



VPI Immingham OCGT

Section 51 Advice – draft Application Documents submitted by VPI Immingham B Limited for The Planning Inspectorate (“the Inspectorate”) review

This advice relates solely to matters raised upon the Inspectorate’s review of the draft application documents submitted in January 2019 by VPI Immingham B Limited (“the Applicant”), and not the merits of the proposal. The advice given is without prejudice to the acceptance or otherwise of the eventual application.

Abbreviations used

PA2008	<i>Planning Act 2008</i>	BoR	<i>Book of Reference</i>	dDCO	<i>draft Development Consent Order</i>
EM	<i>Explanatory Memorandum</i>	ExA	<i>Examining Authority</i>	SoS	<i>Secretary of State</i>
SoR	<i>Statement of Reasons</i>				

General Drafting points

1. The Applicant should ensure that when the development consent order (DCO) is finalised all internal references and legal footnotes are checked, that the drafting follows best practice in Advice Note (AN) 13 and 15 and any guidance on statutory instrument drafting.
2. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in the DCO application is appropriate will be for the Examining Authority (ExA) to consider and examine, taking account of the facts of the particular application and having regard to any views expressed by the relevant authorities and interested parties.
3. Where drafting precedent has been set by previous DCOs the Applicant must fully justify why it is relevant to this particular DCO application.
4. The Applicant should avoid using words such as “may” because of ambiguity over whether they are an imperative or a statement of future intention. If the Applicant considers that the word should be used then full justification for its inclusion must be provided.



Draft Development Consent Order (dDCO)			
Q No.	Article (A)/ Requirement (R)	Extract from dDCO (for ease of reference)	Comment/Question
1.	General		The Applicant should ensure that all cross references within the dDCO are checked and corrected where necessary/relevant, this includes references to any plans and we would assume this will be corrected in the application version.
2.	General		The Applicant will be asked to maintain a list of all plans and other documents that will require SoS certification (including plan/document references), updated throughout the examination process, and supplied to the ExA before the close of the examination.
3.	General		The DCO is proposed to be a Statutory Instrument (SI) and so should follow the statutory drafting conventions. The DCO (and any subsequent revisions) should be in the form required by the SI template (see Planning Inspectorate AN13) and validated as such using the current SI template, including detailed footnotes to all statutory references.
4.	General		<p>The application DCO and any subsequent versions submitted to the examination:</p> <ul style="list-style-type: none">• should be supplied in both .pdf and Word formats, the latter showing any changes from the previous version by way of tracked changes, with Word comments briefly outlining the reason for the change.• The examination timetable will usually provide a deadline for receipt of the Applicant's final or preferred version of the DCO. That version should be supported by a report of the outcome of validating it through the Publishing section of the www.legislation.gov.uk website.



Draft Development Consent Order (dDCO)			
Q No.	Article (A)/ Requirement (R)	Extract from dDCO (for ease of reference)	Comment/Question
5.	A1	<i>Citation and commencement</i> <i>"VPI Immingham OCGT Order"</i>	Statutory instruments do not usually use acronyms, except in the rare cases where they are universally understood. The Applicant should consider whether this needs to be changed to "Immingham Open Cycle Gas Turbine Order".
6.	A2	<i>Definition of "maintain"</i> <i>"includes, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development but only insofar as such activities are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement"</i>	Have these activities been assessed in the ES? Should the maintenance power be limited to activities assessed in the ES? The proposed wording would appear to allow activities that have materially different environmental effects from those assessed, as long as those effects are "unlikely" to arise. The Applicant should consider whether this is appropriate.
7.	A2	<i>Definition of "permitted preliminary works"</i> <i>"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"</i>	See comments on Requirement (R)10.



Draft Development Consent Order (dDCO)			
Q No.	Article (A)/ Requirement (R)	Extract from dDCO (for ease of reference)	Comment/Question
8.	A28	<i>Temporary use of land for carrying out the authorised development</i>	<p>The exclusion of the temporary possession provisions from the Neighbourhood Planning Act 2017 (NPA 2017) in A28(13) is noted. However, given the parliamentary approval to the temporary possession regime under the NPA 2017, which was subject to consultation and debate before being enacted, should the current wording be modified to more closely reflect the incoming statutory regime where possible?</p> <p>As examples:</p> <ul style="list-style-type: none"> • The notice period that will be required under the NPA 2017 Act is 3 months, substantially longer than the 14 days required under article 28(2). Other than prior precedent, what is the justification for only requiring 14 days' notice in this case? • Under the NPA 2017, the notice would also have to state the period for which the acquiring authority is to take possession. Should such a requirement be included in this case? • Powers of temporary possession are sometimes said to be justified because they are in the interests of landowners, whose land would not then need to be acquired permanently. The NPA 2017 Act provisions include the ability to serve a counter-notice objecting to the proposed temporary possession so that the landowner would have the option to choose whether temporary possession or permanent acquisition was desirable. Should this article make some such provision – whether or not in the form in the NPA 2017?
9.	Schedule 1	<i>Authorised Development "comprising all or part of"</i>	The wording "or part of" would appear to allow a smaller generating station to be constructed, potentially below the 50MW threshold. The Applicant should explain how is this justified.



