed that their concerns have been addressed [REP4-011]. Detail relating to fencing and

Provision	Reason/Examination Issue	Resolution
	<p>of asset A6 and to deal with the marking and protection of the heritage asset located in the Temporary Constriction and Laydown Site adjacent to Rosper Road.</p>	<p>protection of the relevant heritage assets were included in Version 3.0 of the dDCO. NLC confirmed at Deadline 4 [REP4-017] that the amendments address its concerns raised in the LIR in respect of cultural heritage.</p> <p>An updated fWSI was provided to the Examination at Deadline 4 [REP4-006].</p>
<p>Schedule 2 Requirement 18 (Construction hours)</p>	<p>Definition of 'emergency' deleted by the Applicant to take account of new definition included in Article 2. Article 2 definition now applies throughout the DCO.</p>	<p>No representations were received from IPs.</p> <p>These amendments were included in version 3.0 and in subsequent versions.</p>
<p>Schedule 2 Requirement 19 (Control of noise during operation)</p>	<p>Version 1 of the dDCO specified an operational noise limit of +5dB above representative background sound levels. NLC requested this was replaced by a maximum of +3dB.</p> <p>These matters were discussed at ISH2 [EV-007] and suggested amendments to the dDCO provided by the Applicant in version 2.0 of the dDCO. These were not accepted by NLC and the matter was further</p>	<p>The Applicant confirmed at ISH3 [EV-012 and REP5-007] that it would amend Requirement 19 to refer to +3dB as requested by NLC. The Applicant also confirmed that an updated SoCG had been issued to reflect the proposed changes.</p> <p>A SoCG was subsequently agreed between the Applicant and NLC containing the agreed changes [REP6a-005] and</p>

Provision	Reason/Examination Issue	Resolution
	<p>discussed at ISH3 [EV-012].</p> <p>Updates were also made in version 2.0 to require a scheme for the management and monitoring of operational noise to apply new trigger to the 'date of final commissioning'. This update was non-contentious.</p>	<p>they are included in version 5.0 of the dDCO.</p>
<p>Schedule 2</p> <p>Requirement 23</p> <p>(Employment skills and training plan)</p>	<p>The ExA raised concerns with inconsistent use of term 'by agreement' in sub-paragraph (2).</p>	<p>The dDCO was updated at version 2.0 accordingly.</p>
<p>Schedule 2</p> <p>Requirement 25</p> <p>(Foul water drainage)</p>	<p>The EA requested the separation of surface and foul water drainage requirements in its RR [RR-008].</p>	<p>A new requirement (Requirement 25) was inserted into version 2.0 to deal with foul water drainage.</p> <p>Following discussions at ISH1 [EV-006], further amendments were made in version 3.0 of the dDCO so that the wording accords with that agreed by the EA in its SoCG with the Applicant [REP2-014].</p>
<p>Schedule 3</p> <p>(Streets subject to street works)</p>	<p>ExA queried missing references to Articles 8 and 12.</p>	<p>The dDCO was updated at version 2.0 accordingly.</p>

Provision	Reason/Examination Issue	Resolution
Schedule 4 (Access)	Minor amendment made by Applicant in version 5.0 to specify that Table 2 relates to accesses to be maintained by the highway authority rather than 'at the public expense'.	This change was made at Deadline 7 and was not subject to comment by IPs. However, it is considered relatively minor and unlikely to prejudice any IP. It has been included in the rDCO.
Schedule 9 Part 3 (PPs for National Grid)	PPs for the benefit of National Grid were included in version 1.0 of the dDCO. These were updated in version 5.0 to take account of the agreement reached between the Applicant and NG.	The PPs agreed by the Applicant and National Grid are included in the rDCO. National Grid have now withdrawn their objections.
Schedule 9 Part 7 (PPs for Centrica)	PPs for the benefit of Centrica were included in version 1.0 of the dDCO and updated at version 2.0, version 3.0, and version 4.0 to take account of ongoing discussions between the Applicant and Centrica.	The required changes were subsequently agreed and included in version 5.0 of the dDCO. Centrica withdrew their objection.
Schedule 9 Part 8 (PPs for Able Humber Ports Limited)	PPs for the benefit of Able were included in version 1.0 of the dDCO and updated at versions 3.0, 4.0 and 5.0 to take account of ongoing discussions between the Applicant and Able Humber Ports Limited.	The changes were subsequently agreed and Able withdrew its objection.

Provision	Reason/Examination Issue	Resolution
<p>Schedule 9</p> <p>Part 10 (PPs for NR)</p>	<p>NR raised concerns in relation to potential maintenance works to the Existing Gas Pipeline on its land.</p> <p>PPs in favour of NR were inserted into the dDCO in version 4.0 of the dDCO.</p>	<p>NR confirmed at Deadline 7 [REP7-012] that a form of PPs had been agreed with the Applicant. These are included at Schedule 9, Part 10 of the final dDCO.</p> <p>However, at the close of the Examination, the related property agreements had not been completed and NR's objection remained outstanding.</p> <p>The Applicant indicated in its Deadline 7 Response [REP7-007] that the drafting of the related property agreements was agreed.</p> <p>The SoSBEIS may therefore wish to seek confirmation from the Applicant and NR that the related property agreement has been completed.</p>

Provision	Reason/Examination Issue	Resolution
<p>Schedule 9</p> <p>Part 13</p> <p>(PPs for Northern Powergrid (Yorkshire) Limited (NPG))</p>	<p>NPG owns various cables within the Order limits and other apparatus along the length of the Existing Gas Pipeline. The Applicant inserted PPs in favour of NPG into version 4.0 at NPG's request.</p> <p>They largely replicate the general PPs Schedule 9, Part 1 but include additional provisions in respect of costs incurred by NPG for diverting or relating apparatus as a result of the development.</p> <p>The Applicant states that they consider the PPs included in version 5.0 of the dDCO adequately protect NPG's apparatus.</p>	<p>No representations were submitted by NPG.</p> <p>I accept that the PPs included in version 5.0 of the dDCO provide some necessary protection for NPG and have included them in the rDCO.</p>
<p>Schedule 10</p> <p>(Procedure for the discharge of requirements)</p>	<p>The ExA noted typographical errors in para 2(4).</p> <p>NLC requested drafting amendments to paragraph 3(3) in relation to timings.</p> <p>The Applicant also inserted minor amendments in version 5.0 of the dDCO to improve drafting consistency and clarity.</p>	<p>The typographical errors noted were amended in version 2.0.</p> <p>Version 3.0 included updates to address comments of NLC at ISH1.</p> <p>The minor changes to version 5.0 of the dDCO were made at Deadline 7 and were not subject to comment by IPs. However, they are considered minor and unlikely to result in</p>

Provision	Reason/Examination Issue	Resolution
		any prejudice to IPs. They have been included in the rDCO.
<p>Schedule 11 (Documents and plans to be certified)</p>	<p>The Applicant made various updates to take account of new versions of documents submitted during the course of the Examination.</p>	<p>These amendments were carried through to version 5.0 of the dDCO. However, I have set out some further changes that I consider necessary in respect of this Schedule in Table 5 below.</p>
<p>Schedule 13 (Design parameters)</p>	<p>Amendments were made in version 4.0 of the dDCO to align them with the amendments agreed with Able.</p> <p>Minor amendments were made in version 5.0 of the dDCO to correct identified errors in paragraph 125.</p>	<p>Able confirmed their agreement to these changes at Deadline [REP7-009].</p> <p>The changes to version 5.0 of the dDCO were made at Deadline 7 and were not subject to comment by IPs. However, they are considered minor and unlikely to result in any prejudice to IPs. They have been included in the rDCO.</p>

- 9.4.2. Other than the matters set out in Table 4 below, all matters raised in respect of the dDCO were resolved and the Applicant reached agreement with the ExA and IPs on suggested amendments.
- 9.4.3. Table 4 considers the matters raised by IPs which had not been resolved at the close of the examination. The SoSBEIS will note that they all relate to the PPs included at Schedule 9 of the dDCO.

Table 4: DCO Provisions with objections outstanding

Provision	Examination Issue	Recommendations
<p>Schedule 9</p> <p>Part 4 (Phillips 66)</p>	<p><u>The 'old' PP's</u></p> <p>PPs were included in favour of P66 in version 1.0 of the dDCO which related to the crossing of P66's existing hydrocarbon pipelines by Work No 3 and Work No.4. P66 objected to the principle of these being secured by CA powers and sought changes to the provisions.</p> <p><u>The 'new' PPs</u></p> <p>Additional PPs were submitted by the Applicant at Deadline 4 which sought to address the concerns raised in respect of the other rights sought by CA for the use, operation and maintenance of the Existing Gas Pipeline and other services connections. These were subsequently included in version 4.0 of the dDCO.</p> <p>In summary, P66 raise concerns around both the lawfulness of including provisions which would normally be included in a private treaty and on the detail of the provisions being proposed. Full details can be found in the P66 representations listed in Table 1 above.</p>	<p><u>The 'old' PP's.</u></p> <p>I consider the justification of including these provisions in Chapter 8. I am satisfied that, in principle, they are necessary to provide adequate protection for P66's hydrocarbon pipelines.</p> <p>P66 stated in their Deadline 6 submissions [REP6-009] that they were content with the drafting of these provisions and I note that they have been incorporated into Version 5.0 of the dDCO. I also note the other minor amendments made by the Applicant.</p> <p>On balance, I am satisfied that they provide suitable protections for P66 in respect of its existing hydrocarbon pipelines and should be included in the rDCO.</p> <p><u>The 'new' PPs</u></p> <p>In respect of the 'new' protective provisions, these were included by the Applicant in an attempt to address the various</p>

Provision	Examination Issue	Recommendations
	<p>P66's outstanding concerns are set out in its Deadline 6a response. This includes a set of suggested PPs which attempt to provide minimum safeguards in the exercise of the CA powers included in the dDCO. The Applicant's response to the matter raised is set out in their Deadline 7 submission [REP7-007].</p> <p>At the close of the Examination the parties indicate in their joint statement [REP7-011] that they have agreed the form of contracts and further changes to the dDCO that would be necessary to give effect to these. These are contained in Appendices 1 and 2 of the joint statement and are reproduced in Annex A of this report.</p> <p>However, notwithstanding the parties stated intention to fully execute and complete the agreements, they remained incomplete at the close of the Examination. As a result, the following matters of detail regarding the 'new' PPs remain outstanding between the parties:</p> <p><u>Indemnities for Contamination</u></p> <p>P66 requested amendments to extend the indemnities offered in respect of contamination to adjacent owners and occupiers.</p>	<p>concerns raised by P66 in its representations.</p> <p>I consider the principle of including PPs to regulate the exercise of the rights sought by CA in chapter 8 above. There, I concluded that the provisions of s120 and Schedule 5 of the PA2008 are sufficiently wide to allow for this.</p> <p>While I acknowledge they may not cater for every eventuality, the 'new' PPs nevertheless provide a range of protections that, in the event that the CA powers sought were to be exercised, would regulate the manner in which they were used. They would considerably limit the resultant impacts on P66 and its operation of the HOR.</p> <p>While maintaining their overall objection to CA powers in respect of their land, P66 provided a mark-up of the amendments it considered were necessary to provide minimum safeguards in the event that CA powers were to be granted in respect of its land [REP6a-007]. These have, in general, been incorporated into version 5.0 of the dDCO.</p> <p>Subject to my consideration of the outstanding drafting matters below, I recommend that they are included in the rDCO.</p>

Provision	Examination Issue	Recommendations
	<p><u>Terms and conditions/ scope of specified works</u></p> <p>P66 requested amendments to the provisions dealing with the manner in which the undertaker can operate within the site of the Existing Gas Pipeline. It also suggested changes to the definition of 'specified work' in the new PPs.</p> <p><u>Emergency access</u></p> <p>P66 raise concerns with the lack of controls on emergency access. These are now contained in paragraph 72 of Schedule 9, Part 4 in version 5.0 of the dDCO.</p> <p><u>Specified rights and specified assets</u></p> <p>P66 also proposed amending the definition of 'specified rights' so that they extend to all of P66's interests.</p> <p><u>Diversion provisions</u></p> <p>P66 raise concerns around the operation of the diversion provisions including that they do not provide for 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. They essentially seek to replicate the provisions of the existing arrangements under the lease between itself and VPI Immingham LLP.</p>	<p><u>Indemnities for Contamination</u></p> <p>The PPs are only intended to protect P66/ HOR's interests and need not seek to offer wider protection to adjacent occupiers. No robust case has been made out for the including of indemnities in respect of land adjoining the HOR. I consider the indemnity provisions included in version 5.0 of the dDCO are adequate and have included them in the rDCO.</p> <p><u>Terms and conditions/ scope of specified works</u></p> <p>The amendments proposed by P66 have been incorporated into version 5.0 of the dDCO.</p> <p><u>Emergency Access</u></p> <p>These provisions are intended to be used only in the case of an emergency as defined in Article 2. In such circumstances, it is reasonable for access to be gained without delay. The PPs include provisions requiring the undertaker to notify P66 and comply with its obligations under the PPs in so far as is reasonably practicable. While I note P66's concerns, I accept that these provisions have been included by the SoS in other DCO's and I am not persuaded that they should</p>

Provision	Examination Issue	Recommendations
	<p>P66 also proposed amendments at Deadline 6a which require the removal of the Existing Gas Pipeline in the event that the agreed diversion works are not carried out within twelve months.</p> <p><u>Excluding the CHP land</u></p> <p>P66 proposed amendments to paragraph 75 of Schedule 9, Part 4 of version 4.0 of the dDCO (para 93 of version 5.0) to ensure that the rights acquired under Article 21 do not prevent P66 gaining permanent operational control over the Existing VPI CHP site.</p> <p><u>Identifying the beneficiary of the PPs</u></p> <p>P66 requested amendments to the definition of the beneficiary of the PPs so that it includes the owner for the time being of the Existing Gas Pipeline and Existing VPI CHP Site as well as the owners and operators from time to time of the 3 hydrocarbon pipelines.</p> <p><u>Paragraph 66</u></p> <p>P66 has also requested the deletion of Paragraph 66 of Schedule 9, Part 4 of the dDCO (version 5.0) on the basis that these obligations should have been sought through the CA powers included in the Order. In response, the Applicant states that they consider them to be entirely</p>	<p>be deleted in the present case.</p> <p><u>Specified rights and specified assets</u></p> <p>The Applicant included a number of changes in version 5.0 of the dDCO including replacing the definition of 'HOR Land' with a new definition of 'P66 land'. In my view these changes are sufficient to address the concerns raised by P66 and should be included in the rDCO.</p> <p><u>Diversion provisions</u></p> <p>The matter of compensation was discussed further in CAH2. In summary, the Applicant argues that the compensation provisions are not required as rights to compensation arise on the acquisition of the land and it is open to P66 to make representations as to the loss of future development opportunities as part of any such assessment.</p> <p>On balance, I find the Applicant's arguments are more compelling. The PPs as included in version 5.0 of the dDCO require the undertaker (where certain conditions are met) to opt to either –</p> <p>(a) carry out such works to the VPI apparatus as may be</p>

Provision	Examination Issue	Recommendations
	<p>reasonable and imperative to protect the Applicant's interests in the Proposed Development. They do, however, insert a new definition of VPI pipeline corridor' which replaces the previous definition of 'pipeline corridor' included in version 4.0 of the dDCO.</p>	<p>necessary so that the position of the VPI apparatus does not materially affect the development; or</p> <p>(b) divert the VPI apparatus or part of it along the diversion route.</p> <p>Although they do not provide for compensation, I accept that these matters can be adequately addressed as part of any resultant claim arising out of the exercise of CA powers. I do not consider that additional provisions in relation to compensation for loss of future development opportunities need to be included in the PPs.</p> <p>Likewise, I see no reason to impose a finite timescale on the completion of the diversion works. The Applicant's alternative is to require the undertaker to use its reasonable endeavours to carry out the diversion works as soon as is reasonably practicable following the service of the notice. I consider this alternative provides sufficient protection to ensure that any diversion is carried out within a reasonable timeframe.</p>

Provision	Examination Issue	Recommendations
		<p><u>Excluding the CHP land</u></p> <p>Version 5.0 of the dDCO makes clear that the requirement for P66 to have permanent occupational control of the CHP site excludes the land in which rights have been acquired under Article 21 of the Order. I consider these amendments address the concerns raised by P66 in this respect.</p> <p><u>Identifying the beneficiary of the PPs</u></p> <p>The Applicant amended version 5.0 of the dDCO so that it includes any subsequent owner of the pipelines or HOR. However, it does not accept that the definition should include the successors in title to any interest in land owned by P66 on the date of the order.</p> <p>I agree that this amendment is not necessary. It would widen the benefit of these provisions unnecessarily.</p> <p><u>Paragraph 66</u></p> <p>I consider the inclusion of these obligations to be reasonable in the circumstances. They provide a reasonable level of protection for the Applicant and are aligned with reciprocal provisions in favour of P66 which are</p>

Provision	Examination Issue	Recommendations
		<p>intended to provide protection for the HOR.</p> <p><u>Other matters</u></p> <p>Notwithstanding my findings above, the SoSBEIS will note that the Applicant and P66 submitted a joint statement at Deadline 7 [REP7-011] in which they confirm that they have now agreed the form of contracts that are proposed to be entered into between them.</p> <p>Furthermore, the joint statement includes the form of agreed amendments to version 5.0 of the dDCO including changes which remove P66's interests from the CA powers sought. It also includes the PPs agreed between the parties which should be included in the DCO in the event that the agreements are completed. These amendments are included in Annex A of this report.</p> <p>As a result, the SoSBEIS may wish to confirm with the Applicant and P66 whether these agreements have now been executed.</p>
<p>Schedule 9</p> <p>Part 9 (TLOR)</p>	<p>TLOR sought PPs for the protection of their existing infrastructure and to include a requirement in the DCO for the relocation of their canteen due to safety concerns.</p>	<p>The PPs included at Schedule 9 Part 9 of the dDCO (Version 5.0) require the Applicant to submit plans (and other such particulars as TLOR may reasonably require) to TLOR for approval before</p>

Provision	Examination Issue	Recommendations
	<p>PPs for the benefit of TLOR were included by the Applicant in Version 3.0. However, at the close of the Examination, the related property agreements had not been completed and the PPs were not agreed.</p>	<p>any works which would have an effect on the operation or maintenance of TLOR's pipelines are carried out.</p> <p>As I make clear in paragraph 8.8.27 of this report, I consider this goes some way to ensuring that the likelihood of any damage to TLOR's pipeline is minimised.</p> <p>Furthermore, I note that no specific concerns have been raised by TLOR. For these reasons, I recommend their inclusion in the dDCO.</p> <p>However, the SoSBEIS may wish to confirm with the Applicant and TLOR whether a more refined set of PPs in favour of TLOR have been agreed and if so, replace those set out in Schedule 9, Part 9 accordingly.</p> <p>As noted in paragraph 8.6.28 above, I have given careful consideration to TLOR's request to require the relocation of TLOR's canteen as part of any DCO granted. However, for the same reasons as those already given, I am not persuaded that the inclusion of such a requirement is justified.</p> <p>However, the Applicant indicated in its Deadline 7 Response [REP7-007] that the drafting of the related property agreements was agreed and that the parties</p>

Provision	Examination Issue	Recommendations
		<p>were close to agreeing the final commercial matter. The parties indicate that this would overcome TLOR's objection and the SoSBEIS may therefore wish to seek confirmation from the Applicant and TLOR that the related property agreement have been completed.</p> <p>Nevertheless, even if such confirmation is not provided by the Applicant, or such an agreement has not been signed at the point confirmation is sought, I am satisfied the SoSBEIS can be confident that the PPs included in the dDCO provide sufficient protection to ensure TLOR's interests and infrastructure are not materially affected by the Proposed Development.</p>
<p>Schedule 9</p> <p>Part 11 (Cadent Gas Limited)</p>	<p>The Applicant disputes the need for PPs in favour of Cadent on the basis that no works are proposed to the Existing Gas Pipeline or on, or in proximity to, Cadent's interests/ apparatus. It has, however, agreed to accept the majority of the PPs requested by Cadent to regulate any future interaction between the Existing Gas Pipeline and Cadent's apparatus. These are included in Schedule 9 Part 11 of the dDCO (version 5.0).</p> <p>Cadent confirmed in its update at the close of the Examination that the material</p>	<p>I should state from the outset that I consider it entirely appropriate and reasonable for Cadent to be subject to arbitration on all matters and in the same manner as other SUs. This accords with the approach taken in a number of other DCOs and there is nothing which would indicate that the inclusion of such provisions would result in any serious detriment to Cadent's undertaking. I am therefore satisfied that the arbitration provisions set out in Schedule 9 Part 11 are adequate.</p>

