Contents

1 INTRODUCTION TO THE ONSHORE AND OFFSHORE SCHEMES

1.1 National Grid Carbon Limited (the "**undertaker**") proposes constructing and operating a carbon dioxide transportation and storage system to support the provision of carbon capture and storage ("**CCS**") technology in the Yorkshire and Humber Region. The project in its entirety, known as The Yorkshire and Humber CCS Transportation and Storage project (the "**Project**"), would comprise the construction of a Cross Country Pipeline and sub-sea pipeline for transporting carbon dioxide captured from power projects in the region to a permanent geological storage site beneath the North Sea.

1.2 The Project includes both onshore and offshore elements which are subject to separate consenting regimes (the "**Onshore Scheme**" and the "**Offshore Scheme**").

1.3 The onshore elements of the Project are collectively termed the Yorkshire and Humber Carbon Capture and Storage Cross Country Pipeline (shortened to the "**Onshore Scheme**") and are proposed to comprise the construction of a cross country pipeline and associated infrastructure including pipeline internal gauge ("**PIG**") traps, a multi-junction, three block valves, a pumping station (collectively termed "**Above Ground Installations**" or "**AGIs**") and any necessary interconnecting local pipelines and associated works.

1.4 The Onshore Scheme requires a new buried high pressure cross country pipeline of approximately 67km in length with an external diameter of up to 610mm for the transportation of carbon dioxide in liquid form to a location on the Holderness coast.

1.5 As the length of the proposed cross country pipeline comprised in the Onshore Scheme will exceed 16.093km it constitutes a nationally significant infrastructure project ("**NSIP**") pursuant to the Planning Act 2008. This requires an application to be made to the Secretary of State for a development consent order ("**DCO**").

1.6 The cross country pipeline will have an external diameter of up to 610mm and will be sized to accommodate up to 17 million tonnes (mt) of carbon dioxide emissions per year. The multi-junction would enable the connection of multiple pipelines from regional carbon dioxide emitters to the Onshore Scheme. At present one installation for the capture of carbon dioxide streams, the White Rose CCS project adjacent to Drax Power Station at Selby, being promoted by Capture Power Limited, would require a pipeline connection into the cross country pipeline. An interconnecting pipeline between the White Rose CCS project and the multi-junction will form part of the application for the Onshore Scheme.

1.7 PIG traps would be sited at the start and end of each pipeline to launch PIGs (these are required as part of the planned pipeline inspection and maintenance programme). Following a site appraisal, a PIG trap site has been identified in the vicinity of the White Rose CCS project adjacent to the Drax Power Station, near Selby.

1.8 The multi junction will facilitate the connection of multiple pipelines from other regional carbon dioxide emitters to the Onshore Scheme in the future. A site options appraisal has identified a site on land to the south of the A645, Camblesforth as the preferred site option for the multi- junction.

1.9 Block valves will be required at regular intervals along the length of the cross country pipeline to enable the isolation of sections of pipeline for maintenance and safety. Site appraisals have been undertaken for all the block valves and preferred sites have been identified as land to the south of Skiff Lane, Tollingham; land to the south of Lund Wold Road, South Dalton; and land to the south of the unnamed track to Copper Hall, Skerne.

1.10 A pumping station is required to re-pressurise the carbon dioxide before it is transported offshore. This is proposed to be constructed near to the coast. A site appraisal has been undertaken and identified land to the south of Sands Road, Barmston as the preferred site.

1.11 The offshore elements of the Project are collectively termed the Yorkshire and Humber CCS Sub-Sea Pipeline and Geological Storage Site (shortened to the "**Offshore Scheme**") and are proposed to comprise the construction of a 90km subsea pipeline to a geological storage site. This is subject to a separate consenting regime requiring authorisation by the Secretary of State for Energy and Climate Change in accordance with the Petroleum Act 1998 and the Energy Act 2008 respectively.

1.12 The sub-sea pipeline will have an external diameter of up to approximately 610mm and would be sized to accommodate up to 17mt of carbon dioxide emissions per year. The geological storage site presently proposed would comprise the permanent storage of captured carbon dioxide in a saline aquifer located approximately 1000m below the seabed. The undertaker has been granted an agreement to lease area 5/42 in the southern North Sea for the purpose of geological storage of carbon dioxide. The capacity of the storage site is subject to on-going investigations but it is expected to accommodate at least 200mt of captured carbon dioxide. It is anticipated that once this site has reached capacity further storage sites would be identified and utilised.