Draft Development Consent Order (dDCO)			
Q No.	Article (A)/ Requirement (R)	Extract from dDCO (for ease of reference)	Comment/Question
10.	Requirements (R)	<i>Use of "Environmental Statement"</i>	The Applicant should carefully consider the definition of "Environmental Statement" within the requirements and the specific references to chapters within the Environmental Statement.
11.	R10	<i>Means of enclosure "save for the permitted preliminary works"</i>	As "erection of any temporary means of enclosure" is excluded from the definition of "permitted preliminary works", this would appear to allow the temporary enclosures to be put in place before a plan for their removal has been agreed. The Applicant should consider whether this is intended.
12.	R12(1)	<i>Flood risk mitigation "...for that part, been submitted to, and after consultation with the Environment Agency and approved by the relevant planning authority."</i>	The Applicant should consider whether the wording of this requirement requires amending to read "...Environment Agency, approved by the relevant planning authority."
13.	R18(4)	<i>Construction workers travel plan "The approved plan must be implemented within three months of commencement..."</i>	The three month time period before possible implementation of the plan may require justification.



Draft Explanatory Memorandum			
Q No.	Paragraph	Extract from EM	Question/comment
1.	General	<i>Explanatory Memorandum</i>	<p>The Inspectorate’s Advice Note 13 recommends that a tracked changes version showing changes from model provisions would be useful. This also applies where the precedent for wording is not a model provision but instead a previously granted DCO or other form of order (“The relevant precedent and the rationale for including the particular wording of a provision will need to be set out and justified in the explanatory memorandum”).</p> <p>The EM does not consistently identify the source or the justification for the wording used.</p>
2.	1.3.2	<i>‘The Lindsey Oil Refining’</i>	This appears to be a typographical error and should read ‘The Lindsey Oil Refinery’.

Draft Funding Statement			
Q No.	Paragraph	Extract from FS	Question/comment
1.	General		As no figures have been given for the Development Cost, or for the net assets of VPI Holding Limited, the Inspectorate is unable to provide detailed comments on the draft Funding Statement.
2.	General		Where ‘EXX’ has been quoted in the draft Funding Statement the Applicant should ensure that these sections are updated in the final submitted document.
3.	1.4.2	<i>The ‘associated development’, for the purposes of Section 115 of the PA 2008 comprises Work No. 2, No. 4, No.5 and No.6 (emphasis added) of the Proposed Development.</i>	Work No.6 does not appear in the works listed in the Proposed Development in paragraph 1.4.1. The Applicant should consider amending this section in the final version submitted as part of the application.



Draft Book of Reference			
Q No.	Paragraph	Extract from BoR	Question/comment
1.	General		The plot numbering is not consecutive. The Applicant should consider clarifying in the preface why the plot numbers aren't consecutive. Additionally, the Plot descriptions are incomplete.
2.	Part 1	Plots relating to [REDACTED] J., R. A., R. P., and [REDACTED]	All parties listed in the BoR should be listed individually, even if they are represented by the same agent.
3.	Part 2		There are currently no category 3 people listed in the BoR. The Applicant should consider justifying this in the application.
4.	Part 3		This section appears to be incomplete. The Applicant may be aware that any party listed in part 3 of the BoR should also be listed in part 1.

Draft Statement of Reasons			
Q No.	Paragraph	Extract from SoR	Question/comment
1.	2.2.1	<i>'2.5 A number of the design aspects and features of the Proposed Development cannot be confirmed until the tendering process for the design and construction of the generating station has been completed.'</i>	'2.5' appears to have been included in error. The Applicant should consider whether this needs to be amended in the final version of the document.
2.	5.1.3		The first sentence begins with 'acquired'. The Applicant should consider amending the first sentence.