Provision	Examination Issue	Recommendations
	<p>points remaining between the parties were in respect of insurance, security and arbitration provisions [AS-007]. The Applicant's position in respect of the matters listed above is set out in its Deadline 7 response [REP7-007].</p>	<p>I have given detailed consideration to the arguments put forward by the both Cadent and the Applicant in relation to minimum insurance levels for third party liability. However, these are matters that, in my view can be left to the parties to agree or where they cannot agree, are better dealt with under the provisions of Article 42.</p> <p>I therefore recommend to the SoSBEIS that the definition of 'acceptable insurance' set out in Schedule 9, Part 11, paragraph 146 is amended in the manner set out in Table 5 below.</p> <p>Finally, in relation to security, while I accept that there remains the possibility that any such insurance policy cannot be claimed against because the conditions attached to it are not met, such a scenario is relatively remote. I am not persuaded that it would be either reasonable or necessary to include such provisions in the DCO on that basis.</p>
<p>Schedule 9 Part 14 (Hornsea 1 Limited)</p>	<p>Draft PPs were submitted into the Examination by the Applicant at Deadline 6 [REP6-004] and subsequently included in version 5.0 of the dDCO.</p> <p>Hornsea 1 confirmed at Deadline 6a [REP6a-012] that</p>	<p>The PPs included at Schedule 9 Part 14 of the dDCO in favour of Hornsea 1 limit the exercise of CA powers and provide a range of protections to ensure that the exercise those powers would not result in serious detriment</p>

Provision	Examination Issue	Recommendations
	<p>the PPs and agreement were close to being finalised.</p> <p>The Applicant reported in its Deadline 7 response [REP7-007 and REP7-010] that discussions on the crossing agreement are well progressed and they anticipate reaching agreed terms on all matters imminently.</p> <p>However, at the close of the Examination, Hornsea 1's objection had not been withdrawn.</p>	<p>to Hornsea 1's undertaking.</p> <p>They include provisions which restrict the Applicant's ability to exercise CA powers (including extinguishment) in respect of Hornsea 1's land interests other than by agreement with Hornsea 1.</p> <p>They also require written approval from Hornsea 1 before any works are commenced within 20m of the Hornsea 1's apparatus and include measures to ensure that access to Hornsea 1's infrastructure is maintained.</p> <p>Taken together, they provide a reasonable amount of protection to ensure that Hornsea 1's infrastructure and apparatus are protected.</p> <p>As a result, I recommend that they are included in the rDCO. However, the SoSBEIS may wish to confirm with the Applicant and Hornsea 1 whether an up-to-date set of PPs in favour of Hornsea 1 have been agreed and if so, replace those set out in Schedule 9, Part 14.</p>
<p>Schedule 9</p> <p>Part 15 (Hornsea 2 Companies)</p>	<p>Draft PPs were submitted into the Examination by the Applicant at Deadline 6 [REP6-005] and subsequently included by the Applicant in version 5.0 of the dDCO.</p>	<p>The SoSBEIS will note that the position in relation to the Hornsea 2 companies is substantially similar to that of Hornsea 1. The PPs included at Schedule 9 Part 15 of the dDCO in favour</p>

Provision	Examination Issue	Recommendations
	<p>Hornsea 2 confirmed at Deadline 6a [REP6a-013] that the PPs and agreement were close to being finalised.</p> <p>The Applicant reported in its Deadline 7 submissions [REP7-007 and REP7-010] that discussions on the crossing agreement are well progressed and they anticipate reaching agreed terms on all matters imminently.</p> <p>However, at the close of the Examination, Hornsea 2's objection had not been withdrawn.</p>	<p>of Hornsea 2 limit the exercise of CA powers and provide a range of protections to ensure that the exercise those powers would not result in serious detriment to Hornsea 2's undertaking.</p> <p>They include provisions which restrict the Applicant's ability to exercise CA powers (including extinguishment) in respect of Hornsea 2's land interests other than by agreement with Hornsea 2.</p> <p>They also require written approval before any works are commenced within 20m of Hornsea 2's apparatus and include measures to ensure that access to such infrastructure is maintained.</p> <p>Taken together, they provide an adequate amount of protection to ensure that Hornsea's infrastructure and apparatus is protected.</p> <p>As a result, I recommend that they are included in the rDCO. However, as in the case of Hornsea 1, the SoSBEIS may wish to confirm with the Applicant and Hornsea 2 whether an agreed set of PPs in favour of Hornsea 2 have been agreed and if so, replace those set out in Schedule 9, Part 15.</p>

9.4.4. Table 5 below sets out the changes to the dDCO which the ExA considers are necessary to address the aforementioned matters as well as typographical and other drafting errors.

Table 5: Changes the ExA considers are required to version 5.0 of the dDCO

Provision	Issue	ExA Reasoning
Article 23(10)	Missing bracket.	Insert additional bracket to final line after 'Compulsory Purchase Act 1965'.
Article 25(1)	Incorrect reference to Acquisition of Land Act 1946.	Replace 'Acquisition of Land Act of 1948' with 'Acquisition of Land Act 1946'.
Article 27(1)(e)	Missing words result in ambiguity.	Insert the words 'carry out or construct' to the start of the subsection.
Schedule 2, Requirement 1	Definition of Humberside Fire and Rescue Service.	Superfluous – removed.
Schedule 2, Requirement 5(1)(a)	Typographical error.	Reference to 'sitting' removed and replaced with 'siting'.
Schedule 2, Requirement 5(1)	Inclusion of new paragraph 5(1)(e) to include further details on landscaping.	To provide a further opportunity to mitigate the visual impact of the proposed development on its surroundings.
Schedule 2, Requirement 14(2)(g)	Typographical error – Capitalisation of 'Framework Written Scheme of Investigation'.	Capitalisation of term removed to ensure consistency of use.
Schedule 6	Plot numbers 6 and 7 refer to class (m) rights. Table 5 does	This provision creates uncertainty and the

Provision	Issue	ExA Reasoning
	not contain an (m) classification.	reference to class (m) rights has been removed.
Schedule 9, Part 3, para 22(2)	Typographical error – ‘the’ in line 6.	Superfluous. Removed.
Schedule 9, Part 3, para 24(2)	Typographical error – ‘in’ - line 5.	Superfluous. Removed.
Schedule 9, Part 3, paragraph 25(4)	Incorrect reference to sub-paragraph (2).	Reference should be to sub-paragraph (3).
Schedule 9, Part 3, paragraph 25(11)	Line 1 – incorrect reference to National Grid.	The obligation to comply with NG’s policies should be placed on the undertaker.
Schedule 9, Part 4, paragraph 54(c)	Missing section number.	Insert s56(1) to end of subsection.
Schedule 9, Part 5, paragraph 106	Typographical error.	Remove ‘Order Land’ and replace with ‘Order land’.
Schedule 9, part 10, paragraph 141	Missing bracket.	Insert bracket after ‘2006’.
Schedule 9, Part 11, paragraph 146 (PPs for Cadent)	See Table 4 above.	Delete definition of ‘acceptable insurance’ and replace with the following: “acceptable insurance” means a third party liability insurance effected and maintained by the undertaker and/ or its contractor(s) to a level as may be approved by Cadent in writing or in the case of dispute in accordance with the terms and level of cover determined by an expert under paragraph 158. Such insurance shall be maintained for the

Provision	Issue	ExA Reasoning
		<p>maintenance period of any specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/ credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation)—</p> <p>(a) Cadent as a Co-Insured;</p> <p>(b) a cross liabilities clause; and</p> <p>(c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/ contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;”.</p>
Schedule 9, Part 11, paragraph 154 (4) and (5)	Reference to ‘promoter’ – not a defined term.	Reference to ‘promoter’ changed to ‘undertaker’.
Schedule 9, Part 12, paragraph 165 (4) and (7)	Incorrect paragraph reference.	Remove reference to paragraph ‘6’.
Schedule 9, Part 13, paragraph 171	Typographical error.	Remove ‘at’ in line 3.
Schedule 11, Table 8	Various document references are incorrect.	Consistency and certainty.

9.5. STATUTORY NUISANCE

- 9.5.1. The application is accompanied by a Statutory Nuisance Statement (SNS) in accordance with regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP) [[APP-022](#)].
- 9.5.2. Having reviewed the SNS, I am content that the Applicant has appropriately identified the scope of potential nuisance sources from the construction and operation of the Proposed Development. It identified no effects that are likely to result in nuisance and concludes that no additional mitigation is necessary. I agree with this conclusion.
- 9.5.3. Article 36 of the dDCO contains a defence to proceedings in respect of statutory nuisance of a type that is commonly provided for NSIPs. The drafting is based on the Model Provisions. I agree that the necessary steps to reduce the risk of nuisance events have been taken and that this provision is an appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs.

9.6. CONCLUSIONS

- 9.6.1. I have considered all versions of the dDCO as set out in Table 2 above and considered the degree to which the final dDCO (version 5.0) [[REP7-002](#)] has addressed outstanding matters.
- 9.6.2. I am satisfied that the requirements set out in version 5 of the dDCO provide mitigation for potential adverse effects identified in the ES and sufficiently addresses issues raised by me and IPs during the course of the Examination. Subject to the changes set out in Table 5, the rDCO at Appendix C is identical to version 5.0 of the dDCO.
- 9.6.3. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this report fully into account, if the SoSBEIS is minded to make the Order, I recommend the following:
- 1) that if, having sought confirmation, it is confirmed that the Applicant and P66 have not entered into the form of agreements envisaged in the joint response provided at Deadline 7 [[REP7-011](#)], it should be made in the form set out in Appendix C; or
 - 2) that if, having sought confirmation, it is confirmed that the Applicant and P66 have entered into the form of agreements envisaged in the joint response provided at Deadline 7 [[REP7-011](#)], it should be made in the form set out in Appendix C but subject to the amendments set out in Annex A.

10. SUMMARY OF FINDINGS AND CONCLUSIONS

10.1. SUMMARY

10.1.1. In relation to s104 of the PA2008, I conclude in summary as follows:

- making the rDCO would be in accordance with:
 - NPS EN-1, EN-2, EN-4 and EN-5;
 - the Climate Change Act (2008) and the Paris Agreement which is the basis for the UK's approach to tackling and responding to climate change;
 - the NLC development plan and other relevant policy, all of which have been considered in this report;
- in making the DCO, the SoSBEIS would be fulfilling their duties under the relevant EU Directives as transposed into UK law by regulation;
- whilst the SoSBEIS is the competent authority under the Habitats Regulations, I conclude that the evidence suggests that the Proposed Development would not adversely affect the integrity of European sites, species or habitats, and I have taken this into account in reaching my recommendation;
- with regard to all other matters and representations received, I have found no relevant matters that would individually or collectively lead to a different recommendation to that below;
- the Proposed Development would have no adverse effects that would outweigh its benefits; and
- there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.

10.1.2. In relation to the application for CA and TP powers within the rDCO, I conclude that:

- the Proposed Development for which the land and rights are sought would be in accordance with national policy, as set out in the NPS;
- the NPSs identify a national need for additional electricity generating capacity, which includes capacity sourced from gas combustion;
- all reasonable alternatives to CA have been explored;
- the dDCO provides a clear mechanism to secure the necessary funding;
- there is a clear need for all the land included in plot 5 to be subject to permanent acquisition;
- there is a need to secure the land and rights required and to construct the Proposed Development within a reasonable commercial timeframe, and the Proposed Development represents a significant public benefit to weigh in the balance;
- the private loss to those affected is mitigated through:
 - the selection of the application land;
 - the limitation to the minimum extent possible of the rights and interests proposed to be acquired;
 - the choice of Gas Connection route; and

- the PPs included in Schedule 9 of the DCO
- the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance
- the CA powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008.
- the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.

10.2. MATTERS UPON WHICH THE SoS MAY WISH TO SEEK FURTHER INFORMATION PRIOR TO MAKING A DECISION

- 10.2.1. As noted in paragraph 4.2.6 above, the SoSBEIS may wish to seek further information from the MOD on the justification for requiring aviation warning lights and/ or other requirements in respect of air safety.
- 10.2.2. The SoS may also wish to seek further information from the Applicant and the following IPs as to whether they have reached agreement on PPs and/or other agreements:
- Network Rail (see paragraph h 8.8.22 and Table 4).
 - Hornsea 1 (see paragraph 8.8.53 and Table 4).
 - The Hornsea 2 Companies (see paragraph 8.8.59 and Table 4).
 - Phillips 66 (see Table 4).

10.3. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 10.3.1. Considering all of the above factors together, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans. I conclude that the Proposed Development would comply with s122(2), s122(3), s127 and s138 of the PA2008.

10.4. RECOMMENDATION

- 10.4.1. For all of the above reasons, and having had regard to the LIRs produced by NLC and NELC as well as my findings and conclusions on relevant matters set out in this report, I conclude that the case for the development has been made and that development consent should be given through a DCO as recommended in paragraph 9.6.3 above and in the form set out in Appendix C.

APPENDIX A: EXAMINATION LIBRARY

VPI Immingham OCGT Examination Library

Updated – 13 February 2020

This Examination Library relates to the VPI Immingham OCGT application. The library lists each document that has been submitted to the Examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

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Category	Reference
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Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority (ExA) Includes the Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
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Deadline 7:	REP7-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

EN010097 – Immingham 'B' OCGT**Examination Library****Application Documents**

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APP-002	VPI Immingham 'B' Ltd 1.2 - Application Guide for the VPI Immingham OCGT Project
APP-003	VPI Immingham 'B' Ltd 1.3 - Application Form for the VPI Immingham OCGT Project
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APP-094	VPI Immingham 'B' Ltd 6.4.20 - ES Appendix 10C Viewpoint Location Plan
APP-095	VPI Immingham 'B' Ltd 6.4.21 - ES Appendix 10D Photomontages Viewpoint K
APP-096	VPI Immingham 'B' Ltd 6.4.22 - ES Appendix 11A Phase I Assessment
APP-097	VPI Immingham 'B' Ltd 6.4.23 - ES Appendix 11B Supplementary Phase 1
APP-098	VPI Immingham 'B' Ltd 6.4.24 - ES Appendix 11C Socotec Factual GI Report
APP-099	VPI Immingham 'B' Ltd 6.4.25 - ES Appendix 11D AECOM GIR
APP-100	VPI Immingham 'B' Ltd 6.4.26 - ES Appendix 12A Flood Risk Assessment
APP-101	VPI Immingham 'B' Ltd 6.4.27 - ES Appendix 13A Designated Assets
APP-102	VPI Immingham 'B' Ltd 6.4.28 - ES Appendix 13B Designated Assets Outside Site
APP-103	VPI Immingham 'B' Ltd 6.4.29 - ES Appendix 13C Non-designated Assets
APP-104	VPI Immingham 'B' Ltd 6.4.30 - ES Appendix 13D Archaeology Report
APP-105	VPI Immingham 'B' Ltd 6.4.31 - ES Appendix 13E Framework Written Scheme of Investigation
APP-106	VPI Immingham 'B' Ltd 6.4.32 - ES Appendix 18A Commitments Register
Adequacy of Consultation Responses	
AoC-001	Bassetlaw District Council

	Adequacy of Consultation Representation
AoC-002	Doncaster Metropolitan Borough Council Adequacy of Consultation Representation
AoC-003	East Lindsey District Council Adequacy of Consultation Representation
AoC-004	Lincolnshire County Council Adequacy of Consultation Representation
AoC-005	North East Lincolnshire Council Adequacy of Consultation Representation
AoC-006	North Lincolnshire Council Adequacy of Consultation Representation
AoC-007	Nottinghamshire County Council Adequacy of Consultation Representation
Relevant Representations	
RR-001	Nottinghamshire County Council
RR-002	Humberside Fire & Rescue Service
RR-003	The Coal Authority
RR-004	NATS LTD
RR-005	National Grid Electricity Transmission PLC and National Grid Gas - WITHDRAWN
RR-006	Defence Infrastructure Organisation
RR-007	Charles Russell Speechlys LLP on behalf of Air Products (BR) Limited
RR-008	Environment Agency
RR-009	Shepherd and Wedderburn LLP on behalf of Hornsea 1 Limited
RR-010	Guy Hird on behalf of North East Lindsey Drainage Board
RR-011	Shepherd and Wedderburn LLP on behalf of Optimus Wind, Breesea, Sonningmay Wind, and Soundmark Wind
RR-012	Total Lindsey Oil Refinery Limited
RR-013	Cadent Gas Limited
RR-014	Natural England
RR-015	Public Health England
RR-016	West Lindsey District Council
RR-017	Able UK Limited - WITHDRAWN
RR-018	Savills on behalf of Centrica PLC - WITHDRAWN
RR-019	Veale Wasbrough Vizards LLP on behalf of CLH Pipeline System (CLH-PS) Limited
RR-020	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited
RR-021	North East Lincolnshire Council
RR-022	North Lincolnshire Council
RR-023	Phillips 66 Limited
RR-024	Boston Borough Council
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Section 51 advice to the Applicant
PD-002	Section 55 Checklist
PD-003	Notification of Decision to Accept Application

PD-004	Appointment of the Examining Authority
PD-005	Rule 6 letter - Notification of the preliminary meeting and matters to be discussed
PD-006	Rule 8 – Notification of timetable for the examination
PD-007	Written Questions
PD-008	Further Written Questions
PD-009	Request for Further Information - Rule 17
PD-010	Variation to Timetable – Rule 8(3)
PD-011	Rule 17 - Request for Further Information and Rule 8(3) Variation to Timetable
PD-012	Notification of the completion of the Examining Authority's Examination
Additional Submissions	
AS-001	VPI Immingham 'B' Ltd 3.1 Book of Reference - Additional Submission accepted at the discretion of the ExA
AS-002	VPI Immingham 'B' Ltd The Applicant's Cover Letter - Additional Submission accepted at the discretion of the ExA
AS-003	Historic England The ExA has designated Historic England as an Other Person
AS-004	Air Products (BR) Limited Response to Rule 6 Letter
AS-005	VPI Immingham 'B' Ltd The revised Non-Technical Summary. Additional Submission accepted at the discretion of the ExA. Response to s51 advice
AS-006	VPI Immingham 'B' Ltd Confirmatory Great Crested Newt Report. Additional Submission accepted at the discretion of the ExA
AS-007	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Limited Additional submission received before the close of the Examination – Accepted at the discretion of the ExA
Events and Hearings	
Preliminary Meeting – 08 August 2019	
EV-001	Recording of Preliminary Meeting - 08 August 2019
EV-002	Preliminary Meeting Note
Unaccompanied Site Inspection -	
EV-003	Note of Unaccompanied Site Inspection – 07 August 2019
Accompanied Site Visits and Hearings	
EV-003A	Notification of Hearings and Accompanied Site Inspection
EV-003B	Agenda for Open Floor Hearing (OFH)
EV-003C	Agenda for Compulsory Acquisition Hearing 1 (CAH1)
EV-003D	Agenda for Issue Specific Hearing 1 (ISH1) and Issue Specific Hearing 2 (ISH2)
EV-004	Recording of Open Floor Hearing (OFH) - 01 October 2019
EV-005	Recording of Compulsory Acquisition Hearing (CAH) - 02 October 2019
EV-006	Recording of Issue Specific Hearing 1 (ISH1) - 02 October 2019
EV-007	Recording of Issue Specific Hearing 2 (ISH2)- 03 October 2019

EV-008	Accompanied Site Inspection Itinerary 1 (ASI 1)
EV-009	Notification of Hearings
EV-010	Agenda for Compulsory Acquisition Hearing 2 (CAH2)
EV-011	Agenda for Issue Specific Hearing 3 (ISH3)
EV-012	Recording of Issue Specific Hearing 3 (ISH3) - 04 December 2019
EV-013	Recording of Compulsory Acquisition Hearing 2 (CAH2) - 04 December 2019
Representations	
Deadline 1	
<ul style="list-style-type: none"> • Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO) • Notification of wish to speak at the Issue Specific Hearing on Environmental Matters • Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • Notification of wish to speak at an Open Floor Hearing (OFH) • Notification of wish to attend an Accompanied Site Inspection (ASI), suggested locations and justifications • Notification by Statutory Parties and certain Local Authorities who wish to be considered as an Interested Party • Notification of wish to have future correspondence electronically 	
REP1-001	VPI Immingham 'B' Ltd Deadline 1 Submission - Accompanied Site Inspection: Suggested Itinerary
REP1-002	Burgess Salmon on behalf of Philips 66 Limited Deadline 1 Submission - Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO) and to attend an Accompanied Site Inspection (ASI), suggested locations and justifications
REP1-003	Charles Russell Speechlys LLP on behalf of Air Products (BR) Limited Deadline 1 Submission - Notification of wish to speak at all Hearings and to attend the Accompanied Site Inspection
REP1-004	CLH Pipeline System Deadline 1 Submission - Update regarding Protective Provisions
REP1-005	Environmental Agency Deadline 1 Submission - Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO) and wish to speak at the Issue Specific Hearing on Environmental Matters
REP1-006	National Grid Electricity Transmission Plc Deadline 1 - Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO) and Compulsory Acquisition Hearing (CAH)
REP1-007	Network Rail Infrastructure Limited Deadline 1 Submission - Notification of wish to have future correspondence electronically
REP1-008	Shepherd and Wedderburn LLP on behalf of Hornsea 1 Limited Deadline 1 - Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO) and Compulsory Acquisition Hearing (CAH)
REP1-009	Shepherd and Wedderburn LLP on behalf of Hornsea 2 Companies