1.13 The Onshore and Offshore Schemes would be joined at the Mean Low Water Mark using appropriate landfall techniques; this is also the juncture of the onshore and offshore consenting regimes.

1.14 A more detailed explanation of the authorised development, as set out in Schedule 1 (*authorised development*) of the Order and on the works plans (Document Reference 2.3) can be found in the Construction Report (Document Reference 7.6).

2 THIS EXPLANATORY MEMORANDUM

2.1 A draft DCO accompanies the application for the Onshore Scheme and is entitled The Yorkshire and Humber (Carbon Capture and Storage Cross Country Pipeline) Order 201[●] (the "**Order**").

2.2 As required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, this explanatory memorandum also accompanies the application for the Onshore Scheme. It explains the purpose and effect of provisions in the draft Order.

2.3 The Planning Inspectorate's Advice Note Thirteen as republished in April 2012 ("**Advice Note 13**") clarifies its approach to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "**DCO Model Provisions**") as follows:

> *'"Model provisions'*
>
> *Model provisions were set out in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (SI 2009/2265). They included provisions which could be common to all NSIPs, others which relate to particular infrastructure development types, in particular railways and harbours, and model provisions in respect of requirements. The Localism Act 2011 removed the requirement for the decision-maker to have regard to the prescribed model provisions in deciding an application for development consent.*
>
> *Model provisions were intended as a guide for developers in drafting orders, rather than a rigid structure, but aided consistency, and assisted developers to draft a comprehensive set of lawful provisions.*
>
> *In the absence of relevant guidance published by DCLG, it would be helpful for the Planning Inspectorate to receive a track-change draft of the DCO showing any departures from the model provisions. The Planning Inspectorate would wish to receive such a track-change draft of the DCO both at the*

pre-application stage and with the formal submission of the application for development consent.

Other provisions

Provisions used in 'predecessor' regimes such as for Transport and Works Act Orders or Harbour Empowerment Orders may be helpful in the drafting of a DCO. Developers should though satisfy themselves that the inclusion of particular wording is appropriate and relevant in all the circumstances of a given development. 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."

2.4 This explanatory memorandum complies with the requirements of Advice Note 13.

2.5 The Order follows the DCO Model Provisions but, where appropriate for the circumstances of the Onshore Scheme, there are certain departures from these. Such departures, where material, are explained in this explanatory memorandum.

2.6 Certain of these departures from the DCO Model Provisions reflect wording from the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (the "**TWA Model Provisions**") and Orders made under the Transport and Works Act 1992 ("**TWA Orders**"). Where appropriate, this explanatory memorandum sets out the rationale for including such wording in the context of the 2008 Act and the Onshore Scheme.

2.7 Where relevant, regard has also been had to the precedents set in the development consent orders made by the Secretary of State under the 2008 Act; and references to such orders are made in this explanatory memorandum as appropriate.

2.8 Again, where relevant, regard has been had to the Planning Inspectorate's Advice Note Fifteen "Drafting Development Consent Orders".

2.9 ~~2.8~~ A comparison version of the draft Order against the DCO Model Provisions is also provided at appendix 1 to this explanatory memorandum, showing any departures from the DCO Model Provisions.

3 PURPOSE OF THE ORDER

Nationally significant infrastructure development

3.1 Under sections 14(1)(g) and 21 of the Planning Act 2008 (the "**2008 Act**") the construction of a cross-country[1] pipeline in England[2] other than by a gas transporter,[3] which would otherwise require authorisation under section 1(1) of the Pipe-lines Act 1962 (the "**Pipe-lines Act**")[4] (on account of the pipeline exceeding 16.093km in length),[5] constitutes an **NSIP**. As stated at paragraph 1.4 above, the cross-country pipeline comprised in the Onshore Scheme is approximately 67 km in length and will thus exceed 16.093 km in length.

3.2 Section 31 of the 2008 Act provides that a development consent order is required to the extent that a development is or forms part of an NSIP.

3.3 Accordingly, the undertaker is making an application to the Secretary of State under section 37 of the 2008 Act in order to obtain development consent for the Onshore Scheme. The Order is part of the application.