Draft Habitats Regulations Assessment Screening (dHRA)			
Q No.	Paragraph	Extract from dHRA	Question/comment
1.	General		<p>Consultation with the Statutory Nature Conservation Body (SNCB)</p> <p>The submitted dHRA screening report makes no reference to consultation with SNCBs. The Applicant should consult with SNCBs to agree the proposed screening processes and conclusions. Any correspondence with SNCBs should be appended to the HRA report and/ or cross reference to a signed Statement of Common Ground (SoCG). This may reduce the need for the ExA to ask questions in this regard.</p>
2.	General		<p>Preliminary Environmental Impact Report (PEIR)</p> <p>The dHRA refers to information within the PEIR which has not been provided. Therefore conclusions within the dHRA relies upon information unavailable to the Inspectorate and such, specific comments regarding the methodologies used, adequacy of assessments, and conclusions cannot be made.</p> <p>The Applicant should refer to the Planning Inspectorate’s ‘<i>Advice Note 10: Habitats Regulations Assessment relevant to Nationally Significant Infrastructure Projects</i>’ for general guidance.</p>
3.	1.2.3	<i>it is usual to consider a search radius of 10km when examining the potential pathways for air quality impacts on site</i>	<p>Study area of screening processes</p> <p>Environment’s Agency’s guidance on <i>Air emission risk assessment for your environmental permit</i>, which states that for large (over 50 MW) emitters may be required to screen to 15km for European sites and 10-15km for Sites of Special Scientific Interest (SSSI). No justification is provided in the dHRA for only screening to 10km.</p>



Draft Habitats Regulations Assessment Screening (dHRA)			
Q No.	Paragraph	Extract from dHRA	Question/comment
4.	4.1.2	<i>For all potential source-receptor pathways identified, the ecological impact assessment report in the PEI Report Volume concluded that the Proposed Development will not result in any significant effects on designated sites. When considered in HRA terms, the technical assessments undertaken are considered to present sufficient evidence for a conclusion of no likely significant effect on any Natura 2000 site.</i>	<p>PEIR</p> <p>No evidence has been provided within the submitted documents that supports this conclusion.</p> <p>See point 2 above.</p>
5.	Table 9B.3: HRA Signposting for Relevant Natura 2000 Sites	<i>Standard environmental measures to control pollution to the drain during construction phase will adequately minimise risk</i>	<p>Mitigation Measure</p> <p>The dHRA provides mitigation measures in a high level of detail and as such the Inspectorate cannot comment.</p> <p>The HRA should provide as much details as possible, and if “standard environmental measures” are to be used, the measures should be stated and secured within the Development Consent Order (DCO).</p>
6.	5.1.1	<i>Includes a plan to be agreed with the EA</i>	<p>Consultation</p> <p>See point 1 above.</p>
7.	6.3.1; and 6.4.6	<ul style="list-style-type: none"> <i>The cumulative impacts assessment for air quality... confirmed that there will be no cumulative effects on any of the Natura 2000 sites...</i> <p><i>It is therefore concluded that there will be no likely significant cumulative disturbances/ displacement effects with the Proposed Development</i></p>	<p>Potential Cumulative Disturbance/ Displacement Impacts</p> <p>No information has been provided that supports these conclusions.</p> <p>See point 2 above.</p>



Draft Habitats Regulations Assessment Screening (dHRA)			
Q No.	Paragraph	Extract from dHRA	Question/comment
8.	Table 9B.3: Summary of Projects Considered in Cumulative Effects Assessment in the PEI Report		<p>In-Combination Effects with other Plans or Projects</p> <p>The Applicant should consider including a figure that illustrates the locations of the other projects/ proposals considered for the in-combination/ cumulative assessment.</p>
9.	Annex 9B.1: Noise Assessment Technical Note – Rosper Road Fields		<p>Methodology</p> <p>The Noise Assessment Technical Note is submitted in a high level of detail, and as such, the methodology and assessment undertaken is not adequately described.</p> <p>The noise assessment should describe the methodology used to record the background noise, stating the location of noise monitoring surveys, the time of year and length of time of the surveys. The receptors should be identified and their locations should be included within the methodology.</p> <p>The assessment should follow appropriate guidance and be agreed with the relevant SNCB.</p>



Draft Plans			
Q No.	Plan Ref	Extract from Plan (for ease of reference)	Question/Comments
1.	4.1 Location Plan		No Comments.
2.	4.2 Land Plans Key Plan		No Comments.
3.	4.2 Land Plans Sheets 1 - 4		No Comments.
4.	4.3 Access and Right of Way Key Plan and Sheets 1 - 4		No comments.
5.	4.4 Work Plans Key Plan		No comments.
6.	4.4 Work Plans Work No.1 Sheets 1 - 6		No comments.