	Deadline 1 - Notification of wish to speak at the Issue Specific Hearing on the draft Development Consent Order (DCO) and Compulsory Acquisition Hearing (CAH)
Deadline 2	
<ul style="list-style-type: none"> • Comments on Relevant Representations (RRs) • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Local Impact Reports (LIRs) from any local authorities • Responses to the ExA's Written Questions • Statements of Common Ground (SoCG) requested by the ExA • Statement of Commonality of SoCG • Applicant's Guide to the Application • The Compulsory Acquisition (CA) Schedule • Comments on any additional submissions 	
REP2-001	VPI Immingham 'B' OCGT Deadline 2 Submission - Cover email
REP2-002	VPI Immingham 'B' OCGT Deadline 2 Submission - 1.2 - Application Guide - Update
REP2-003	VPI Immingham 'B' OCGT Deadline 2 Submission - 2.3 - Draft Development Consent Order - Revised
REP2-004	VPI Immingham 'B' OCGT Deadline 2 Submission - 2.4 - Draft Development Consent Order - Comparison to Submission Version
REP2-005	VPI Immingham 'B' OCGT Deadline 2 Submission - 2.5 - Explanatory Memorandum - Revised
REP2-006	VPI Immingham 'B' OCGT Deadline 2 Submission - 2.6 - Explanation of changes made to the Draft Development Consent Order at Deadline 2
REP2-007	VPI Immingham 'B' OCGT Deadline 2 Submission - 5.2 - Other Consents and Licences - Update
REP2-008	VPI Immingham 'B' OCGT Deadline 2 Submission - 7.1 - Cover Letter
REP2-009	VPI Immingham 'B' OCGT Deadline 2 Submission - 7.2 - The Applicant's Responses to the ExA's First Written Questions
REP2-010	VPI Immingham 'B' OCGT Deadline 2 Submission - 7.3 - The Applicant's Comments on the Relevant Representations
REP2-011	VPI Immingham 'B' OCGT Deadline 2 Submission - 7.4 - Compulsory Acquisition Schedule
REP2-012	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.1 - Statement of Common Ground - North Lincolnshire Council
REP2-013	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.2 - Statement of Common Ground - North East Lincolnshire Council
REP2-014	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.3 - Statement of Common Ground - Environment Agency

REP2-015	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.4 - Statement of Common Ground – Natural England
REP2-016	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.5 Statement of Common Ground – National Grid
REP2-017	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.6 - Statement of Common Ground – Highways England
REP2-018	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.7 - Statement of Common Ground - Historic England
REP2-019	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.8 - Statement of Common Ground - Able Humber Ports Limited
REP2-020	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.9 - Statement of Common Ground - Hornsea 1 and 2 Limited
REP2-021	VPI Immingham 'B' OCGT Deadline 2 Submission - 8.10 - Statement of Commonality
REP2-022	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 2 Submission - Written Representations
REP2-023	BDB Pitmans Limited on behalf of Able UK Limited (Able) Deadline 2 Submission - Responses to the ExA's Written Questions
REP2-024	Burgess Salmon LLP on behalf of Phillips 66 Limited Deadline 2 Submission - Written Representations
REP2-025	Charles Russell Speechlys LLP on behalf of Air Products (BR) Limited Deadline 2 Submission - Written Representation
REP2-026	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Limited Deadline 2 Submission - Written Representation
REP2-027	Environment Agency Deadline 2 Submission - Responses to the ExA's Written Questions
REP2-028	Environment Agency Deadline 2 Submission - Written Representation
REP2-029	Historic England Deadline 2 Submission - Responses to the ExA's Written Questions
REP2-030	National Grid Electricity Transmission Plc Deadline 2 Submission - Written Representation
REP2-031	North East Lindsey Drainage Board Deadline 2 Submission - Written Representation
REP2-032	North Lincolnshire Council Deadline 2 Submission - Responses to the ExA's Written Questions
REP2-033	North Lincolnshire Council Deadline 2 Submission - Local Impact Report
REP2-034	Public Health England Deadline 2 Submission - Responses to the ExA's Written Questions
REP2-035	Shepherd and Wedderburn LLP on behalf of Hornsea 1 Limited Deadline 2 Submission - Responses to the ExA's Written Questions

REP2-036	Shepherd and Wedderburn LLP on behalf of Hornsea 1 Limited Deadline 2 Submission - Written Representations
REP2-037	Shepherd and Wedderburn LLP on behalf of Hornsea 2 Companies Deadline 2 Submission - Responses to the ExA's Written Questions
REP2-038	Shepherd and Wedderburn LLP on behalf of Hornsea 2 Companies Deadline 2 Submission - Written Representations
REP2-039	Total Lindsey Oil Refinery Limited Deadline 2 Submission - Written Representations
REP2-040	North East Lincolnshire Council Deadline 2 Submission - Local Impact Report. Late submission accepted at the discretion of the ExA
Deadline 3 <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on LIRs • Comments on responses to the ExA's Written Questions • Revised draft DCO from the Applicant • Post hearing submissions including written submissions of oral case • Responses to any further information requested by the ExA 	
REP3-001	VPI Immingham 'B' OCGT Deadline 3 Submission - Cover Letter
REP3-002	VPI Immingham 'B' OCGT Deadline 3 Submission - 1.2 - Application Guide (Rev 3.0)
REP3-003	VPI Immingham 'B' OCGT Deadline 3 Submission - 2.7 - Draft Development Consent Order - Revised (Rev 3.0)
REP3-004	VPI Immingham 'B' OCGT Deadline 3 Submission - 2.8 - Draft Development Consent Order - Comparison to Deadline 2 Version (Rev 2.0)
REP3-005	VPI Immingham 'B' OCGT Deadline 3 Submission - 2.9 - Table of Changes made to Development Consent Order at Deadline 3
REP3-006	VPI Immingham 'B' OCGT Deadline 3 Submission - 3.4 - Book of Reference (Rev 2.0)
REP3-007	VPI Immingham 'B' OCGT Deadline 3 Submission - 7.6 - The Applicant's Response to the Written Representations
REP3-008	VPI Immingham 'B' OCGT Deadline 3 Submission - 7.7 - The Applicant's Response to the Local Impact Reports
REP3-009	VPI Immingham 'B' OCGT Deadline 3 Submission - 7.8 - The Applicant's Comments on Responses to the Written Questions
REP3-010	VPI Immingham 'B' OCGT Deadline 3 Submission - 7.9 - The Applicant's Written Submission of Oral Case - DCO Hearing
REP3-011	VPI Immingham 'B' OCGT Deadline 3 Submission - 7.10 - The Applicant's Written Submission of Oral Case - Compulsory Acquisition Hearing
REP3-012	VPI Immingham 'B' OCGT Deadline 3 Submission - 7.11 - The Applicant's Written Submission of Oral Case - Environmental Matters Hearing

REP3-013	VPI Immingham 'B' OCGT Deadline 3 Submission - 7.12 - Compulsory Acquisition Schedule (Rev 2.0)
REP3-014	VPI Immingham 'B' OCGT Deadline 3 Submission - 7.13 - Statement to Inform Appropriate Assessment
REP3-015	VPI Immingham 'B' OCGT Deadline 3 Submission - 8.1 - Draft Statement of Common Ground – North Lincolnshire Council (Rev 4.0)
REP3-016	VPI Immingham 'B' OCGT Deadline 3 Submission - 8.4 - Draft Statement of Common Ground – Natural England (Rev 2.0)
REP3-017	Burgess Salmon LLP on behalf of Phillips 66 Limited Deadline 3 Submission - Written Summaries of the oral submissions presented at the Issue Specific Hearing 1 and Compulsory Acquisition Hearing
REP3-018	Hornsea 1 Limited Deadline 3 Submission - Written Summaries of the oral submissions presented at the Issue Specific Hearing 1
REP3-019	Hornsea 1 Limited Deadline 3 Submission - Written Summaries of the oral submissions presented at the Compulsory Acquisition Hearing
REP3-020	Hornsea 2 Companies Deadline 3 Submission - Written Summaries of the oral submissions presented at the Issue Specific Hearing 1
REP3-021	Hornsea 2 Companies Deadline 3 Submission - Written Summaries of the oral submissions presented at the Compulsory Acquisition Hearing
REP3-022	The Environment Agency Deadline 3 Submission - Post hearing submissions including written submissions of oral case
Deadline 3a	
<ul style="list-style-type: none"> • Response to Request for Further Information - Rule 17 	
REP3a-001	VPI Immingham 'B' OCGT Deadline 3a Submission - 7.14 - Compulsory Acquisition Schedule (Rev 3.0)
REP3a-002	VPI Immingham 'B' OCGT Deadline 3a Submission - 7.15 - Compulsory Acquisition Schedule Comparison
REP3a-003	VPI Immingham 'B' OCGT Deadline 3a Submission - 7.16 - Protective Provisions Able Humber Ports
REP3a-004	VPI Immingham 'B' OCGT Deadline 3a Submission - 7.17 - Cover Letter
REP3a-005	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 3a Submission - Response to Request for Further Information - Rule 17
REP3a-006	BDB Pitmans LLP on behalf of Able UK Limited (Able) Deadline 3a Submission - Response to Request for Further Information - Rule 17

REP3a-007	Burges Salmon LLP on behalf of Phillips 66 Limited Deadline 3a Submission - Response to Request for Further Information - Rule 17
REP3a-008	Charles Russell Speechlys LLP on behalf of Air Products (BR) Limited Deadline 3a Submission - Response to Request for Further Information - Rule 17
REP3a-009	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Limited Deadline 3a Submission - Response to Request for Further Information - Rule 17
REP3a-010	ESP Utilities Group Ltd Deadline 3a Submission - Response to Request for Further Information - Rule 17
REP3a-011	Shepherd and Wedderburn LLP on behalf of Hornsea 1 Limited Deadline 3a Submission - Response to Request for Further Information - Rule 17
REP3a-012	Shepherd and Wedderburn LLP on behalf of Hornsea 2 Companies Deadline 3a Submission - Response to Request for Further Information - Rule 17
REP3a-013	Total Lindsey Oil Refinery Limited Deadline 3a Submission - Response to Request for Further Information - Rule 17
REP3a-014	National Grid Electricity Transmission Plc Deadline 3a Submission - Response to Request for Further Information - Rule 17
Deadline 4	
<ul style="list-style-type: none"> • Responses to the ExA's Further Written Questions (if required) • Comments on the Applicant's revised draft DCO (if required) • Responses to any further information requested by the ExA • Comments on Post hearing submissions including written submissions of oral case 	
REP4-001	VPI Immingham 'B' OCGT Deadline 4 Submission - 7.14 - Cover Letter
REP4-002	VPI Immingham 'B' OCGT Deadline 4 Submission - 1.2 - Application Guide (Rev 4.0)
REP4-003	VPI Immingham 'B' OCGT Deadline 4 Submission - 3.5 - Book of Reference (Rev 4.0)
REP4-004	VPI Immingham 'B' OCGT Deadline 4 Submission - 4.2 - Land Plans (Key Plan and Sheets 1-4) (Rev 2.0)
REP4-005	VPI Immingham 'B' OCGT Deadline 4 Submission - 4.4 - Access and Rights of Way Plans (Key Plan and Sheets 1-4) (Rev 5.0)
REP4-006	VPI Immingham 'B' OCGT Deadline 4 Submission - 6.4.31 - Environmental Impact Assessment: Volume III Appendix 13E: Framework Written Scheme of Investigation (Rev 2.0)
REP4-007	VPI Immingham 'B' OCGT Deadline 4 Submission - 7.15 - The Applicant's Response to the ExAs Further Written Questions

REP4-008	VPI Immingham 'B' OCGT Deadline 4 Submission - 7.16 - Compulsory Acquisition Schedule (Rev 4.0)
REP4-009	VPI Immingham 'B' OCGT Deadline 4 Submission - 7.17 - Statement to Inform Appropriate Assessment (Rev 2.0)
REP4-010	VPI Immingham 'B' OCGT Deadline 4 Submission - 8.1 - Statement of Common Ground with North Lincolnshire Council (Draft) (Rev 5.0)
REP4-011	VPI Immingham 'B' OCGT Deadline 4 Submission - 8.4 - Statement of Common Ground with Natural England (Rev 3.0)
REP4-012	Cadent Gas Limited Deadline 4 Submission - Responses to the ExA's Further Written Questions
REP4-013	Highways England Deadline 4 Submission - Responses to the ExA's Further Written Questions
REP4-014	Shepherd and Wedderburn LLP on behalf of Hornsea 1 Limited Deadline 4 Submission - Responses to the ExA's Further Written Questions
REP4-015	Shepherd and Wedderburn LLP on behalf of Hornsea 2 Companies Deadline 4 Submission - Responses to the ExA's Further Written Questions
REP4-016	Network Rail Infrastructure Limited Deadline 4 Submission - Responses to the ExA's Further Written Questions
REP4-017	North Lincolnshire Council Deadline 4 Submission - Responses to the ExA's Further Written Questions
REP4-018	Burgess Salmon LLP on behalf of Phillips 66 Limited Deadline 4 Submission - Responses to the ExA's Further Written Questions
Deadline 5:	
<ul style="list-style-type: none"> • Comments on responses to the ExA's Further Written Questions (if required) • Applicant's revised draft DCO • Responses to further information requested by the ExA • Post hearing submissions including written submissions of oral case 	
REP5-001	VPI Immingham 'B' OCGT Deadline 5 Submission - Cover Letter
REP5-002	VPI Immingham 'B' OCGT Deadline 5 Submission - 1.2- Application Guide (Rev 5.0)
REP5-003	VPI Immingham 'B' OCGT Deadline 5 Submission - 2.10 - Draft Development Consent Order - Revised (Rev 4.0)
REP5-004	VPI Immingham 'B' OCGT Deadline 5 Submission - 2.11 - Draft Development Consent Order - Comparison to Deadline 3 Version (Rev 4.0)
REP5-005	VPI Immingham 'B' OCGT Deadline 5 Submission - 2.12 - Table of changes made to DCO at Deadline 5

REP5-006	VPI Immingham 'B' OCGT Deadline 5 Submission - 7.19 - The Applicant's Written Submission of Oral Case - CA Hearing 2 (Rev 1.0)
REP5-007	VPI Immingham 'B' OCGT Deadline 5 Submission - 7.20 - The Applicant's Written Submission of Oral Case - DCO Hearing (Rev 1.0)
REP5-008	VPI Immingham 'B' OCGT Deadline 5 Submission - 8.1 - Draft Statement of Common Ground with North Lincolnshire Council (Rev 6.0)
REP5-009	Burgess Salmon LLP on behalf of Phillips 66 Limited Deadline 5 Submission - Post hearing submissions including written submissions of oral case
Deadline 6:	
<ul style="list-style-type: none"> • Comments on the Applicant's draft DCO (if required) • Responses to further information requested by the ExA 	
REP6-001	VPI Immingham 'B' OCGT Deadline 6 Submission - 1.2 - Application Guide - Rev 6.0
REP6-002	VPI Immingham 'B' OCGT Deadline 6 Submission - 7.21 - The Applicant's Deadline 6 Cover Letter
REP6-003	VPI Immingham 'B' OCGT Deadline 6 Submission - 7.22 - Protective Provisions - Highways England - FINAL
REP6-004	VPI Immingham 'B' OCGT Deadline 6 Submission - 7.23 - Protective Provisions - Hornsea 1 Limited - DRAFT
REP6-005	VPI Immingham 'B' OCGT Deadline 6 Submission - 7.24 - Protective Provisions - Hornsea 2 companies - DRAFT
REP6-006	VPI Immingham 'B' OCGT Deadline 6 Submission - 7.25 - The Applicant's Response to Phillips 66 Limited's Deadline 5 Submission
REP6-007	VPI Immingham 'B' OCGT Deadline 6 Submission - 7.26 - Compulsory Acquisition Schedule
REP6-008	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 6 Submission - Comments on the Applicant's draft Development Consent Order
REP6-009	Burgess Salmon LLP on behalf of Phillips 66 Limited Deadline 6 Submission - Comments on the Applicant's draft Development Consent Order
REP6-010	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Limited Deadline 6 Submission - Comments on the Applicant's draft Development Consent Order
REP6-011	Shepherd and Wedderburn LLP on behalf of Hornsea 1 Limited Deadline 6 Submission - Comments on the Applicant's draft Development Consent Order
REP6-012	Shepherd and Wedderburn LLP on behalf of Hornsea 2 Companies Deadline 6 Submission - Comments on the Applicant's draft Development Consent Order

Deadline 6a:	
<ul style="list-style-type: none"> • Responses to further information requested under Rule 17 	
REP6a-001	VPI Immingham 'B' OCGT Deadline 6a Submission - 1.2 - Application Guide (Rev 7.0)
REP6a-002	VPI Immingham 'B' OCGT Deadline 6a Submission - 7.27 - Cover Letter
REP6a-003	VPI Immingham 'B' OCGT Deadline 6a Submission - 7.28 – The Applicant's Deadline 6a Response
REP6a-004	VPI Immingham 'B' OCGT Deadline 6a Submission - 7.29 - Compulsory Acquisition Schedule
REP6a-005	VPI Immingham 'B' OCGT Deadline 6a Submission - 8.1 - Statement of Common Ground with North Lincolnshire Council (Rev 7.0)
REP6a-006	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 6a Submission - Response to Request for Further Information - Rule 17
REP6a-007	Burgess Salmon LLP on behalf of Phillips 66 Limited Deadline 6a Submission - Response to Request for Further Information - Rule 17
REP6a-008	Cadent Gas Limited Deadline 6a Submission - Response to Request for Further Information - Rule 17
REP6a-009	Charles Russell Speechlys LLP on behalf of Air Products (BR) Limited Deadline 6a Submission - Response to Request for Further Information - Rule 17
REP6a-010	The Environment Agency Deadline 6a Submission - Response to Request for Further Information - Rule 17
REP6a-011	Savills Plc on behalf of Centrica Plc Deadline 6a Submission - Response to Request for Further Information - Rule 17
REP6a-012	Shepherd and Wedderburn LLP on behalf of Hornsea 1 Limited Deadline 6a Submission - Response to Request for Further Information - Rule 17
REP6a-013	Shepherd and Wedderburn LLP on behalf of Hornsea 2 Companies Deadline 6a Submission - Response to Request for Further Information - Rule 17
Deadline 7:	
<ul style="list-style-type: none"> • Responses to comments on the Applicant's draft DCO (if required) • Responses to further information requested by the ExA • Final updated version of the Book of Reference Applicant's final Guide to the Application document • Final CA Schedule • Final SoCG • Final Statement of Commonality of SoCG • Final draft DCO to be submitted by the Applicant in the Statutory Instrument (SI) template with the SI template validation report • Resubmission of final version of updated application documents 	

REP7-001	VPI Immingham 'B' OCGT Deadline 7 Submission - 1.2 - Application Guide (Rev 8.0)
REP7-002	VPI Immingham 'B' OCGT Deadline 7 Submission - 2.13 - Draft Development Consent Order. FINAL
REP7-003	VPI Immingham 'B' OCGT Deadline 7 Submission - 2.14 - Draft Development Consent Order. Comparison to Deadline 5 Version
REP7-004	VPI Immingham 'B' OCGT Deadline 7 Submission - 2.15 - Table of changes made to Draft Development Consent Order
REP7-005	VPI Immingham 'B' OCGT Deadline 7 Submission - 5.2 - Other Consents and Licences
REP7-006	VPI Immingham 'B' OCGT Deadline 7 Submission - 7.30 - Cover Letter
REP7-007	VPI Immingham 'B' OCGT Deadline 7 Submission - 7.31 - The Applicant's Deadline 7 Response
REP7-008	VPI Immingham 'B' OCGT Deadline 7 Submission - 7.32 - Compulsory Acquisition Schedule
REP7-009	VPI Immingham 'B' OCGT Deadline 7 Submission - 8.8 - Statement of Common Ground with Able Humber Ports (Rev 2.0)
REP7-010	VPI Immingham 'B' OCGT Deadline 7 Submission - 8.10 - Statement of Commonality (Rev 2.0)
REP7-011	Pinsnet Mason LLP on behalf of VPI Immingham 'B' OCGT Deadline 7 Submission - Statement between the Applicant and Phillips 66 Limited
REP7-012	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 7 Submission - Position Statement
REP7-013	BDB Pitmans LLP on behalf of Able UK Limited (Able) Deadline 7 Submission - Withdrawal of objection
REP7-014	Highways England Deadline 7 Submission - Responses to further information requested by the ExA
REP7-015	National Grid Deadline 7 Submission - Withdrawal of objection
REP7-016	Total Lindsey Oil Refinery Limited Deadline 7 Submission - Responses to comments on the Applicant's draft Development Consent Order
Other Documents	
OD-001	IMHM - Regulation 32 Transboundary Screening
OD-002	Section 51 advice to the Applicant
OD-003	VPI Immingham 'B' Ltd Section 56 Notice