Associated development

3.4 Pursuant to section 115(1) of the 2008 Act and in accordance with the principles set out in the document entitled "Planning Act 2008: Guidance on associated development applications for major infrastructure projects" published in April 2013 by the Department for Communities and Local Government (the "**CLG Guidance**"), the Order also seeks consent for associated development set out in Schedule 1 (*authorised development*) of the Order. Examples of items of associated development with their own Work Nos. in the Schedule include:

3.4.1 access roads;

3.4.2 temporary working areas;

3.4.3 temporary pipeline stores; and

3.4.4 office, welfare and security facilities.

1 S.21(1)(a) of the 2008 Act
2 S.21(2)(a) of the 2008 Act
3 S.14(1)(g) of the 2008 Act
4 S.21(1)(b) of the 2008 Act
5 S.1(1) and s.66(1) of the Pipe-lines Act

3.5 A list of further associated development is included at the end of Schedule 1 (*authorised development*) for works associated with multiple Work Nos. These include in summary:

3.5.1 site preparation works and construction compounds for certain of the AGIs;

3.5.2 the installation of wires, cables, conductors, pipes and ducts;

3.5.3 pipeline construction works;

3.5.4 works to remove or alter the position of apparatus including mains, sewers drains and cables, which will be required where these items need to be temporarily or permanently removed to allow the construction and operation of the authorised development. Examples include the possible temporary diversion of a utility pipe or cable to provide working space to allow construction of permanent works;

3.5.5 locating aerial markers, cathodic protection ~~test posts~~apparatus and field boundary markers;

3.5.6 landscaping, ecological mitigation works and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

3.5.7 works for the benefit or protection of land affected by the authorised development, which might (where the undertaker considers it necessary) include works to reinstate land to its former condition including land drainage systems or providing fencing to replace that temporarily removed or to provide a delineation between land ownership or usage;

3.5.8 works required for the strengthening, improvement, maintenance or reconstruction of any streets, which may be required where existing tracks or streets are to carry increased heavy traffic or increased numbers of vehicles. Crossings of existing public and private highways are required and reinstatement of excavated trenches will be necessary;

3.5.9 works to alter or remove road furniture;

3.5.10 ramps, means of access, footpaths and bridleways, which are required to access the facilities as a whole and to safely access individual areas and buildings associated with the development;

3.5.11 the carrying out of street works pursuant to article 10 (*street works*), works to alter the layout of streets pursuant to article 11 (*power to alter layout, etc., of streets*) and the alteration or removal of road furniture;

~~3.5.12~~ ~~works for the maintenance of the authorised development;~~

3.5.12 ~~3.5.13~~ works for the decommissioning, restoration and aftercare of the authorised development;

3.5.13 ~~3.5.14~~ installation of drainage, drainage attenuation and land drainage including outfalls; and

3.5.14 ~~3.5.15~~ other works, including working sites, storage areas and works of demolition necessary for the construction or operation of the authorised development ~~and which do not give rise to any materially different effects from those assessed in the environmental statement.~~

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3.6 The undertaker considers there to be two types of works in this "further associated development" section above:

3.6.1 The first is of the residual type described at paragraph 3.5.14: "other works [etc.] as may be necessary for […] the construction or operation of the authorised development". In the context of a large and complex nationally significant infrastructure project such as this, it is acknowledged and understood that there may well be some minor works required for the purposes of carrying out and or operating the authorised development which were not specifically foreseen and thus individually itemised in the Schedule of Works at the time the Order is granted. The Secretary of State has historically made them subject to the test that these kinds of unspecified (because unknown and unforeseeable) works for the purposes of the authorised development are only authorised to the extent that they do not give rise to any materially new or different effects from those assessed in the environmental statement (see for example paragraph (p) on page 62 of the recent Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. This limitation wording is included in the Order for the works at paragraph 3.5.14. Further to the first written questions, on review, the undertaker considered that the categories of works identified in paragraphs 3.5.4, 3.5.6 and 3.5.7 could, arguably, also be viewed as being of a similar type; though even here, the need for these types of works was clearly understood at the time of the environmental impact assessment process carried out for the authorised development and, therefore, taken into account as part of that process. Strictly speaking, therefore, those categories of works are not really unknown and unforeseeable in the same way as the works at 3.5.14. Thus the need for the additional caveat does not therefore arise in the same way but, to go some way towards accommodating the point expressed in the written questions, the undertaker agrees to the limitation wording being added to paragraphs 3.5.4, 3.5.6 and 3.5.7 that the works must not give rise

to any materially different effects from those assessed in the environmental statement.