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
Able	Able Humber Ports Limited
AGI	Above Ground Installation
AGLV	Area of Great Landscape Value
Air Products	Air Products (BR) Limited
AN (number)	Planning Inspectorate's Advice Notes
AP	Affected Person
AQD	Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe
ASI	Accompanied Site Inspection
BAT	Best Available Techniques
BEIS	Department for Business, Energy and Industrial Strategy
BEMP	Biodiversity Enhancement Management Plan
BEP	Biodiversity Enhancement Plan
BoR	Book of Reference
BS	British Standards
CA	Compulsory Acquisition
Cadent	Cadent Gas Limited
CAH	Compulsory Acquisition Hearing
CCR	Carbon Capture Ready
CCS	Carbon Capture and Storage
CEMP	Construction Environmental Management Plan
Centrica	Centrica Plc
CDS	Conceptual Drainage Strategy
CHP	Combined Heat and Power
CLH	CLH Pipeline Systems Limited
CO ²	Carbon Dioxide
CoPA	Control of Pollution Act 1974
COMAH	Control of Major Accident Hazards
COMAH Regulations	Control of Major Accident Hazards Regulations 1999
CS	North Lincolnshire Core Strategy 2011
CTMP	Construction Traffic Management Plan
CWTP	Construction Workers Travel Plan
D (number)	Deadline, with a number referring to a specific deadline identified in the Examination Timetable
DAS	The Design and Access Statement submitted with the application
dB	Decibel
DCLG	Former Department for Communities and Local Government, re-organised to form Ministry of Housing, Communities and Local Government (MHCLG) in January 2018. References to documents (eg Examination Guidance) or decisions taken by the former department are referred to using the abbreviation DCLG
DCO	Development Consent Order
dDCO	draft Development Consent Order

Abbreviation or usage	Reference
DECC	Former Department for Energy and Climate Change, reorganised to form BEIS
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DPs	Development Plans
EA	Environment Agency
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EMFs	Electromagnetic Fields
EP	Environmental Permit
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EP Regulations	Environmental Permitting (England and Wales) Regulations 2016
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
AGI	Above Ground Installation
ExAQ (number)	Written examination questions by the ExA
fBEMP	Framework Biodiversity Enhancement Management Plan
fCEMP	Framework Construction Environmental Management Plan
fCWTP	Framework Construction Workers Travel Plan
FMP	The Environment Agency's Flood Map for Planning
FRA	Flood Risk Assessment
FS	Funding Statement
fWSI	Framework Written Scheme of Investigation (archaeology)
GCN	Great Crested Newts
GHG	Green Houses Gas
HELAD	North Lincolnshire Housing and Employment Land Allocations Development Plan Document
HFRS	The Humberside Fire and Rescue Service
HGV	Heavy Goods Vehicle
HE	Historic England
HOR	Humber Oil Refinery
Hornsea One	Hornsea One Limited
Hornsea Two Companies	Optimus Wind Limited, Breesea Limited, Sonningmay Wind Limited and Soundmark Wind Limited
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IED	Directive 2010/75/EU on industrial emissions (integrated pollution and prevention control)
IP	Interested Party

Abbreviation or usage	Reference
ISH (number)	Issue Specific Hearing and where followed by a number, the number is a reference to a specific ISH on a date in the examination timetable
km	kilometre
LBCA Act	The Planning (Listed Buildings and Conservation Areas) Act 1991
LIR	Local Impact Report
LOAEL	Lowest Observable Adverse Effect Level
LP	North Lincolnshire Local Plan (2003)
LV	Limit value(s) – a regulatory limit expressed as a value above which a regulated substance should not be found in the environment and triggering action for pollution control
LWS	Locally Recognised Wildlife Sites
m	metre
made Order	A statutory Order providing development consent made by the relevant SoS under PA2008, use of this term signifies a reference to a DCO that has been decided
MHCLG	Ministry of Housing, Communities and Local Government
MPs	Model Provisions
MW	Megawatt
NE	Natural England
NELC	North East Lincolnshire Council
NELIDB	North East Lindsey Drainage Board
National Grid	used to refer to NGET and NGG collectively
NGET	National Grid Electricity Transmission Plc
NGG	National Grid Gas Plc
NLC	North Lincolnshire Council
NOEL	No Observed Effect Level
NO ₂	Nitrogen Dioxide
NO _x	Nitrogen Oxide
NPA2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NR	Network Rail Infrastructure Limited
NSR	Noise Sensitive Receptor
NSIP	Nationally Significant Infrastructure Project
NTS	National Transmission System
OCGT	Open Cycle Gas Turbine
OFGEM	Office of Gas and Electricity Markets
OFH	Open Floor Hearing
OMH	Open Mosaic Habitat
P66	Phillips 66 Limited
PA2008	Planning Act 2008 (as amended)
PC	Process Contributions
PM	Preliminary Meeting
PPs	Protective Provisions

Abbreviation or usage	Reference
PPG	Planning Policy Guidance accompanying the NPPF
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R	Requirement
rDCO	Recommended Development Consent Order
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy (2015 – 2020)
RR	Relevant Representation
s (number)	Section of a statute and when followed by a number, a particular section number from a named statute
SAC	Special Area of Conservation
SES	South Humber Bank Strategic Employment Site
SING	Semi-improved Neutral Grassland
SNCB	Statutory Nature Conservation Body
SOAEL	Significant Observed Adverse Effect Level
SO ₂	Sulphur Dioxide
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSBEIS	... for Business, Energy and Industrial Strategy
SoSHCLG	... for Housing, Communities and Local Government (from Jan 2018)
SoST	...for Transport
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SuDS	Sustainable drainage system
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990
TLOR	Total Lindsey Oil Refinery
TP	Temporary Possession
UK	United Kingdom
USI (number)	Unaccompanied Site Inspection
WCA	The Wildlife and Countryside Act 1981
WER	The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
WFD	Water Framework Directive – Directive 2000/60/EC
WHO	World Health Organisation
WLDC	West Lindsey District Council
WR	Written Representation
WSI	Written Scheme of Investigation (archaeology)

APPENDIX C: THE RECOMMENDED DCO (rDCO)

20 No. 0000**

INFRASTRUCTURE PLANNING

The Immingham Open Cycle Gas Turbine Order 20[x]

<i>Made</i> - - - -	20[x]
<i>Coming into force</i> - -	20[x]

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An application under section 37 (applications for orders granting development consent) of the Planning Act 2008(a) (the “2008 Act”) has been made to the Secretary of State for an order granting development consent.

(a) 2008 c.29. The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20) and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27). Transitional provisions are contained in S.I. 2013/1124.

The single appointed person having considered the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2)(a) of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn, the report and recommendation of the single appointed person and having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(b) and having had regard to the documents and matters referred to in section 104(2) (decisions in cases where national policy statement has effect) of the 2008 Act has determined to make an Order granting development consent for the development comprised in the application on terms that, in the opinion of the Secretary of State, are not materially different from those comprised in the application.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 149A of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Immingham Open Cycle Gas Turbine Order 20[x] and comes into force on [X] 20[X].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(c);

“the 1965 Act” means the Compulsory Purchase Act 1965(d);

“the 1980 Act” means the Highways Act 1980(e);

“the 1984 Act” means the Road Traffic Regulation Act 1984(f);

“the 1990 Act” means the Town and Country Planning Act 1990(g);

“the 1991 Act” means the New Roads and Street Works Act 1991(h);

“the 2008 Act” means the Planning Act 2008(i);

“access and rights of way plans” means the plans which are certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act and further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

(a) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c.20).

(b) S.I. 2017/572 amended by S.I 2018/695, S.I 2018/834 and S.I 2018/942.

(c) 1961 c.33.

(d) 1965 c.56.

(e) 1980 c.66.

(f) 1984 c.27.

(g) 1990 c.8.

(h) 1991 c.22.

(i) 2008 c.29.

“Anglian Water” means Anglian Water Services Limited (company number 2366656) whose registered address is Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridge, United Kingdom PE29 6XU;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that description set out in Schedule 11 (documents to be certified) by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means beginning to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is nearly complete) in order to ensure that they, and the authorised development as a whole, function in accordance with the plant design specifications and the undertaker’s operational and safety requirements;

“commitments register” means the document of that description set out in Schedule 11 as the commitments register for the purposes of this Order;

“date of completion of construction” means the date on which the construction of the authorised development is complete including rectification of any construction defects, landscaping and reinstatement works;

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis, but excluding the generation of power during commissioning;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means provided it is in electronic form;

“emergency” 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 individuals, classes or generally as the case may be) of taking that action;

“the environmental statement” means the document of that description set out in Schedule 11;

“flood risk assessment” means the document of that description set out in Schedule 11;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“framework biodiversity enhancement and management plan” means the document of that description set out in Schedule 11;

“framework construction environmental management plan” means the document of that description set out in Schedule 11;

“framework construction traffic management plan” means the document of that description set out in Schedule 11;

“framework construction worker travel plan” means the document of that description set out in Schedule 11;

“framework written scheme of investigation” means the document of that description set out in Schedule 11;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“indicative lighting strategy” means the document of that description set out in Schedule 11;

“land plans” means the plans of that description set out in Schedule 11;

“limits of deviation” means in respect of numbered works 1, 2, 3, 4, 5 and 6 the outer limits of the corresponding numbered area shown on the works plan;

“maintain” includes, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH and/or National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH as the context requires;

“Network Rail” means Network Rail Infrastructure Limited (Company Registration Number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown coloured pink, blue and yellow on the land plans and described in the book of reference;

“Order limits” means the Order limits shown on the works plans;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“relevant planning authority” means the local planning authority for the land in question, being North Lincolnshire Council, or any successor to it as planning authority;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act;

“statement to inform appropriate assessment” means the document of that description set out in Schedule 11;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means VPI Immingham B Limited or the person who for the time being has the benefit of this Order in accordance with articles 6 (benefit of this Order) and 7 (consent to transfer benefit of the Order);

“VPI Immingham B Limited” means VPI Immingham B Limited (Company number 10630563) whose registered office is at 4th Floor, Nova South, 160 Victoria Street, London, England, SW1E 5LB;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the plans of that description set out in Schedule 11.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order.

(a) 1981 c.67.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plan and access and rights of way plan are to be taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

(6) The expression “includes” is to be construed without limitation.

(7) References in this Order to plots are references to the plots shown on the land plans and described in the book of reference.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation shown for each work number on the works plans.

Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

(3) This article does not authorise any works which are likely to give rise to any significant adverse effects that have not been assessed in the environmental statement.

Operation of authorised development

5.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of the generating station.

Benefit of this Order

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of VPI Immingham B Limited.

(2) Subject to article 7, paragraph (1) does not apply to Work No. 5, for which development consent is granted for the benefit of VPI Immingham B Limited and National Grid.

Consent to transfer benefit of the Order

7.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

(a) the transferee or lessee is—

(i) the holder of a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989(a) or section 7 (licensing of public gas transporters) of the Gas Act 1986(b); or

(ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order land; or

(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claims that have been made have all been compromised or withdrawn;

(iii) compensation has been paid in final settlement of all such claims;

(iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State and National Grid in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

(a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;

(b) subject to paragraph (9), the date on which the transfer is expected to take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (3), the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The undertaker must notify National Grid on seeking the consent of the Secretary of State referred to in paragraph (4).

(8) The notification referred to in paragraph (7) must comply with the requirements in paragraph (6).

(9) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(10) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers are to be transferred or granted as specified in that notice.

(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.

(b) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.

PART 3 STREETS

Power to alter layout etc. of streets

8.—(1) The undertaker may for the purposes of the authorised development alter the layout of, or carry out any works in, the street in the manner specified in relation to that street in column (3) of Schedule 3 (streets subject to street works).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraph (3), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(4) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Part 1 of Schedule 4 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 4 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had

taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary prohibition or restriction of use of streets

11.—(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the street specified in column (2) of Schedule 5 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) the street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

12. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the means of access, or improve existing means of access, in the locations specified in Schedule 3 (streets subject to street works); and

- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

- 13.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) construction of any new street including any structure carrying the street;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
 - (e) the execution in the street of any of the authorised development;
 - (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway; and
 - (g) any such works as the parties may agree.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation

14.—(1) Subject to paragraphs (3) and (4) and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development, at any time prior to the date that is 12 months after the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
 - (b) make provision as to the direction or priority of vehicular traffic on any road,
- either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than four weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 (temporary prohibition or restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

(4) In this article—

- (a) subject to sub-paragraph (b), expressions used in it and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

15.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(b).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(c).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(d), an internal drainage board, a joint planning

(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

(b) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c.37).

(c) S.I. 2016/1154.

(d) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c.42). There are other amendments to the 1964 Act that are not relevant to this Order.

board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

- (b) other terms and expressions, with the exception of the term “watercourse”, used both in this article and in the Water Resources Act 1991^(a) have the same meaning as in that Act.

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or on any land which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Removal of human remains

17.—(1) Before the undertaker carries out any part of the authorised development or works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and

^(a) 1991 c.57.

(b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium and that person must, as soon as reasonably practicable after such re-interment or cremation,

provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10) and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the Order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) of the Burial Act 1857(a) is not to apply to a removal carried out in accordance with this article.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 21 (compulsory acquisition of rights etc.) and article 27 (temporary use of land for carrying out the authorised development).

Power to override easements and other rights

19.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 (benefit of order granting development consent) of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

(4) Subsection (2) of section 10 (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

20.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(a) 1857 c.81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in SI 2014/2077 Sch.1 paras 1 and 2).

- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

21.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In respect of such parts of the Order land that are shown edged red and shaded blue on the land plans, the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new class of rights and impose the restrictions as described in Table 6 of Schedule 6 (land in which only new rights etc. may be acquired).

(3) Subject to section 8 (provisions as to divided land) of the 1965 Act and Schedule 2A (counter-notice requiring purchase of land) (as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictions), where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1) or (2), the undertaker is not to be required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restriction.

(5) The powers of paragraph (1) may be exercised by a statutory undertaker instead of by the undertaker in any case where the undertaker has given its prior consent to that in writing, and that consent may be given subject to terms and conditions.

(6) Where in consequence of paragraph (5) a statutory undertaker exercises the powers of paragraph (1) in place of the undertaker, except in relation to the payment of compensation, the statutory undertaker is to be treated for the purposes of this Order, and by any person with an interest in the land in question, as being the undertaker in relation to the acquisition of the rights and the imposition of the restrictive covenants in question.

(7) Subject to the modifications set out in Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

Private rights

22.—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(a) 1981 c.66.

- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order or which is leased by the undertaker, are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 29 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs are not to apply to any right specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

23.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of act) for subsection 2 there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Section 5A (time limit for general vesting declaration) is omitted.

(6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 20[X]”.

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 24(3) (acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 20[X], which excludes the acquisition of subsoil only from this Schedule.”.

(10) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

24.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraphs (1) and (2) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Modification of Part 1 of the Compulsory Purchase Act 1965

25.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 20[X]”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 20[X]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 24(3)(acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 20[X], which excludes the acquisition of subsoil only from this Schedule”; and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) of the Immingham Open Cycle Gas Turbine Order 20[X].”.

Rights under or over streets

26.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

27.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take possession of—
 - (i) so much of the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule;
 - (ii) any other part of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any works specified in relation to that land in column (2) of Schedule 8; and
- (e) carry out or construct any other mitigation works.

(2) Before taking temporary possession of land for a period of time by virtue of sub-paragraph (1) the undertaker must give a notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(3) The notice in paragraph (2) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of three months beginning with the day on which the notice is given;
- (b) subject to paragraph (4) the period for which the undertaker is to take temporary possession of the land,

provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker must not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(10) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in article 21 (compulsory acquisition of rights etc.); or
- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 24 (acquisition of subsoil only) or article 26 (rights under or over streets).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

(14) The provisions of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development or works necessary for the authorised development within the Order land.

Temporary use of land for maintaining the authorised development

28.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Before taking temporary possession of land for a period of time by virtue of paragraph (1) the undertaker must give notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(4) The notice in paragraph (3) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of three months beginning with the day on which the notice is given; and

(a) 2017 c.20.

- (b) subject to sub-paragraph (5) the period for which the undertaker is to take temporary possession of the land,

provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article "the maintenance period" means the period of one year beginning with the date of final commissioning.

(13) The provisions of the Neighbourhood Planning Act 2017^(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development and other development necessary for the authorised development within the Order land.

Statutory undertakers

29. Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land; and
- (c) create and acquire compulsorily rights or impose restrictions over any Order land belonging to statutory undertakers.

Apparatus and rights of statutory undertakers in streets

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (power to alter layout etc. of streets), article 9 (street works), article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the

^(a) 2017 c.20.

street is to have the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communication provider” has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003^(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

OPERATION

Felling or lopping of trees

32.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order land or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

^(a) 2003 c.21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations S.I. 2011/1210.

Protective works to buildings

33.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by the reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within a period of five years beginning with the date of final commissioning it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article, to the same extent as it applies to the compulsory acquisition of land under this order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

34.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

35. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(a) in relation to a

(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(a); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974(b) does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protective provisions

37. Schedule 9 (protective provisions) has effect.

Procedure in relation to certain approvals

38.—(1) Where an application is made to, or a request is made of, the relevant planning authority, highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 9 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 10 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 10 and where stated to the contrary if, within eight weeks (or such longer period as may be agreed with the undertaker in writing) after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) The procedure set out in paragraph 1(3) of Schedule 10 has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 9 (protective provisions).

(a) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3), paragraphs 33 and 35(1) of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c.29); Section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 (c.55), paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

(b) 1974 c.40.

(6) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

Certification of plans etc.

39.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 8 of Schedule 11 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

40.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be, “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(a) 1978 c.30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of notice or document in printed form.

Amendment and modification of statutory provisions

41. The Able Marine Energy Park Development Consent Order 2014 is amended for the purposes of this Order only as set out in Schedule 13 (modifications to the Able Marine Energy Park Development Consent Order 2014).

Arbitration

42.—(1) Subject to paragraph (3), any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) Should the Secretary of State fail to appoint an arbitrator under paragraph (1) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

(3) This article does not apply where any difference under any provision of this Order is between any person and the Secretary of State.

Funding

43.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place, following approval by the Secretary of State, either—

- (a) a guarantee (and the amount of that guarantee) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security (and the amount of that security) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 21 (compulsory acquisition of rights etc.);
- (c) article 22 (private rights);
- (d) article 24 (acquisition of subsoil only);

- (e) article 26 (rights under or over streets);
- (f) article 27 (temporary use of land for carrying out the authorised development);
- (g) article 28 (temporary use of land for maintaining the authorised development); and
- (h) article 29 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by the authority of the Secretary of State for Business, Energy and Industrial Strategy

Name

Address

Date

Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In North Lincolnshire—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, and associated development under section 115(1)(b) of that Act, consisting of a generating station with a gross rated electrical output of up to 299MWe—

Work No. 1 – OCGT power station, being an open cycle gas turbine generating station with a gross capacity of up to 299 megawatts, comprising—

- (a) gas turbine and turbine hall buildings;
- (b) electrical generator;
- (c) stack;
- (d) auxiliary cooling equipment or system;
- (e) gas turbine air intake filters;
- (f) banks of finfan coolers;
- (g) nitrogen oxide emissions control equipment;
- (h) transformers;
- (i) a switchyard, associated switch gear and ancillary equipment;
- (j) a gas receiving area, gas control facilities and gas reception building;
- (k) lubricating oil, hydraulic oil and chemical storage tanks and equipment;
- (l) continuous emissions monitoring system;
- (m) raw water and fire water storage tanks;
- (n) water treatment facilities, demineralised water treatment works, including storage tanks;
- (o) oily water and waste water treatment plant building and basin;
- (p) fire fighting equipment, buildings and distribution pipework;
- (q) permanent plant laydown area;
- (r) auxiliary plant, buildings, enclosures and structures;
- (s) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between parts of this Work No. 1 and Work Nos 4, 5 and 6;
- (t) workshop buildings and stores;
- (u) electrical, control, administration and welfare buildings; and
- (v) storm water attenuation system.

Work No. 2 – access, comprising access from Rosper Road to each of Work Numbers 1, 3, 4, 5 and 6.

Work No. 3 – 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 connection, being works for the transport of natural gas to Work No. 1, comprising—

- (a) an underground and overground gas pipeline up to 600 millimetres (nominal internal diameter);
- (b) cathodic protection system and posts;
- (c) marker posts; and
- (d) control systems and cables.

Work No. 5 – overground electrical connection up to 400 kilovolts and controls systems.

Work No 6 – utilities and services connections comprising—

- (a) water pipes, connections, structures and ancillary equipment;
- (b) telecommunications cables and equipment;
- (c) compressed air connections and ancillary equipment;
- (d) electrical cables, connections and ancillary equipment;
- (e) control systems and cables; and
- (f) closed circuit television and security system connections.

In connection with and in addition to Work Nos. 1 to 6, further development including—

- (a) buildings and structures;
- (b) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (c) electrical, gas, water, foul drainage and telecommunications infrastructure, connections and works, and works to install, remove, alter and connect into such services;
- (d) hard standing and hard landscaping, soft landscaping, embankments, planting and biodiversity enhancement measures;
- (e) security fencing, gates, boundary treatment and other means of enclosure;
- (f) lighting, including lighting columns;
- (g) gatehouses and weighbridges;
- (h) closed circuit television cameras, columns and other security works;
- (i) site establishment and preparation works, including site clearance, demolition, earthworks, excavations, vehicular access points, the alteration and protection of services and utilities, and works for the protection of buildings and land;
- (j) temporary construction laydown areas, contractor facilities, materials and plant storage, generators, concrete batching facilities, vehicle and cycle parking, roadways and haul routes, offices and welfare facilities, wheel wash facilities, and signage;
- (k) vehicle parking and cycle storage;
- (l) accesses, roads, pedestrian and cycle routes; and
- (m) tunnelling, boring and drilling works,

and to the extent that it does not form part of such works, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

1. In this Schedule—

“Environment Agency” means the non-departmental public body of that name created by section 1 (the Environment Agency) of the Environment Act 1995(a);

“existing CHP Plant” means the VPI Immingham Combined Heat and Power Plant which, at the date this Order comes into force, is located partly within Order limits;

“Highways England” means Highways England Company Limited or such other person who is appointed as the strategic highways company in respect of the A160 Humber Road and the A160/A180 interchange pursuant to section 1 (appointment of strategic highways companies) of the Infrastructure Act 2015(b);

“Historic England” means the Historic Buildings and Monuments Commission for England established by section 32 (establishment of commission) of the National Heritage Act 1983(c);

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) (other definitions) of the Flood and Water Management Act 2010(d);

“Lincolnshire Wildlife Trust” means Lincolnshire Wildlife Trust (registered charity number 218895) of Banovallum House, Lincolnshire, LN9 5HF;

“North East Lindsey Internal Drainage Board” means the internal drainage board for the area in which the authorised development is located pursuant to section 1 (internal drainage districts and boards) of the Land Drainage Act 1991(e);

“North Lincolnshire Police” means the police force for the area in which the authorised development is located pursuant to section 1 (police areas) of the Police Act 1996(f);

“part of the authorised development” means any part of Works Nos. 1 to 6; and

“permitted preliminary works” means operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, archaeological investigations, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements.

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days’ notice of its intention to commence the authorised development.

(a) 1995 c.25.

(b) 2015 c.7.

(c) 1983 c.47.

(d) 2010 c.29.

(e) 1991 c.59 as amended by the Water Act 2014 (c.21).

(f) 1996 c.16 as amended by the Local Government and Public Involvement in Health Act 2007 (c.28) and the Policing and Crime Act 2017 (c.3).

Notice of commencement

3. Notice of the intended start of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within seven days from the date that commissioning is started.

Notice of date of final commissioning

4. Notice of the intended date of final commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such date of final commissioning and in any event within seven days from the date of final commissioning.

Detailed design

5.—(1) In relation to any part of the authorised development comprised in Work No. 1 no development of that part may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraph (d) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes; and
- (e) landscaping

(2) The details submitted pursuant to sub-paragraph (1) must be in accordance with the parameters set out in Schedule 12.

(3) No part of the authorised development comprised in Work No. 2 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority—

- (a) construction access;
- (b) operational access;
- (c) vehicle parking; and
- (d) haul routes.

(4) No part of the authorised development comprised in Work No. 3 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraphs (a), (d) and (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) hard standings, laydown and open storage areas;
- (b) contractor compounds and construction staff welfare facilities;
- (c) gatehouse;
- (d) vehicle parking and cycle storage facilities; and
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(5) No part of the authorised development comprised in Work Nos. 4 and 5, save for the permitted preliminary works, may commence until details of the following for that part have been submitted to and, after consultation with National Grid, approved by the relevant planning authority—

- (a) the route and method of installation of the gas pipeline; and
- (b) the route and method of electrical connection works comprising overground electrical cables, and control systems and cables.

(6) No part of the authorised development comprised in Work No. 6 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority—

- (a) the route and method of construction of any utilities and services connections including water pipes, connections, pumps, tanks, structures and ancillary equipment; telecommunications cables and equipment; electrical cables, connections and ancillary equipment; and control systems and cables; and
- (b) water connection works, comprising underground and overground pipes, plant apparatus, enclosures and structures, and supply cables, transformers and control system cables.

(7) Work Nos. 1, 2, 3, 4, 5 and 6 must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

Biodiversity enhancement and management plan

6.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a biodiversity protection plan for that part has been submitted to and, after consultation with Natural England, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—

- (a) measures to protect existing shrub and tree planting that is to be retained; and
- (b) biodiversity and habitat impact avoidance.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) Prior to the date of final commissioning a biodiversity enhancement and management plan must be submitted to and approved by the relevant planning authority.

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

- (a) measures to protect existing shrub and tree planting that is to be retained;
- (b) measures to enhance biodiversity and habitats;
- (c) an implementation timetable; and
- (d) biodiversity management and maintenance.

(6) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the framework biodiversity enhancement and management plan.

(8) The plan must be implemented as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

External lighting

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be in accordance with the indicative lighting strategy and include measures to

minimise and otherwise mitigate any artificial light emissions during the construction and operation of the authorised development.

(4) The schemes must be implemented as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details prior to the start of construction of the relevant part of the authorised development (other than the accesses), and where temporary, reinstated prior to the date of final commissioning, unless otherwise agreed with the relevant planning authority.

(3) Prior to the date of final commissioning details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent means of access to a highway to be used by vehicular traffic, must be submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(4) The highway accesses approved pursuant to sub-paragraph (3) must be constructed in accordance with the details approved unless otherwise agreed with the relevant planning authority.

Means of enclosure

9.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development has, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development.

(3) Any temporary fencing must be removed by the end of three months beginning with the date of completion of construction of the authorised development (or such other period as the relevant planning authority may approve).

(4) Prior to the date of final commissioning details of any proposed permanent means of enclosure must be submitted to and approved by the relevant planning authority.

(5) Any permanent means of enclosure approved pursuant to sub-paragraph (4) must be completed prior to the date of final commissioning.

(6) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(7) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

Surface water drainage

10.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface water drainage systems, including means of pollution control in accordance with the construction environmental management plan submitted pursuant to requirement 14 and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with the lead local flood

authority and North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency, the lead local flood authority, Anglian Water and North East Lindsey Internal Drainage Board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 12 (surface water, flood risk and drainage) of the environmental statement and the flood risk assessment.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Flood risk mitigation

11.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction, has, for that part, been submitted to and approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may commence until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency and North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 12 (surface water, flood risk and drainage) of the environmental statement and the flood risk assessment.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(6) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(7) The plan approved pursuant to sub-paragraph (6) must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

Contaminated land and groundwater

12.—(1) No part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in chapter 11 (ground conditions and hydrogeology) of the Environmental Statement and with the construction environmental management plan submitted pursuant to requirement 14.

(3) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a materials management plan, which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

(5) Should any remediation be required a verification report demonstrating the completion of works set out in the approved scheme and the effectiveness of the remediation must be submitted to, and approved, by the relevant planning authority prior to the date of final commissioning. The report must include results of sampling and monitoring carried out in accordance with the approved scheme to demonstrate that the site remediation criteria have been met.

Archaeology

13.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation Historic England, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with chapter 13 (cultural heritage) of the environmental statement and the framework written scheme of investigation.

(3) The scheme must identify whether any further archaeological investigations are required and, if investigations are deemed to be required, the nature and extent of the investigations in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority unless otherwise agreed with the relevant planning authority.

Construction environmental management plan

14.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan has been submitted to and, after consultation with Natural England, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction environmental management plan and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of emissions of dust;
- (c) a soil management plan;
- (d) a sediment control plan;
- (e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;
- (f) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development; and
- (g) a requirement that the detail of the fencing and protection of asset A6 is in accordance with the strategy set out in the framework written scheme of investigation.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

(4) The plan submitted must include information on the proposed piling methods, their approximate duration and timing, the likely sound power levels, and any necessary management measures or mitigation to ensure, taking into account the information in the statement to inform appropriate assessment, that there will be no adverse impact on any qualifying species of the Humber Estuary Special Protection Area and Ramsar Site.

Protection of highway surfaces

15.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant parts of Rosper Road which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs required due to use by construction traffic for the authorised development, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

Construction traffic management plan

16.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with North East Lincolnshire Council, Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 7 (traffic and transport) of the environmental statement and the framework construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal invisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact; the construction programme; and
- (c) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Construction workers travel plan

17.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after consultation with North East Lincolnshire Council, Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 7 (traffic and transport) of the environmental statement and the framework construction worker travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented prior to commencement of the authorised development, save for the permitted preliminary works, and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction hours

18.—(1) Construction work relating to the authorised development must not take place on bank holidays or otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0800 to 1800 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor outside the hours of 0700 to 1900 hours on Monday to Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits which has been agreed with the relevant planning authority;
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, which are—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0730 to 0800 and a shut-down period from 1800 to 1830 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(6) In this requirement—

“shut down period” means the period during which construction workers may return to the site office to return safety and other equipment, attend debrief sessions, change clothing and prepare to leave site; and

“start-up period” means the period during which construction workers may arrive at site, sign in, don personal protective equipment, attend safety and other briefings and mobilise on site.

Control of noise - operation

19.—(1) Prior to the date of final commissioning a scheme for the management and monitoring of noise during operation of the authorised development must be submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include the results of daytime and night time baseline noise monitoring that has been carried out by the undertaker for the purposes of this requirement as agreed with the relevant planning authority.

(3) Noise (in terms of the BS4142:2014 rating level) from the operation of the authorised development must be no greater than 3dB higher than the defined representative background sound level during each of the daytime and the night time, adjacent to the nearest residential properties at locations agreed with the relevant planning authority.

(4) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

(5) In this requirement—

(a) “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700; and

(b) “defined representative background sound level” means the sound level measured during the monitoring secured by sub-paragraph (2).

Piling and penetrative foundation design

20.—(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

Waste management on site - construction wastes

21.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in the framework construction environmental management plan.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Restoration of land used temporarily for construction

22.—(1) Prior to the date of final commissioning a scheme for the restoration of any land within the Order limits which has been used temporarily for construction must be submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the date of final commissioning (or such other period as the relevant planning authority may approve), in accordance with the restoration scheme approved in accordance with sub-paragraph (1).

Employment, skills and training plan

23.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction and employment opportunities during operation of the authorised development has been submitted to and, after consultation with North East Lincolnshire Council, approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed with the relevant planning authority.

Decommissioning

24.—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for their approval a decommissioning environmental management plan.

(2) No decommissioning works may be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the scheme.

(4) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Foul water drainage

25.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until full details of a scheme, for the connection, conveyance, treatment and disposal of mains foul water drainage on and off site has been submitted to, and after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority.

(2) If it is demonstrated as part of the information submitted pursuant to sub-paragraph (1) that it is not practicable or reasonable to connect to a mains system, an alternative strategy for the provision and implementation of wastewater treatment must be submitted to and, after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority. Any non-mains drainage proposal must include a management and maintenance plan to ensure that it will not cause pollution to the water environment.

(3) The schemes approved pursuant to sub-paragraph (1) and (where relevant) sub-paragraph (2) must be implemented and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Requirement for written approval

26. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

27.—(1) All details submitted for approval of the relevant planning authority under these requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 39 (certification of plans etc.).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

28.—(1) Where the words “unless otherwise agreed with the relevant planning authority” appear in the above requirements, any such approval or agreement may only be given in relation to non-

material amendments and where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

SCHEDULE 3

Articles 8, 9 and 12

STREETS SUBJECT TO STREET WORKS

Table 1

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the District of North Lincolnshire	Rosper Road	Works to repair and resurface the access and to maintain visibility splays in the areas cross hatched in red and blue at the point marked C on sheet 1 of the access and rights of way plans
In the District of North Lincolnshire	Rosper Road	Works to repair and resurface the access and to maintain visibility splays in the area cross hatched in red at the point marked A on sheet 1 of the access and rights of way plans
In the District of North Lincolnshire	Rosper Road	Works for the installation and maintenance of Work No. 6 in the area cross hatched in blue at the point marked B on sheet 1 of the access and rights of way plans

SCHEDULE 4

Article 10

ACCESS

PART 1

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE HIGHWAY
AUTHORITY

Table 2

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of North Lincolnshire	Rosper Road	That part of the access in the area cross hatched in blue at the point marked C on sheet 1 of the access and rights of way plans

PART 2

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET
AUTHORITY

Table 3

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of North Lincolnshire	Rosper Road	That part of the access cross hatched in red at the point marked A on sheet 1 of the access and rights of way plans
In the District of North Lincolnshire	Rosper Road	That part of the access cross hatched in red at the point marked C on sheet 1 of the access and rights of way plans

SCHEDULE 5

Article 11

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF
STREETS

Table 4

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of street</i>
In the District of North Lincolnshire	Rosper Road	Temporary closure of the part of the street cross hatched in blue at the point marked B on sheet 1 of the access and rights of way plans

SCHEDULE 6

Article 21

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Table 5

<p>(1) <i>Class of compulsory acquisition and the creation of rights and the imposition of restrictions for the installation and use of the authorised development</i></p>	<p>(2) <i>Means of all rights and restrictions necessary for the undertaker and/or those authorised by the undertaker</i></p>
(a)	To pass and repass on foot, with or without vehicles, plant and machinery
(b)	To construct, maintain, improve and protect access routes
(c)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground and overground gas pipeline up to 600 millimetres (nominal internal diameter), control systems and cables and any other ancillary apparatus and any other works as necessary
(d)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an overground electrical connection of up to 400 kilovolt, control systems and any other ancillary apparatus and any other works as necessary
(e)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve water pipes, connections, structures and ancillary equipment; telecommunications cables and equipment; compressed air connections and ancillary equipment; electrical cables, connections and ancillary equipment; control systems and cables; closed circuit television and security system connections; and any other ancillary apparatus and any other works as necessary
(f)	To retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground gas pipeline, control systems and cables and any other ancillary apparatus and any other works as necessary
(g)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve water pipes, connections, structures and ancillary equipment and any other ancillary apparatus and any other works as necessary
(h)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment and any other ancillary apparatus and any other works as necessary

(i)	To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve gatehouses and weighbridges and any other ancillary apparatus and any other works as necessary
(j)	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions which may obstruct, interrupt or interfere with the exercise of rights

Table 6

<i>(1)</i> <i>Plot</i>	<i>(2)</i> <i>Class of rights listed in Table 5 applicable to the plot</i>
2	(a), (b), (h), (i) and (j)
6	(a) and (g)
7	(a) and (g)
8	(a), (b), (h), (i) and (j)
9	(a), (b), (h), (i) and (j)
10	(a), (b), (h), (i) and (j)
12	(a), (e) and (j)
14	(a), (e), (b), (h), (i) and (j)
15	(a), (b), (h), (i) and (j)
16	(a), (c) and (j)
17	(a), (d), (e), (c) and (j)
18	(a), (e) and (j)
20	(a), (b), (c), (h), (i) and (j)
21	(a), (b), (h), (i) and (j)
22	(a), (b), (e), (h), (i) and (j)
23	(a), (b), (c), (d), (e), (h), (i) and (j)
24	(a), (d) and (j)
25	(a), (b), (h), (i) and (j)
26	(a), (b), (h), (i) and (j)
27	(a), (e) and (j)
28	(a), (b), (c), (e), (h), (i) and (j)
29	(a), (b), (c), (e), (h), (i) and (j)
30	(a), (b), (d), (h), (i) and (j)
31	(a), (b), (h), (i) and (j)
32	(a), (e), (b), (h), (i) and (j)
34	(a), (b), (h), (i) and (j)
35	(a), (b), (c) (h), (i) and (j)
33, 37-111	(a) and (f)

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND IMPOSITION OF NEW RESTRICTIONS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph 2(2).

(2) For section 5A (5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 7 to the Immingham Open Cycle Gas Turbine Order 20[X]; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the Immingham Open Cycle Gas Turbine Order 20[X]) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 18 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 21 (compulsory acquisition of rights etc.)—

- (a) with the modification specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(a) 1973 c.26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 of the 1965 Act there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 18, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on a specified date), 12(c) (penalty for unauthorised entry) and 13(d) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(e) (protection for interests of tenants at will etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

-
- (a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
 - (b) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c.22).
 - (c) Section 12 was amended by section 56(2) of and part 1 of Schedule 9 to, the Courts Act 1971 (c.23).
 - (d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).
 - (e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act (execution of declaration) as applied by article 23 of the Immingham Open Cycle Gas Turbine Order 20[X] (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

(2) But see article 24(3) of the Immingham Open Cycle Gas Turbine Order 20[X] (acquisition of subsoil only) which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

- 11.** In making its determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right or the imposition of the covenant,
 - (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
 - (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 7

<i>(1)</i> <i>Plot</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
01	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
03	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
04	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
11	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
13	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6
19	Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreement to adopt water main or service pipe at future date) of the Water Industry Act 1991;
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act, and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986;

(a) 1989 c.29.

- (c) water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker,

that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal.

(3) If in accordance with the provisions of this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2
**FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS**

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in section 106 (application of the electronic communications code) of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide; and

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106(5) of the 2003 Act and who is an operator of a network.

13. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A (the electronic communications code) of the 2003 Act.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

15. This Part of this Schedule does not apply to—

(a) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

(b) Added by Schedule 1 of the Digital Economy Act 2017 (c.30).

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

17. For the protection of National Grid referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

18. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991(a);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989(b), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply,

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 (interpretation) of the Order and commencement is to be construed to have the same meaning save that for the purposes of this Part only the term commence and commencement include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and

(a) 1991 c.22.
 (b) 1989 c.29.

interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means—

- (a) National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH; and
- (b) National Grid Gas plc (company number 200600) whose registered office is at 1-3 Strand, London WC2N 5EH,

as the context requires; and

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise; and/or
- (c) includes in relation to gas apparatus any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

On Street Apparatus

19. Except for paragraphs 20 (apparatus in stopped up streets), 25 (retained apparatus: protection), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of undertakers in streets subject to temporary prohibition or restriction

20. Notwithstanding a temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction on the use of streets), National Grid will be at liberty at all times to take all necessary access across any street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Protective works to buildings

21.—(1) The undertaker, in the case of the powers conferred by article 33 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity and/or gas, as the case may be, by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof may be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

22.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement, such agreement not to be unreasonably withheld.

(2) As a condition of agreement between the parties in paragraph 22(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affect the provision of any enactment or apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variation by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other

enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by National Grid under paragraph 25 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (3).

Removal of apparatus

23.—(1) If, in the exercise of the agreement reached in accordance with paragraph 22 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

24.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the

whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration under paragraph 42 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

25.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised

development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 28.

Retained apparatus: protection of electricity undertaker

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

- (g) assessment of earth rise potential if reasonably required by National Grid’s engineers; and
 - (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraphs (2) or (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
 - (b) must not be unreasonably withheld.
- (6) In relation to any work to which sub-paragraph (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grids’ satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days’ notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
 - (b) comply with sub-paragraph (12) at all times.
- (12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid’s policies for development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

Expenses

27.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 23(3); and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of National Grid with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 28 applies where it is within National Grid’s reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control.