3.6.2 The second type of "further associated development" comprises works which were clearly contemplated at the time of the environmental impact assessment process for the authorised development as foreseeable activities, and in some detail. One example is those forms of "further associated development" included in this final part of Schedule 1 (*authorised development*) simply as a drafting approach so as not to relist each form of associated development with every single related pipeline section Work No.: e.g. the pipeline construction works in 3.5.3 or markers in 3.5.5. The significant environmental effects likely to be caused by this second type of work were therefore within the contemplation of the environmental impact assessment process which has taken place to date in just the same way as the other items of development set out in Schedule 1 (*authorised development*). The Infrastructure Planning (EIA) Regulations 2009 (the "**EIA Regulations**") require applications for DCOs to be accompanied by an environmental statement which contains a description of the development, a description of the aspects of the environment likely to be affected by the development and a description of the likely significant effects of the development on the environment. However, the description of the development must be proportionate – clearly it would not be practicable to describe every piece of material, no matter how small, or every movement or minor operation which will be undertaken in order to complete the development. Case law simply requires the description of the proposed development to be sufficient to enable the main effects which that development is likely to have on the environment to be identified and assessed (*R. v Rochdale MBC Ex p. Milne (No. 1) [1999] 3 P.L.R. 74*; [2000] Env L.R. 1). Moreover, the second type of "further associated development" described in this response would not permit the construction of a project "which could be very different in scale or impact from that applied for, assessed or permitted" (*R (Midcounties Co-operative Ltd) v Wyre Forest DC* [2009] EWHC 964 (Admin)). In other words, whether this second type of "further associated development" would require a retrospective, second environmental assessment mechanism after the DCO is made needs to be understood in the context of the appropriate level of detail that was required under the EIA Regulations the first time, and whether it could give rise to very different effects to what was contemplated and assessed that first time, sufficient to justify a second assessment. None of the other types of further associated development described in the paragraphs in the list at the end of Schedule 1 (authorised development) could justify a second environmental assessment exercise to determine whether or not they fall within the scope of the authorised development. This is because they clearly form part of what has been

assessed and could not give rise to a very different scheme to the one which has been assessed. " The undertaker therefore does not consider it either "necessary" or "reasonable in all respects" for the purposes of paragraph 4.1.7 of EN-1 for a second environmental assessment exercise to be carried out for any "further associated development" above, other than as currently set out in the draft Order.

3.7 ~~3.6 The~~Separately, the undertaker considers that all of the works described in Schedule 1 (*authorised development*) are either development for which development consent is required or associated development for which development consent may be granted (in accordance with sections 31 and 115 of the 2008 Act and CLG Guidance) and, accordingly, may lawfully form part of an application for an Order granting development consent under the 2008 Act.

4 ANCILLARY MATTERS

4.1 The Order also contains several matters ancillary to the development for which consent is sought.

4.2 Powers of compulsory acquisition

The main ancillary matter is that the Order seeks (1) powers of compulsory acquisition for land (and rights in or over land) that are required for, facilitate or are incidental to the Onshore Scheme under sections 122 and 159 of the 2008 Act and (2) the power to override easements and other rights within the Order limits under sections 120(3) and (4) and paragraphs 2 and 3 of Schedule 5 of the 2008 Act. Justification for these powers is set out more particularly in the statement of reasons (Document Reference 4.1), which accompanies the application.

4.3 Approach of book of reference and land plans

The book of reference

4.3.1 The application for the Onshore Scheme is accompanied by a "**book of reference**" as defined in Regulation 7 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the "**Regulations**"). It should be read in conjunction with:

4.3.2 the Order (Document Reference 3.1); and

4.3.3 the twenty five "**land plans**" (Document Reference 2.1) with drawing nos. HUMBCC-2014-1-JH-SH1 to HUMBCC-2014-1-JH-SH25,

which also accompany the application.