Enactments and agreements

29. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

30.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or an undertaker requires the removal of apparatus under paragraph 23(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 27, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and each undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the statutory undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by National Grid or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of the agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Save for differences or disputes arising under paragraphs 23(2), 23(4), 24(1), 25 and 27(5) any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

Notices

33. The plans submitted to National Grid by the undertaker pursuant to paragraphs 25(1) and 26(1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF PHILLIPS 66 LIMITED

Benefit of protective provisions

34. For the protection of P66, the following provisions, unless otherwise agreed in writing between the undertaker and P66, have effect.

Interpretation

35. In this Part of this Schedule—

“applicable legislation” means European Union directives and regulations, statutes, regulations or subordinate or local legislation or notices or other requirements or directions of any relevant body (including any public body or agency or other authority) and any formal guidance notes or codes of conduct issued by or under the same, and common law but only in so far as the same are valid and have the force of law relating to—

(a) the use of or any activity on the VPI pipeline corridor; or

- (b) any process, conduct or activity (including without limit treatment, transport, storage, disposal or re) involving any hazardous material on under above in or about the VPI pipeline corridor; or
- (c) the health and safety of employees, visitors, contractors and other persons at or in the vicinity of the VPI pipeline corridor; or
- (d) the exercise of the specified rights; or
- (e) otherwise the protection of the environment; or
- (f) any requirement pertaining to reporting, notification or disclosure of information to any body or person concerning any matter referred above;

“affected assets” means apparatus owned or operated by P66 on or above ground which in the reasonable opinion of P66 would have the potential to be physically affected by the relevant works;

“apparatus” means any part of the pipelines and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(a), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“CHP land” means the land on which the VPI Immingham CHP power station is sited as at the date of this Order, at Rosper Road, near Immingham;

“contamination” means any contamination by hazardous material which harms or damages or otherwise adversely affects or presents a significant risk of harm or damage or other adverse effects or a significant possibility of such harm or damage or other adverse effects to the environment or in relation to controlled waters the presence of substances which cause or are likely to cause pollution of controlled waters;

“controlled waters” has the meaning given to it in Section 104 of the Water Resources Act 1991;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“decision” means the decision of the relevant local planning authority (or of an inspector appointed by the Secretary of State to decide an appeal lodged against the local planning authority’s decision) to grant or refuse (as the case may be) a P66 planning permission;

“described land” means any land owned by or acquired by P66 as lies within the limits of lateral deviation authorised by a P66 planning permission;

“development” has the meaning given to it by section 55 of the Town and Country Planning Act 1990;

“development plan” means the development plan or a local plan operative in respect of any part of the described land following adoption of it by the local planning authority;

“diversion route” means the route to be agreed or determined in accordance with paragraph 98 of this Part of this Schedule;

“engineer” means an engineer appointed by P66 for the purposes of this Order;

“existing gas pipeline” means that part of the existing underground gas pipeline within the Order land which connects the VPI Immingham CHP power station as at the date of this Order, at Rosper Road, near Immingham, to the National Grid Feeder No.9 located to the west of South Killingholme;

(a) 1962 c.58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 Schedule 2 to, the Energy Act 2011 (c.16), S.I. 2000/1937 and S.I. 2011/2305.

“good industry practice” means the standards and practice which would reasonably and ordinarily be expected from a skilled and experienced operator of the relevant apparatus or infrastructure in the United Kingdom;

“hazardous material” means any substance (whether in solid, liquid or gaseous form) which alone or in combination with others is capable of polluting the environment or capable of causing significant harm to the environment;

“HOR” means the Humber Oil Refinery which at the date of this Order is owned and operated by P66;

“local planning authority” means the planning authority responsible for determining an application for P66 planning permission;

“P66” means Phillips 66 Limited (Company number 00529086) and any subsequent owner of the pipelines or HOR;

“P66 address” means the postal address details to be provided pursuant to paragraph 103;

“P66 email” means the email address details to be provided pursuant to paragraph 103;

“P66 land” means any interest in land owned by P66 on the date of this Order and within the Order land;

“P66 planning permission” means a planning permission within the meaning of Section 336 of the 1990 Act;

“pipelines” means the 3 pipelines located in the pipeline corridor crossing the Order limits which at the date of this Order are owned and operated by P66 for the passage of multipurpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962;

“pipeline corridor” means the corridor within the Order land within which the pipelines are located;

“planning application” means an application for a P66 planning permission;

“protected land” means such parts of the Order land as fall within the pipeline corridor;

“relevant plan provision” means a policy or provision contained in a development plan restricting development or to the effect that no development may be carried out in some part of the described land where either—

- (a) the policy or provision is included for any reason related to the position of the VPI apparatus; or
- (b) the decision to apply the policy or provision to that part of the described land was made for any reason related to the position of the VPI apparatus;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any of the pipelines;

“scheme of works” means such works designed to investigate, rectify, remove and/or treat and render harmless contamination and its effects including making good any damage caused in so doing;

“specified asset” means any asset owned and operated by P66 and forming part of the P66 land which would be physically affected by the specified works;

“specified rights” means the rights as may be acquired by the undertaker in any part of the P66 land pursuant to the powers in Part 5 of this Order;

“specified work” mean any work carried out pursuant to the specified rights;

“VPI apparatus” means gas pipes, water pipes, electricity cables and other conducting media and associated supports, gantries, bridges, ladders, steps, gantries, walkways, cables, poles and stays, security cameras and ancillary equipment necessary for conducting steam, heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities for the transport of all or any utilities;

“VPI pipeline corridor” means the corridor of land along the existing gas pipeline within which the undertaker acquires specified rights; and

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of the undertaker and their principal contractors’ management of change procedures;
- (c) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (d) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;
- (e) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development;
- (f) details of the emergency response plan as prepared in consultation with local emergency services and P66;
- (g) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works;
- (h) any further particulars provided in accordance with paragraph 36(3) or 53(1);
- (i) a description of the land upon which the proposed works will be carried out including a written record of the ground conditions of the land and details of any historic land contamination; and
- (j) a description of any trees that will be removed pursuant to the carrying out of the proposed works.

Authorisation of works details affecting pipelines or protected crossings

36.—(1) Before commencing any part of a relevant work the undertaker must submit the works details to P66 in accordance with paragraph 103.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 60 days from the receipt of the works details under sub-paragraph (2), reasonably require.

37. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by P66; or
- (b) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by an expert under paragraph 39(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 39(1).

38.—(1) Any authorisation by P66 required under paragraph 37(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for P66 to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the pipelines.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 37 and any conditions imposed on the authorisation under subparagraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 39(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 39(3).

39.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 36(1) within 60 days of receipt by P66 under paragraph 36(2) and no further particulars have been requested under paragraph 36(3); or
- (b) authorisation has not been given within 45 days of receipt by P66 of the further particulars supplied under paragraph 36(3),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 38(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 102.

(3) Where the matter is referred to an expert under paragraph 39(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 38(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 102.

Notice of works

40. The undertaker must provide to P66 a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about relevant works

41. Before carrying out a relevant work the undertaker must—

- (a) provide P66 with baseline data for any existing cathodic protection of the affected asset; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

Monitoring for damage to pipelines

42.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify P66 to enable repairs to be carried out to the reasonable satisfaction of P66.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of P66—

- (a) afford P66 all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to P66 its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of P66 to have effectively repaired the affected asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the repairs exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which would be payable to P66 under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where P66 agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then P66 is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

43.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and P66 must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform P66;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

44.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 40; or
- (b) determined by the expert following a determination under paragraph 102 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Restriction on exercising powers

45. The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on P66, including any disruption to access and supplies of utilities and other services that are required by P66 in order to carry out its operations.

Insurance

46.—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 48 in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 102, and evidence of that insurance must be provided on request to P66.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify P66 of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting P66 during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph 102.

47. If P66 has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 46—

- (a) P66 may refer the matter to an expert for determination under paragraph 102; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 102 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

48.—(1) The undertaker must repay to P66 all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

- (a) authorisation of works details submitted by the undertaker under paragraph 36 and the imposition of conditions under paragraph 38;

- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 40;
- (c) the repair and testing of a pipeline or protected crossing under paragraph 42; and
- (d) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 46,

including the reasonable costs incurred by P66 in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to P66 to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep P66 indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage which may be occasioned or reasonably incurred by P66—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

and the fact that any act or thing may have been done by P66 on the protected land on behalf of the undertaker or in accordance with plans approved by or on behalf of P66 or in accordance with any requirement of the engineer appointed by P66 or under his supervision does not (if it was done without negligence on the part of P66 or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) P66 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) P66 must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule.

(5) In the assessment of any sums payable to P66 under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, P66 if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

Further protection in relation to the exercise of powers under the Order

49. The undertaker must give written notice to P66 of the terms and level of cover of any guarantee or alternative form of security put in place and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

50. The undertaker must give written notice to P66 if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (consent to transfer benefit of Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

51. The undertaker must, when requested to do so by P66, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 39

(certification of plans etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

52. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to P66.

Exercise of the specified rights

53.—(1) Before commencing any part of a specified work the undertaker must submit the works details to P66.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 60 days from the receipt of the works details under sub-paragraph (2), reasonably require.

54. No part of a specified work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that specified work under paragraph 53 have been authorised by P66; or
- (b) the works details supplied in respect of that specified work under paragraph 53 have been authorised by an expert under paragraph 56(3) or
- (c) authorisation is deemed to have been given in accordance with paragraph 56(1).

55.—(1) Any authorisation by P66 required under paragraph 54(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the specified asset; and
- (b) the requirement for P66 to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the specified asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the specified asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the HOR it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the HOR.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 54 and any conditions imposed on the authorisation under sub-paragraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 56(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 56(3).

56.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 53(1) within 60 days of receipt by P66 under paragraph 53(2) and no further particulars have been requested under paragraph 53(3); or

(b) authorisation has not been given within 45 days of receipt by P66 of the further particulars supplied under paragraph 53(3), approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 55(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 55(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 102.

(3) Where the matter is referred to an expert under sub-paragraph (2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 55(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under sub-paragraph (2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 102.

57. In the exercise of the specified rights the undertaker must—

- (a) take all reasonable and proper precautions to ensure that damage to property located on any part of the P66 land is minimised or avoided so far as reasonably practicable including to any structures in, on or under that land or to any drains or other conducting media on or under it;
- (b) cause the least practicable disturbance to or interference with the business and operations of P66;
- (c) ensure that all maintenance work is carried out under the supervision of an engineer acting on behalf of the undertaker who will appoint a local representative to supervise the execution of the works and to maintain contact with P66;
- (d) provide P66 with the name, address and telephone number of the person appointed under sub-paragraph (c); and
- (e) accept responsibility for the actions and omissions of its contractors and of their subcontractors and of all persons employed in connection with works, except for actions carried out or omissions directed expressly at the request of P66.

58. The undertaker must with all practicable speed reinstate and put any part of the P66 land opened or broken up in the exercise of the specified rights into as good a condition in all respects so far as is reasonably practicable as it was in before it was opened or broken up.

59. The undertaker must following a written request by P66 replace or restore any growing crops, trees, hedges, bushes or plants removed in the exercise of the specified rights, except where in the reasonable opinion of the undertaker they may cause damage to the VPI apparatus.

60. The undertaker must keep the VPI apparatus in good and substantial repair and condition in accordance with good industry practice.

61. In exercising the specified rights the undertaker must at its own cost comply with all applicable legislation.

62. The undertaker must as soon as reasonably practicable following a written request from P66 provide written information in relation to the VPI apparatus, the VPI pipeline corridor, compliance with applicable legislation, or the exercise of the specified rights or any activity incidental thereto, in each case as P66 may reasonably require.

63. The undertaker must indemnify P66 against losses incurred or sustained directly as a consequence of or in connection with any breach of any of obligations on the part of the undertaker in this Part of this Schedule or any act or omission of the undertaker, its employees, contractors or agents or any person acting expressly or impliedly with the undertaker's authority

or permission including all costs and expenses incurred by P66 in connection with any steps it may take to remedy any breach by the undertaker under this Part of this Schedule.

64. The undertaker must permit P66 and its agents, contractors and workmen and others authorised by P66 with all necessary plant, machinery and equipment at all times in cases of emergency and otherwise at any reasonable times on reasonable prior written notice to enter the VPI pipeline corridor for such period as is reasonably necessary to examine the VPI pipeline corridor;

65. P66 must take all reasonable and proper precautions to ensure that in undertaking any examination pursuant to paragraph 64 any damage to the VPI apparatus is avoided or minimised.

66. P66 must—

- (a) not erect construct or place any building or structure, carry out any excavation or plant or suffer to be planted or otherwise permit to subsist any trees on the VPI pipeline corridor without the written consent of the undertaker;
- (b) not materially raise or lower the existing level of the surface of the VPI pipeline corridor without the written consent of the undertaker;
- (c) not undermine or damage the VPI apparatus, the VPI pipeline corridor or take such other action as may interfere with the use and free flow and passage of the relevant media through the VPI apparatus or to do anything which would reasonably foreseeably inhibit or prevent the undertaker from complying with this Part of this Schedule;
- (d) on all occasions when P66 may suffer any loss or anticipate or receive any third party claim against it resulting from any action by the undertaker or in any way arising out of the existence of the VPI apparatus P66 will use all reasonable endeavours to mitigate its losses; and
- (e) have due regard in the light of information made available in writing by the undertaker and to the safety and integrity of the VPI apparatus in carrying out operations on any part of the P66 land.

67. The undertaker must take all reasonable precautions to ensure that other than authorised discharges no hazardous material leaks, spills or escapes are discharged from the VPI apparatus and that no contamination will occur as a result of the use by the undertaker of the pipeline corridor or the exercise of its specified rights.

68.—(1) The undertaker must indemnify and keep P66 indemnified from and against all losses incurred in respect of any contamination in or on the VPI pipeline corridor or which escapes or migrates from the VPI pipeline corridor to the HOR which relates to the exercise of the specified rights.

(2) The undertaker is not liable under sub-paragraph (1) in respect of any contamination unless P66 gives written notice to the undertaker providing reasonable particulars of the basis of its claim including an estimate of the amount of such claim.

(3) P66 must give written notice under sub-paragraph (2) as soon as reasonably practicable.

69.—(1) If during the exercise of the specified rights it appears to the undertaker that there is contamination in or on the VPI pipeline corridor the undertaker must give written notice of such contamination to P66.

(2) On receipt of such written notice under sub-paragraph (1) the undertaker and P66 may jointly instruct environmental consultants in terms agreed between the parties to produce and implement a scheme of works.

70. P66 must use its reasonable endeavours to comply at the cost of the undertaker and (save in the case of emergency) upon notice with all reasonable written requests of the undertaker in relation to the use of the VPI pipeline corridor that are requested for the safety and protection of the VPI apparatus.

71.—(1) Subject to sub-paragraph (2) P66 must not make any admission of liability to a third party making or bringing a claim, demand or proceedings or settle or compromise it without the consent in writing of the undertaker, such consent not be unreasonably withheld or delayed.

(2) Sub-paragraph (1) does not apply to the extent that such conduct is contrary to what is required by law or by any authority or compliance with the sub-paragraph would have an adverse effect on the liabilities or goodwill of P66.

(3) The undertaker is entitled, with the consent of P66 (such consent not to be unreasonably withheld or delayed unless to give such consent might reasonably be considered likely to have a materially adverse effect on the liabilities or goodwill of P66), to negotiate a settlement of any claim, demand or proceedings against P66 and to conduct on behalf of P66 any litigation which may arise in respect of the claim, demand or proceedings.

72. The undertaker is not required to comply with this Part of this Schedule in a case of emergency but in that case it must give to P66 notice as soon as is reasonably practicable of the emergency and must comply with this Part of this Schedule in so far as is reasonably practicable in the circumstances.

73. Any information or data obtained by the undertaker from carrying out activities under this Part of this Schedule must be treated by the undertaker as confidential and must only be disclosed to a third party who is connected with the undertaker's activities and who needs the relevant information or data, or it may be disclosed with the consent of P66 or where the undertaker is required to disclose information or data by law or by a court of law or other competent authority.

74. Where any trees are removed by the undertaker in carrying out a specified work, all timber will remain the property of P66 and will be cut and disposed of in accordance with the reasonable requirements of P66.

75. Where timber is cut and disposed of by the undertaker pursuant to paragraph 74 the undertaker will compensate P66 for any loss thereby properly and reasonably incurred.

76. Unless otherwise agreed between the undertaker and P66, any fencing required for the purposes of exercising the specified rights will comprise of a demarcation fence of posts and wire provided that where necessary such fencing complies with any requirement of any statutory or other body or pursuant to any statute or other obligation.

77. All temporary fencing will be maintained in position during the carrying out of any specified work and until reinstatement and will then be removed by and at the cost of the undertaker (unless otherwise agreed with P66).

78. In exercising the specified rights, and if reasonably required by P66—

- (a) topsoil excavated during a specified work will be kept apart from all other excavated material and will not be run over by any machinery and all cultivated turf will be carefully reinstated or replaced with turf of equivalent quality;
- (b) all trenches dug during a specified work will be backfilled as soon as reasonably practicable and care will be taken to ensure that backfill material is properly consolidated in accordance with good industry practice;
- (c) excavated material will be replaced with topsoil uppermost so as to restore the working area to its former condition so far as is reasonably practicable and no large stones are left on the surface after reinstatement of the trench;
- (d) large stones and any surplus subsoil will be removed by the undertaker where specifically requested by P66 and where deemed by the undertaker to be necessary;
- (e) all construction debris, tools, equipment, temporary work and litter will be removed from the working area around a specified work as soon as reasonably practicable;
- (f) the topsoil of agricultural land will be left in a loose and workable condition to its full depth; and
- (g) compacted subsoil will be loosened with a cultivator where the topsoil has been removed and before it is replaced.

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

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

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

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

83. Particular care will be taken to ensure that minimum damage or disturbance to land drains is caused by the exercise of the specified rights. The position of all land drains cut or disturbed during excavation will be prominently marked by pegs at both sides of the trench immediately following their location. Such land drains will also be logged and a subsequent land drainage record kept by the undertaker for future reference. The undertaker will engage a land drainage expert to design appropriate pre-construction drainage, where necessary, and also any necessary land drainage reinstatement. The methods to be employed in repairing damage to field drainage systems will be agreed with P66 and, failing agreement, will be referred to an expert in accordance with paragraph 103.

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

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

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

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

(and will oblige its contractors to do so) provided that P66 will pay any costs reasonably incurred by the undertaker in so doing.

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

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

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

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

91. The undertaker will not light fires on the VPI pipeline corridor without the consent of P66.

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

Diversion Provisions

93. In the following provisions of this Part of this Schedule the described land excludes the CHP land unless and until P66 has permanent occupational control of the CHP land (excluding land in which rights have been acquired by the undertaker under article 21 of the Order).

94. If P66 wishes to carry out any development of the described land it must—

- (a) supply to the undertaker full details of the proposed development in writing as soon as reasonably possible and in any event not less than two months before the submission of the planning application for the proposed development and keep the undertaker reasonably informed in writing of the progress of the planning application;
- (b) have due regard to any reasonable proposals of the undertaker for the purpose of safeguarding the VPI apparatus and minimising the interference to the VPI apparatus and its use; and
- (c) use its reasonable endeavours with the assistance (if requested) of the undertaker (whose assistance is to be at no cost to P66) to arrange the development so as to avoid the diversion of the VPI apparatus, and must consult with the undertaker and have due regard to the undertaker's comments and representations.

95. P66 must submit a copy to the undertaker of any P66 planning permission for development in on over or under the described land within a period of 28 days of receipt of the decision.

96.—(1) If following consultation under paragraph 94—

- (a) a P66 planning permission is granted but the development is prevented for any reason relating to the presence or position of the VPI apparatus or by such P66 planning permission being made subject to a condition which prevents the development for any reason related to the position of the VPI apparatus or renders it unviable; or
- (b) a P66 planning permission for the development is refused for any reason related to the position of the VPI apparatus or the existence or effect of a relevant plan provision,

then P66 must give written notice to the undertaker.

(2) Any notice given pursuant to sub-paragraph (1) must state whether P66—

- (a) intends to submit a further planning application, planning appeal or other representation to the relevant planning authority which seeks to address the reason that is preventing the

development or rendering it unviable or that has otherwise resulted in the refusal of the P66 planning permission (insofar as such reason relates to the position of the VPI apparatus); or

(b) requires the diversion of the VPI apparatus or part of the VPI apparatus.

(3) Where P66 give written notice that it intends to submit a further planning application, planning appeal or other submission to the local planning authority—

(a) the undertaker must use reasonable endeavours to assist P66 so far as matters relate to the VPI apparatus; and

(b) P66 must comply with the requirements under paragraph 94.

(4) Any diversion of the VPI apparatus pursuant to sub-paragraph (1) must be only the extent of diversion that is required in order to ensure that the development notified by P66 to the undertaker pursuant to paragraph 94 is not prevented.

(5) Following receipt of the notice under sub-paragraph (1) the undertaker must confirm in writing to P66 within three months of the date of receipt of the notice whether it will either—

(a) carry out such works to the VPI apparatus as may be necessary so that the position of the VPI apparatus does not materially affect the development; or

(b) divert the VPI apparatus or part of it along the diversion route.

97.—(1) If P66 obtains a P66 planning permission for the development but does not give notice in accordance with paragraph 96 it must nevertheless notify the undertaker that a P66 planning permission has been obtained and provide a copy of it to the undertaker.

(2) If following receipt of the notice under sub-paragraph (1) the undertaker is of the reasonable opinion that the development would be likely to cause damage to the VPI apparatus or any interference with the exercise of the specified rights it may at its sole cost and expense divert the VPI apparatus or part thereof along the diversion route or carry out any such works as are described in paragraph 96(5)(a).

(3) Where the undertaker elects to carry out works under sub-paragraph (2) it is not required to implement any such works before the expiry of the period of six months from the date of the notice under sub-paragraph (1).

98. The diversion route must be within the described land and must be agreed between P66 and the undertaker.

99. If the VPI apparatus is to be diverted under any paragraph of this Part then P66 must grant the necessary rights to the undertaker to carry out the diversion, and to maintain and use the relevant diverted VPI apparatus.

100. Subject to paragraph 97(3), where the undertaker elects to carry out works under paragraph 96(5) it must use its reasonable endeavours to carry out such works as soon as reasonably practicable.

101. If there is a dispute about the diversion route or the rights to be granted pursuant to paragraph 98 then either party may refer the matter to an expert for determination under paragraph 102 of this Part of this Schedule.

Expert determination

102.—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) the constructability notes; and
- (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

Service of Notices

103.—(1) P66 must as soon as reasonably practicable following a written request from the undertaker provide details of the P66 address and P66 email.

(2) A notice or other document required or authorised to be served on P66 under this Part of the Schedule (except under sub-paragraph (1)) must be served—

- (a) by post to the P66 address; and
- (b) by electronic transmission to the P66 email,

or to such other postal or electronic mail address which P66 may from time to time notify to the undertaker.

(3) In the event that P66 does not provide the P66 address and P66 email within 14 days of the undertaker's request pursuant to sub-paragraph (1) then sub-paragraph (2) does not apply and the undertaker must—

- (a) serve any notice or document on P66 at its registered office; and
- (b) send a copy of such notice or document to the HOR marked for the attention of the refinery manager.

PART 5

FOR THE PROTECTION OF ANGLIAN WATER

104. For the protection of Anglian Water, the following provisions, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

105. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

106. The undertaker must not interfere with, build over or near to any apparatus within the Order land or carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker in writing.

107. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained by the undertaker, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has

agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be carried out only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

108. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, an alteration or extension must not take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

109. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement with Anglian Water, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 42 (arbitration).

110. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

111. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection as other Anglian Water apparatus.

112. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 107 to 109 and 111 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water.

113. Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part 5 apply. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how any claim has been minimised. The undertaker shall only be liable under paragraph 112 for claims reasonably incurred by Anglian Water.

PART 6

FOR THE PROTECTION OF CLH PIPELINE SYSTEM (CLH-PS) LTD

114. For the protection of CLH Pipeline System (CLH-PS) Limited, the following provisions, unless otherwise agreed in writing between the undertaker and CLH Pipeline System (CLH-PS) Ltd, have effect.

115. In this Part of this Schedule—

“CLH” means CLH Pipeline System (CLH-PS) Ltd (company number 09497223); and

“the pipeline” means the pipeline crossing the Order limits owned and operated by CLH used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962.

116. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipeline and access to it, the undertaker must submit to CLH plans and sections of the proposed works and such further particulars as CLH may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

117. No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph 116 have been approved by CLH.

118. Any approval of CLH required under paragraph 117 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CLH may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for CLH to have uninterrupted and unimpeded access to the pipeline at all times.

PART 7

FOR THE PROTECTION OF CENTRICA STORAGE LIMITED

119. For the protection of Centrica Storage Limited, the following provisions, unless otherwise agreed in writing between the undertaker and Centrica Storage Limited, have effect.

120. In this Part of this Schedule—

“Centrica” means Centrica Storage Limited (company number 03294124); and

“the pipeline” means the pipeline crossing the Order limits owned and operated by Centrica used at various times for the passage of stabilised liquid condensate and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962.

121. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipeline and access to it, the undertaker must submit to Centrica plans and sections of the proposed works and such further particulars as Centrica may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

122. At the same time as providing the plans and sections to Centrica pursuant to paragraph 121, the undertaker must also provide a copy of the construction traffic management plan and the construction environmental management plan, in each case being the document approved by the relevant planning authority pursuant to the requirements or where no such approval has been given at that time, the draft of the relevant document.

123. No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph 121 have been approved by Centrica.

124. Any approval of Centrica required under paragraph 123 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Centrica may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and

- (b) the requirement for Centrica to have uninterrupted and unimpeded access to the pipeline at all times.

125.—(1) Subject to sub-paragraphs (2) to (5), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to the pipeline (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of Centrica; or
- (b) there is any interruption in the supply of the service provided by Centrica,

the undertaker must bear and pay the cost reasonably incurred by Centrica in making good such damage or restoring the supply and make reasonable compensation to Centrica for any other direct expenses, loss, damages, penalty or other direct costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Centrica, its officers, servants, contractors or agents.

(3) Centrica must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The total liability of the undertaker in respect of this paragraph 125 shall be limited to the sum of ten million pounds (£10,000,000) for any one event or series of connected events.

(5) Any difference arising between the undertaker and the Centrica under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

PART 8

FOR THE PROTECTION OF ABLE HUMBER PORTS LIMITED

126. For the protection of Able Humber Ports Limited (company no. 107029) as referred to in this Part of this Schedule the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Able.

127. In this Part of this Schedule—

“Able” means Able Humber Ports Limited (company no. 107029) whose registered office is at 44 Esplanade, St Helier, Jersey JE4 9WG;

“the Able authorised development” means the development authorised by the Able Order;

“the Able Order” means the Able Marine Energy Park Development Consent Order 2014(a);

“the Able Order land” means the Order land (as defined in the Able Order) or any part of it;

“the Able Order limits” means the Order limits as defined in the Able Order;

“the OCGT authorised development” means the development authorised by this Order; and

“the respective authorised developments” means the OCGT authorised development and the Able authorised development.

Co-operation during construction

128. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent—

- (a) the construction, operation, use or maintenance of the Able authorised development; or

(a) S.I. 2014/2935

(b) access to all parts of the Able authorised development, otherwise than with the prior written consent of Able.

129. If the undertaker proposes to alter the layout of the existing highway access points within plots 2, 8 or 9, it must not submit written details for numbered work 2 so far as it is within those plots for approval to the relevant planning authority in accordance with requirement 5(3) or requirement 8(1) without first obtaining the written consent of Able in respect of the design and layout of the relevant part of numbered work 2.

130. The undertaker must not submit written details for numbered work 6 so far as it is within plots 6 or 7 for approval to the relevant planning authority in accordance with requirement 5(6) without first obtaining the written consent of Able in respect of the siting, design and layout of the relevant part of numbered work 6.

131.—(1) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Able Order land otherwise than with the prior written consent of Able.

(2) The articles referred to in sub-paragraph (1) are—

- (a) article 8 (power to alter layout etc. of streets);
- (b) article 9 (street works);
- (c) article 10 (construction and maintenance of new or altered means of access);
- (d) article 11 (temporary prohibition or restriction of use of streets);
- (e) article 12 (access to works);
- (f) article 14 (traffic regulation);
- (g) article 16 (authority to survey and investigate the land);
- (h) article 18 (compulsory acquisition of land);
- (i) article 19 (power to override easements and other rights);
- (j) article 21 (compulsory acquisition of rights etc.);
- (k) article 22 (private rights);
- (l) article 26 (rights under or over streets);
- (m) article 27 (temporary use of land for carrying out the authorised development);
- (n) article 28 (temporary use of land for maintaining the authorised development); and
- (o) article 29 (statutory undertakers).

(3) In the event that Able withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

132.—(1) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Able, that approval or consent must be in writing (and subject to such reasonable terms and conditions as Able may require), and must not be unreasonably withheld or delayed.

(2) In the event that Able does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Able is deemed to have given its consent, without any terms or conditions.

133.—(1) Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker must—

- (a) co-operate with Able with a view to ensuring—
 - (i) the co-ordination of construction programming and the carrying out of works; and
 - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Able and their respective contractors; and

- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Arbitration

134. Any difference or dispute arising between the undertaker and Able under this Part of this Schedule will, unless otherwise agreed in writing between the undertaker and Able, be referred to and settled by arbitration.

PART 9

FOR THE PROTECTION OF TOTAL LINDSEY OIL REFINERY LIMITED

135. For the protection of Total Lindsey Oil Refinery Limited, the following provisions, unless otherwise agreed in writing between the undertaker and Total Lindsey Oil Refinery Limited, have effect.

136. In this Part of this Schedule—

“the pipelines” means the pipelines crossing the Order limits owned and operated by TLOR used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962; and

“TLOR” means Total Lindsey Oil Refinery Limited (company number 00564599).

137. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipelines and access to them, the undertaker must submit to TLOR plans and sections of the proposed works and such further particulars as TLOR may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

138. No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipelines and access to them are to be commenced until plans and sections in respect of those works submitted under paragraph 137 have been approved by TLOR.

139. Any approval of TLOR required under paragraph 138 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as TLOR may require to be made for—

- (a) the continuing safety and operational viability of the pipelines; and
- (b) the requirement for TLOR to have uninterrupted and unimpeded access to the pipelines at all times.

PART 10

FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

140. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

141. In this Part of this Schedule—

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of

Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease; and

“railway property” means railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment.

142.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 18 (compulsory acquisition of land);
- (b) article 19 (power to override easements and other rights);
- (c) article 21 (compulsory acquisition of rights etc.);
- (d) article 22 (private rights);
- (e) article 24 (acquisition of subsoil only);
- (f) article 27 (temporary use of land for carrying out the authorised development);
- (g) article 28 (temporary use of land for maintaining the authorised development,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code operators: preliminary notices) of the 1990 Act, or article 29 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions and such consent is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

143. Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Network Rail, be determined by arbitration in accordance with article 42 (arbitration).

144. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

PART 11

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

145. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

146. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

(a) “acceptable insurance” means a third party liability insurance effected and maintained by the undertaker and/or its contractor(s) to a level as may be approved by Cadent in writing or in the case of dispute in accordance with the terms and level of cover determined by an expert under paragraph 158. Such insurance shall be maintained for the maintenance period of any specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation)—

(b) (a) Cadent as a Co-Insured;

(c) (b) a cross liabilities clause; and

(d) (c) contractors’ pollution liability for third party property damage and third party bodily

(e) damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;”

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas distribution together with any replacement apparatus and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“maintenance activity” means the diversion, replacement, relaying, removal, refurbishment, reconstruction or improvement of the high pressure gas pipeline which supplies gas to the authorised development by the undertaker, or any works which would include the breaking of the ground within 15 metres in any direction of any apparatus;

“maintenance period” means the period of time from the commencement of the maintenance activity to the completion of the maintenance activity;

“Order land” has the same meaning as is given to the term “Order land” in article 2 of this Order;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any intrusive activities undertaken by the undertaker within the Order land pursuant to the powers in article 19 (Power to override easements and other rights), article 21 (Compulsory acquisition of rights etc.), article 22 (Private rights) and article 29 (Statutory undertakers) which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 150(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 150(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties GD/SP/SSW/22”); and

“undertaker” means the undertaker as defined in article 2 of this Order.

On Street Apparatus

147.—(1) Except for paragraphs 148 (apparatus of Cadent in stopped up streets), 150 (removal of apparatus) in so far as sub-paragraph (2) applies, 151 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) below applies, 152 (retained apparatus: protection of Cadent), 153 (expenses) and 154 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 150 and 151 of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any Apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 30 (apparatus and rights of statutory undertakers in streets) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in stopped up streets

148.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary prohibition or restriction of uses of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

(2) The protective provisions in this Part of this Schedule apply and take precedence over article 30 (apparatus and rights of statutory undertakers in streets) of the Order which shall not apply to Cadent.

Acquisition of land

149.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and the undertaker must use its reasonable endeavours procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such specified works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 152 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

150.—(1) If, in the exercise of the agreement reached in accordance with paragraph 149 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 152(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be

constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraphs (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

151.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 158 (Arbitration) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

152.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 145 to 147 and 150 to 151 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 150(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) At all times when carrying out any specified works the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties SPGD/SP /SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to any specified works the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 153.

Expenses

153.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any specified works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 150(3) if it elects to do so; and/or
- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any specified works;
- (g) any watching brief pursuant to paragraph 152(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

Indemnity

154.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of any specified works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such specified works, including without limitation works carried out by the undertaker under this Part of this Schedule or

any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the specified works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any specified works carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any specified works yet to be executed and not falling within this sub-section (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 154.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker Cadent must provide an explanation of how the claim has been minimised.

(6) The undertaker must not commence any maintenance activity (and must not permit the commencement of such maintenance activity) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker or its contractor has procured acceptable insurance (and provided evidence to Cadent that it shall maintain such acceptable insurance for the maintenance period) and Cadent has confirmed the same in writing to the undertaker.

(7) In the event that the undertaker fails to comply with sub-paragraph (6), nothing in this Part of this Schedule shall prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(8) The undertaker is not required to comply with sub-paragraph (6) where it needs to carry out emergency works as defined in the 1991 Act.

Enactments and agreements

155. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

156.—(1) Where in consequence of the specified works, the undertaker or Cadent requires the removal of apparatus under paragraph 150(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 152, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the specified works and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent’s consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

157. If in consequence of the agreement reached in accordance with paragraph 149(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

158. Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42 (arbitration).

Notices

159. The plans submitted to Cadent by the undertaker pursuant to paragraph 152(1) must be sent to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 12

FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED

Application

160. For the protection of Highways England Company Limited (Company No. 04346363) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Highways England.

Interpretation

161. In this Part of this Schedule—

“the contractor” means any contractor or sub-contractor appointed by the undertaker to construct the HE works;

“the detailed design information” means details of the following where applicable to the HE works—

- (a) site clearance details;
- (b) boundary and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal processassessment;

- (d) drainage and ducting and supporting drainage calculations;
- (e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets) and supporting lighting calculations;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB requirements;
- (n) utilities diversions;
- (o) topographical survey;
- (p) site waste management plan;
- (q) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;
- (r) asbestos survey;
- (s) regime of core testing and sampling of existing trunk road pavement construction;
- (t) site investigation survey;
- (u) health and safety information; and
- (v) other such information used to inform the detailed design of the HE works that may be required by Highways England;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“the estimated costs” means the estimated costs in respect of any HE works agreed pursuant to paragraph 164 of this Part of this Schedule;

“the Existing Gas Pipeline” means the existing gas pipeline the location of which is shown shaded blue within the Order Land but outside the Order Limits as shown on sheets the Land Plans;

“the HE works” means any works carried out by the undertaker on the strategic road network for to maintain, alter, inspect, repair, renew, replace, decommission or remove in whole or in part the Existing Gas Pipeline;

“Highways England” means the Highways England Company Limited with company number 04346363 and whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ;

“the nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during construction of the HE works, as notified to Highways England from time to time;

“the programme of works” means a document setting out the sequence and timetabling of the HE works; and

“utilities” means any pipes, wires, cables or other equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

Prior approvals

162.—(1) The HE works must not commence until—

- (a) the detailed design of the HE works comprising of the following details has been submitted to and approved by Highways England—

- (i) the detailed design information;
 - (ii) the programme of works;
 - (iii) details of proposed road space bookings;
 - (iv) a scheme of traffic management; and
 - (v) the identity of the contractor and nominated persons;
- (b) all necessary temporary traffic regulation measures have been made by the undertaker under article 11(1) or 14(3), or all necessary temporary traffic regulation orders have been made by Highways England;
- (c) at least 28 days' notice of the commencement date of the HE works has been given to Highways England in writing, unless otherwise agreed by Highways England.

(2) Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the information required by sub-paragraphs (1)(a)(i) to (1)(a)(v) being received by Highways England. Highways England must give reasons for any disapproval and shall not unreasonably delay its approval to the undertaker.

(3) In the event of any disapproval, the undertaker may re-submit the information required by sub-paragraphs (1)(a)(i) to (1)(a)(v) with modifications and Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the revised detailed design information being received by Highways England. Highways England must give reasons for any further disapproval and must not unreasonably withhold or delay consent.

(4) The documents and programmes approved under sub-paragraphs (1) and (2) may be subsequently amended by agreement between the undertaker and Highways England from time to time, both parties acting reasonably and without delay.

(5) Within 28 days of receipt of a written request by the undertaker and in any event prior to the commencement of the HE works, Highways England must inform the undertaker of the identity of the person who will act as the point of contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).

Construction of the HE works

163.—(1) The HE works must be constructed to the satisfaction of Highways England acting reasonably and in accordance (where relevant) with—

- (a) the information approved under paragraph 162(1) or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 162(1) in respect of the HE works;
- (c) the Traffic Signs Regulations and General Directions 2016 or any amendment to or replacement of them; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any amendment to or replacement of them.

(2) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(3) The undertaker must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside

the contractor's obligations under its contract with the undertaker or the undertaker's obligations under this Order.

(4) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule.

(5) If within 28 days of the date on which a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to take the steps required by that notice. Highways England may carry out works to reinstate the highway and other land and premises of Highways England, and Highways England may recover from the undertaker any expenditure reasonably incurred by it in so doing.

(6) If during construction of the HE works the undertaker causes any damage to the strategic road network then Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to remedy the damage.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice. Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(9) In constructing the HE works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

Payments

164.—(1) The undertaker must fund the full cost of the HE works and any incidental and amended works approved under this Part of this Schedule and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using internal or external staff) in relation to—

- (a) the checking and approval of the information required by paragraph 162(1)(a);
- (b) the supervision of the HE works;
- (c) all legal and administrative costs in relation to sub-paragraphs (a) and (b) above;
- (d) any costs incurred by Highways England in undertaking any necessary statutory procedure required as a result of construction of the HE works, and in preparing and bringing into force any traffic regulation order necessary to construct or implement the HE works, provided that this paragraph will not apply to the making of any orders which duplicate traffic regulation measures contained in, or which may be made by the undertaker under, this Order; and
- (e) any value added tax which is payable by Highways England in respect of the costs incurred pursuant to paragraphs (a) to (e) which Highways England cannot otherwise recover from HM Revenue and Customs,

sub-paragraphs (a) to (e) together comprising “the estimated costs”.

(2) The undertaker and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works and once that schedule is agreed the undertaker must pay to Highways England the estimated costs in line with the agreed schedule.

(3) Highways England is not entitled to costs or expenses incurred under any limb of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other limb of that sub-paragraph.

Indemnity

165.—(1) Subject to sub-paragraphs (2) and (3) the undertaker must in relation to the construction of the HE works indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from any claim, demand, action or proceedings resulting from damage caused by the construction of the HE works.

(2) Sub-paragraph (1) does not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the act, neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.

(3) In no circumstances is the undertaker liable to Highways England under this Part of this Schedule for any indirect or consequential loss or loss of profits.

(4) If any person makes a claim or notifies an intention to make a claim against Highways England which may reasonably be considered likely to give rise to a liability under this paragraph then Highways England must—

- (a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(5) The undertaker acknowledges that Highways England may receive statutory compensation claims and that Highways England may not be able to comply with sub-paragraph (4) above in respect of such claims.

(6) Where Highways England considers that sub-paragraph (5) applies to any claim or demand it must give notice of that view as part of the relevant notice provided pursuant to sub-paragraph (4)(a) above.

(7) Highways England must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within Highways England's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Highways England's control. If reasonably requested to do so by the undertaker, Highways England must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why.

Arbitration

166. Any difference or dispute arising between the undertaker and Highways England under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Highways England, be determined by arbitration in accordance with article 42 (arbitration).

Notices

167. A notice or other document required to be served on Highways England under this Part of the Schedule must be served by post to Antony Firth, Head of Planning and Development, Operations, Yorkshire and the North East Region, Highways England, Lateral, 8 City Walk, Leeds, LS11 9AT or such other postal address which Highways England may from time to time notify to the undertaker.

PART 13

FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

168. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

169. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“Northern Powergrid” means Northern Powergrid (Yorkshire) Plc (company number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

170. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

171. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), Northern Powergrid is at entitled at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

172. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

173.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided by virtue of an easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give Northern Powergrid written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 185.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 185, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3) proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Northern Powergrid that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid.

(7) Nothing in sub-paragraph (6) authorises the undertaker to place, install, bed, pack, remove, connect or disconnect any apparatus, or any fill around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

174.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 185.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

175.—(1) Not less than 90 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 173(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 168 to 174 apply as if the removal of the apparatus had been required by the undertaker under paragraph 173(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and

subsequently a plan, section and description of those works as soon as reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

176.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 173(2); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 173(2) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and, if the apparatus removed under the provisions of this Part of this Schedule has no value, no sum is to be deducted from the amount payable under sub-paragraph (1).

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 185 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type capacity or dimensions of apparatus or to lay it at the same depth as the existing apparatus being replaced in which case the full costs are to be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 173(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northern Powergrid in respect of works by virtue of sub-paragraph (1) is to be reduced by the amount which represents that benefit if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northern Powergrid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course.

177.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 173(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

178. Nothing in this Part of this Schedule affects any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

179.—(1) Without prejudice to the generality of this Part of this Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this Part of this Schedule including without limitation—

- (a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 176;
- (b) costs incurred in fulfilling its obligations in paragraph 173(3);
- (c) fees incurred in settling and completing and registering any documentation to secure rights for its diverted or relocated apparatus; and
- (d) costs and expenses of contractors required to undertake any works for which Northern Powergrid is responsible and of purchasing the necessary cabling and associated apparatus,

provided that Northern Powergrid must use reasonable endeavours to minimise to a proper and reasonable level any charges, costs, fees and expenses to the extent that they are incurred.

180. Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 179 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm whether it agrees to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, the dispute must be dealt with in accordance with paragraph 185.

181. Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to Northern Powergrid under paragraph 173(1) for the benefit of its statutory undertaking.

182. If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

183. Northern Powergrid may from time to time, and at least monthly, from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and
- (b) be supported by timesheets and narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate.

184. The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 181 or determined in accordance with paragraph 185.

185. Any difference under the provisions of this Part of this Schedule, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.

PART 14

FOR THE PROTECTION OF HORNSEA 1 LIMITED

186. For the protection of Hornsea 1 referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Hornsea 1, have effect.

Interpretation

187. In this Part of this Schedule—

“Hornsea 1” means Hornsea 1 Limited (registered number 07640868) and in substitution therefor their successors to Hornsea 1 Limited’s interests and/or the Hornsea 1 apparatus;

“Hornsea 1 apparatus” means any conduit cables ducts pipes or other apparatus or equipment belonging to or maintained by Hornsea 1 for the purposes of the transmission of electricity and includes any structure in which such apparatus is lodged and where such apparatus is or is to be maintained within 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;

“Hornsea 1 Limited’s interests” means any interest or right held by Hornsea 1 or which Hornsea 1 has the right or power to obtain within 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;

“in” in a context referring to rights, interests or apparatus in land includes a reference to under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“protected area” means the area within 20 metres in all directions of each point from the Hornsea 1 apparatus or Hornsea 1 interests; and

“works” means any future works undertaken by or on behalf of the undertaker to install, maintain, alter, inspect, repair, renew, decommission or remove in whole or in part land or apparatus in the protected area.

Acquisition of land

188. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or cables of Hornsea 1 other than by agreement, such agreement not to be unreasonably withheld.

Protection of Hornsea 1 from works

189.—(1) Before any works are commenced the undertaker must submit to Hornsea 1 plans and sections of the proposed works and such further particulars as Hornsea 1 may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Hornsea 1 has given written approval of the plan so submitted.

(3) Any approval of Hornsea 1 required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions; and
- (b) must not be unreasonably withheld.

Costs

190.—(1) The undertaker must repay to Hornsea 1 all reasonable fees, costs, charges and expenses properly and reasonably incurred by them in relation to these protective provisions, in respect of—

- (a) the consideration and approval of the works under paragraph 189; and
- (b) the attendance of a representative of Hornsea 1 during the undertaking of any works in the protected area.

(2) Hornsea 1 must provide the undertaker with such estimates of and evidence in relation to any fees, costs, charges or expenses to which sub-paragraph (1) does or may apply as the undertaker may reasonably request.

(3) The undertaker will indemnify and keep Hornsea 1 indemnified against all reasonable costs, charges, damages, expenses, loss, demands, proceedings, claims or penalty which may be reasonably incurred by Hornsea 1—

- (a) by reason of the works or the failure of them; and/or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the works.

(4) Hornsea 1 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (3) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Access

191. If in consequence of the powers granted under this Order the access to any Hornsea 1 apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Hornsea 1 to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expert determination

192.—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
 - (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
 - (d) give reasons for the decision.
- (6) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
 - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
 - (c) the nature of the power sought to be exercised by the undertaker;
 - (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
 - (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
 - (f) the effects of the undertaker’s proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
 - (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
 - (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
 - (i) the constructability notes; and
 - (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

PART 15

FOR THE PROTECTION OF HORNSEA 2 COMPANIES

Application

193. For the protection of Hornsea 2 referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Hornsea 2, have effect.

Interpretation

194. In this Part of this Schedule—

“Hornsea 2” means Optimus Wind Limited (registered number 07883284), Breesea Limited (registered number 07883217), Sonningmay Wind Limited (registered number 10722635) and Soundmark Wind Limited (registered number 10721881) and in substitution therefor their successors to Hornsea 2’s interests and/or the Hornsea 2 apparatus;

“Hornsea 2 apparatus” means any conduit cables ducts pipes or other apparatus or equipment belonging to or maintained by Hornsea 2 for the purposes of the transmission of electricity and includes any structure in which such apparatus is lodged and where such apparatus is or is to be maintained within 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;

“Hornsea 2’s interests” means any interest or right held by Hornsea 2 or which Hornsea 2 has the right or power to obtain within 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;

“in” in a context referring to rights, interests or apparatus in land includes a reference to under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“protected area” means the area within 20 metres in all directions of each point from the Hornsea 2 apparatus or Hornsea 2 interests; and

“works” means any future works undertaken by or on behalf of the undertaker to install, maintain, alter, inspect, repair, renew, decommission or remove in whole or in part land or apparatus in the protected area.

Acquisition of land

195. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or cables of Hornsea 2 other than by agreement, such agreement not to be unreasonably withheld.

Protection of Hornsea 2 from works

196.—(1) Before any works are commenced the undertaker must submit to Hornsea 2 plans and sections of the proposed works and such further particulars as Hornsea 2 may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Hornsea 2 has given written approval of the plan so submitted.

(3) Any approval of Hornsea 2 required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions; and,
- (b) must not be unreasonably withheld.

Costs

197.—(1) The undertaker must repay to Hornsea 2 all reasonable fees, costs, charges and expenses properly and reasonably incurred by them in relation to these protective provisions, in respect of—

- (a) the consideration and approval of the works under paragraph 196; and
- (b) the attendance of a representative of Hornsea 2 during the undertaking of any works in the protected area.

(2) Hornsea 2 must provide the undertaker with such estimates of and evidence in relation to any fees, costs, charges or expenses to which sub-paragraph (1) does or may apply as the undertaker may reasonably request.

(3) The undertaker will indemnify and keep Hornsea 2 indemnified against all reasonable costs, charges, damages, expenses, loss, demands, proceedings, claims or penalty which may be reasonably incurred by Hornsea 2—

- (a) by reason of the works or the failure of them; and/or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the works.

(4) Hornsea 2 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (3) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Access

198. If in consequence of the powers granted under this Order the access to any Hornsea 2 apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Hornsea 2 to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expert determination

199.—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

- (i) the constructability notes; and
- (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1. In this Schedule—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a);

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3,

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

(a) 1971 c.80.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 14 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within 21 days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in subparagraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

Appeals

5.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(3);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional

(a) S.I. 2012/2920.

information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to paragraph (c);
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five business days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 3 March 2014 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

SCHEDULE 11
DOCUMENTS AND PLANS TO BE CERTIFIED

Table 8

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access and rights of way plans	4.4	4 (sheets 1, 2 and 3) 5 (key plan and sheet 4)	1 November 2019
book of reference	3.5	4	1 November 2019
commitments register	6.4.32	1	April 2019
environmental statement	Volume 1, 6.2 Volume 2, 6.3 Volume 3, 6.4	1 1 1	April 2019
flood risk assessment	6.4.26	1	April 2019
framework biodiversity enhancement and management plan	6.4.17	1	April 2019
framework construction environmental management plan	6.4.3	1	April 2019
framework construction traffic management plan	6.4.7	1	April 2019
framework construction worker travel plan	6.4.6	1	April 2019
framework written scheme of investigation	6.4.31	2	October 2019
indicative lighting strategy	5.6	1	April 2019
land plans	4.2	1 (sheets 1, 2 and 3) 2 (key plan and sheet 4)	1 November 2019 (key plan and sheet 4) 27 March 2019 (sheets 1 and 3) 28 March 2019 (sheet 2)
works plans	4.3	1	April 2019
statement to inform appropriate assessment	7.17	2	October 2019

SCHEDULE 12

Requirement 5

DESIGN PARAMETERS

Table 9

<i>(1) Building or structure</i>	<i>(2) Maximum length (metres)</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum height (metres above 0 meters above ordnance datum)</i>	<i>(5) Maximum diameter (metres)</i>
Single gas turbine and generator	30	20	20	-
Gas turbine building	46	25	29	-
Exhaust stack	-	-	56	12
Air intakes	24	16	40	-
Fin-fan cooler	30	15	17	-
Control room, workshops, stores	35	20	16	-
Demineralised tank, firewater tank	-	-	32	24

**MODIFICATIONS TO THE ABLE MARINE ENERGY PARK
DEVELOPMENT CONSENT ORDER 2014**

Schedule 9 to the Able Marine Energy Park Development Consent Order 2014

1. After paragraph 120 of Schedule 9 insert new Part 16—

“PART 16

FOR THE PROTECTION OF VPI IMMINGHAM B LIMITED

Application

121. For the protection of VPI Immingham B Limited (Company No. 10630563) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and VPI.

Interpretation

122. In this Part of this Schedule—

“the OCGT authorised development” means the development authorised by the OCGT Order;

“the OCGT Order” means the Immingham Open Cycle Gas Turbine Order 2020;

“the OCGT Order land” has the same meaning as the term “Order land” in article 2(1) of the OCGT Order;

“the OCGT water connection” means that part of work number 2 of the OCGT authorised development which is to be carried out within plots 6 and 7 of the OCGT Order land;

“VPI” means VPI Immingham B Limited (Company No. 10630563) whose registered office is at 4th Floor, Nova South, 160 Victoria Street, London SW1E 5LB, or any person having the benefit of the OCGT Order pursuant to article 6 and/or 7 of it;

“the Order” means this Order; and

“the respective authorised developments” means the developments authorised by the Order and the OCGT Order respectively.

Regulation of powers over Rosper Road

123.—(1) Subject to VPI complying with paragraphs 59, 60, 61 and 64 of Part 8 of Schedule 9 to the OCGT Order the undertaker must not exercise the powers granted under this Order so as to hinder or prevent—

- (a) the construction, operation, use or maintenance of the OCGT water connection; or
- (b) access between all parts of the OCGT authorised development and Rosper Road, otherwise than with the prior written consent of VPI.

(2) Wherever in this Schedule provision is made with respect to the approval or consent of VPI, that approval or consent must be in writing (and subject to such reasonable terms and conditions as VPI may require), but must not be unreasonably withheld or delayed.

(3) In the event that VPI does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, VPI is deemed to have given its consent, without any terms or conditions.

124.—(1) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the OCGT Order land otherwise than with the prior written consent of VPI.

(2) The articles referred to in sub-paragraph (1) are—

- (a) article 15 (street works);
- (b) article 16 (temporary stopping up of streets);
- (c) article 17 (access to works);
- (d) article 22 (authority to survey and investigate land);
- (e) article 30 (compulsory acquisition of land);
- (f) article 31 (power to override easements and other rights);
- (g) article 34 (compulsory acquisition of rights etc.);
- (h) article 35 (private rights of way);
- (i) article 39 (rights under or over streets);
- (j) article 40 (temporary use of land for carrying out the authorised development);
- (k) article 41 (temporary use of land for maintaining authorised development); and
- (l) article 42 (statutory undertakers).

(3) In the event that VPI withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

125. Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker must—

- (a) co-operate with VPI with a view to ensuring—
 - (i) the co-ordination of construction programming and the carrying out of works; and
 - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and VPI and their respective contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Arbitration

126. Any difference or dispute arising between the undertaker and VPI under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and VPI, be referred to and settled by arbitration.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises VPI Immingham B Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 39 (certification of plans etc.) of this Order may be inspected free of charge during working hours at [x].

ANNEX A: RECOMMENDED CHANGES TO THE rDCO WHERE AGREEMENTS HAVE BEEN SIGNED BY THE APPLICANT AND PHILLIPS 66 LIMITED.

PART A:

Table 6: Amendments to Articles and Schedule 6 to the rDCO.

Provision	Amendment
Article 2 – Definitions	<p>Add the following definitions to Article 2:</p> <p><i>"HOR" means the Humber Oil Refinery which at the date of this Order is owned and operated by P66;</i></p> <p><i>"P66" means Phillips 66 limited (company number 00529086) and any subsequent owner of the pipelines or HOR;</i></p> <p><i>"pipelines" means the 3 pipelines located in the pipeline corridor crossing the Order limits which at the date of this Order are owned and operated by P66 for the passage of multipurpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962;</i></p> <p><i>"pipeline corridor" means the corridor of land within which the pipelines are located;</i></p>
Article 21	<p>Add the following words at the end of Article 21(2):</p> <p><i>, subject to the terms of Schedule 6'.</i></p>
Article 22	<p>Add the following sub-paragraph:</p> <p><i>'(10) Nothing in paragraphs (1) to (4) of this article applies so as to extinguish, suspend or</i></p>

Provision	Amendment
	<i>make unenforceable a private right or restriction over land where the person in or to whom the right or restriction in question is vested, belongs or benefits is P66.'</i>
Schedule 6	<p>Add the following to the start of the Schedule:</p> <p>'1(1) The powers in article 21 have effect in relation to all interests in the relevant parts of the Order land other than any interest in land owned by P66.'</p>

PART B:

Schedule 9, Part 4 shall be deleted in its entirety and replaced with the following:

PART 4

FOR THE PROTECTION OF PHILLIPS 66 LIMITED

Benefit of protective provisions

34. For the protection of P66, the following provisions, unless otherwise agreed in writing between the undertaker and P66, have effect.

Interpretation

35. In this Part of this Schedule—

“affected assets” means apparatus owned or operated by P66 on or above ground which in the reasonable opinion of P66 would have the potential to be physically affected by the relevant works;

“apparatus” means any part of the pipelines and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and

(c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962⁽⁵⁸⁾, as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“contamination” means any contamination by hazardous material which harms or damages or otherwise adversely affects or presents a significant risk of harm or damage or other adverse effects or a significant possibility of such harm or damage or other adverse effects to the environment or in relation to controlled waters the presence of substances which cause or are likely to cause pollution of controlled waters;

“controlled waters” has the meaning given to it in Section 104 of the Water Resources Act 1991;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“engineer” means an engineer appointed by P66 for the purposes of this Order;

“existing gas pipeline” means that part of the existing underground gas pipeline within the Order land which connects the VPI Immingham CHP power station as at the date of this Order, at Rosper Road, near Immingham, to the National Grid Feeder No.9 located to the west of South Killingholme;

“hazardous material” means any substance (whether in solid, liquid or gaseous form) which alone or in combination with others is capable of polluting the environment or capable of causing significant harm to the environment;

“HOR” means the Humber Oil Refinery which at the date of this Order is owned and operated by P66;

“P66” means Phillips 66 Limited (Company number 00529086) and any subsequent owner of the pipelines or HOR;

“P66 address” means the postal address details to be provided pursuant to paragraph 54;

“P66 email” means the email address details to be provided pursuant to paragraph 54;

“P66 land” means any interest in land owned by P66 on the date of this Order and within the Order land;

“pipelines” means the 3 pipelines located in the pipeline corridor crossing the Order limits which at the date of this Order are owned and operated by P66 for the passage of multipurpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962;

“protected land” means such parts of the Order land as fall within the pipeline corridor;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any of the pipelines; and

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of the undertaker and their principal contractors’ management of change procedures;
- (c) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;

(58) 1962 c.58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 Schedule 2 to, the Energy Act 2011 (c.16), S.I. 2000/1937 and S.I. 2011/2305.

- (d) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;
- (e) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development;
- (f) details of the emergency response plan as prepared in consultation with local emergency services and P66;
- (g) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works;
- (h) any further particulars provided in accordance with paragraph 36(3);
- (i) a description of the land upon which the proposed works will be carried out including a written record of the ground conditions of the land and details of any historic land contamination; and
- (j) a description of any trees that will be removed pursuant to the carrying out of the proposed works.

Authorisation of works details affecting pipelines or protected crossings

36.—(1) Before commencing any part of a relevant work the undertaker must submit the works details to P66 in accordance with paragraph 54.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

- (a) that the undertaker obtains written acknowledgement of receipt from P66; or
- (b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 60 days from the receipt of the works details under sub-paragraph (2), reasonably require.

37. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by P66; or
- (b) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by an expert under paragraph 39(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 39(1).

38.—(1) Any authorisation by P66 required under paragraph 37(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for P66 to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the pipelines.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 37 and any conditions imposed on the authorisation under sub-paragraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 39(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 39(3).

39.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 36(1) within 60 days of receipt by P66 under paragraph 36(2) and no further particulars have been requested under paragraph 36(3); or
- (b) authorisation has not been given within 45 days of receipt by P66 of the further particulars supplied under paragraph 36(3),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(1); or
- (b) the undertaker considers that P66 has given its authorisation under paragraph 38(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 53.

(3) Where the matter is referred to an expert under paragraph 39(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 38(1).

(4) Where the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 38(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 53.

Notice of works

40. The undertaker must provide to P66 a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about relevant works

41. Before carrying out a relevant work the undertaker must—

- (a) provide P66 with baseline data for any existing cathodic protection of the affected asset; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

Monitoring for damage to pipelines

42.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify P66 to enable repairs to be carried out to the reasonable satisfaction of P66.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of P66—

- (a) afford P66 all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to P66 its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of P66 to have effectively repaired the affected asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the repairs exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which would be payable to P66 under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where P66 agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then P66 is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

43.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and P66 must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform P66;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

44.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

- (2) The undertaker is not bound by any condition, requirement or regulation that is—
- (a) introduced after the date on which notice of the works was given under paragraph 40; or
 - (b) determined by the expert following a determination under paragraph 53 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.
- (3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Restriction on exercising powers

45. The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on P66, including any disruption to access and supplies of utilities and other services that are required by P66 in order to carry out its operations.

Insurance

46.—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 48 in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 53, and evidence of that insurance must be provided on request to P66.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify P66 of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting P66 during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph 53.

47. If P66 has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 46—

- (a) P66 may refer the matter to an expert for determination under paragraph 53; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 53 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

48.—(1) The undertaker must repay to P66 all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these PPs in respect of—

- (a) authorisation of works details submitted by the undertaker under paragraph 36 and the imposition of conditions under paragraph 38;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 40;
- (c) the repair and testing of a pipeline or protected crossing under paragraph 42; and
- (d) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 46,

including the reasonable costs incurred by P66 in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to P66 to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep P66 indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage which may be occasioned or reasonably incurred by P66—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

and the fact that any act or thing may have been done by P66 on the protected land on behalf of the undertaker or in accordance with plans approved by or on behalf of P66 or in accordance with any requirement of the engineer appointed by P66 or under his supervision does not (if it was done without negligence on the part of P66 or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) P66 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) P66 must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule.

(5) In the assessment of any sums payable to P66 under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, P66 if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

Further protection in relation to the exercise of powers under the Order

49. The undertaker must give written notice to P66 of the terms and level of cover of any guarantee or alternative form of security put in place and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

50. The undertaker must give written notice to P66 if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7. (consent to transfer benefit of Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

51. The undertaker must, when requested to do so by P66, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

52. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to P66.

Expert determination

53.—(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (i) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

Service of Notices

54.—(1) P66 must as soon as reasonably practicable following a written request from the undertaker provide details of the P66 address and P66 email.

(2) A notice or other document required or authorised to be served on P66 under this Part of the Schedule (except under sub-paragraph (1)) must be served—

- (a) by post to the P66 address; and
- (b) by electronic transmission to the P66 email,

or to such other postal or electronic mail address which P66 may from time to time notify to the undertaker.

(3) In the event that P66 does not provide the P66 address and P66 email within 14 days of the undertaker's request pursuant to sub-paragraph (1) then sub-paragraph (2) does not apply and the undertaker must—

- (a) serve any notice or document on P66 at its registered office; and
- (b) send a copy of such notice or document to the HOR marked for the attention of the refinery manager.