4.3.4 The book of reference is split into **five parts**, listing (in summary):

(a) in **Part 1**, the plots of land over which powers of compulsory acquisition or temporary possession are sought for the purposes of the authorised development. These plots together form the "**Order land**", more particularly defined in article 2 of the Order;

(b) in **Part 2**, any persons who "would or might" be entitled to make a claim under section 10 of the Compulsory Purchase Act 1965 (the "**1965 Act**") or Part 1 of the Land Compensation Act 1973 (the "**1973 Act**") as a result of the Order being implemented or as a result of the use of the land once the Order has been implemented. The 1965 Act relates to claims that may be made by those persons who have no land taken but who have the benefit of a right over the Order land and whose right is interfered with or breached by the construction or use of the authorised development in such a way as to depreciate the value of its own land. The 1973 Act relates to claims by persons whose property is sufficiently close to be depreciated in value by execution of works for the authorised development;

(c) in **Part 3**, any persons who have rights over the Order land, which may be extinguished, suspended or interfered with due to the carrying out of the authorised development;

(d) in **Part 4**, any of the Order land in which the Crown has an interest; and

(e) in **Part 5**, any Order land which falls into a "special category", i.e. forming part of a common, open space, National Trust land or fuel or field garden allotment.

4.3.5 The first page of each Part provides the statutory language describing what it lists.

Types of land on the land plans

4.3.6 The land plans show three different types of land within the Order land:

(a) The land tinted dark grey is land which (if the Order is made) may be subject to the exercise of compulsory acquisition powers (as further explained in paragraph 4.3.8 below). In addition to those compulsory acquisition powers, this land may also be subject to the exercise of temporary possession powers for carrying out the authorised development generally and maintaining it (as further explained in paragraph 4.3.9

below), which includes in particular carrying out drainage works (as further explained in paragraph 4.3.10 below).

(b) The land tinted light grey is land which (if the Order is made) may be subject to the exercise of temporary possession powers for carrying out the authorised development generally and maintaining it (as further explained in paragraph 4.3.9 below), which, again, includes in particular carrying out drainage works (as further explained in paragraph 4.3.10 below). The differentiating feature of this type of land is that none of the land tinted light grey is land that may be subject to the exercise of compulsory acquisition powers under the Order.

(c) The land shown cross-hatched may (if the Order is made) be subject to the exercise of temporary possession powers for drainage works (as further explained in paragraph 4.3.10 below). The differentiating feature of this type of land is that none of the cross-hatched land may be subject to the exercise of compulsory acquisition powers under the Order and the purposes for which temporary possession powers may be exercised is narrower than that at paragraph 4.3.6(b) above.

4.3.7 In other words, the purpose of the differentiation above is to ensure that the rights sought are proportionate to the requirements of constructing, operating and maintaining the authorised development on different parts of the Order land.

Compulsory acquisition powers and temporary possession

4.3.8 The compulsory acquisition powers to which the land tinted dark grey relate are conferred by articles 23-27 (inclusive) of the Order. These are either:

(a) referred to in this book of reference as "**Permanent Type 1**" i.e. the acquisition of all interests and estates in the land; and/or

(b) referred to in this book of reference as "**Permanent Type 2**" i.e. the creation of the following permanent new rights in relation to the land in a 24.4 metres wide strip of land (within which a pipeline comprised in the authorised development (as defined in article 2 of The Yorkshire and Humber (Carbon Capture and Storage Cross Country Pipeline) Order 201[●]) may be located):

(i) rights to construct lay inspect test maintain repair protect reconstruct replace dismantle remove or render

unusable the authorised development in upon and over the land;

(ii) rights to use the authorised development for the purposes for which it was designed;

(iii) rights to enter, pass and repass with or without vehicles over the said 24.4 metres wide strip of land for all purposes associated with these rights;

(iv) rights to prevent the planting or removal of any trees, bushes or other fauna within the said 24.4 metres wide strip of land which could damage or obstruct the authorised development or obstruct the undertaker from exercising its rights and powers in relation to the authorised development (and which for the avoidance of doubt shall not prevent the planting of conventional cereal crops);

(v) rights to prevent the construction of or remove any new building, structure or erection which is within the said 24.4 metres wide strip of land;

(vi) rights of continuous vertical and lateral support for the pipeline and ancillary apparatus (if any) within the said 24.4 metres wide strip of land;

(vii) rights to install, adjust, alter and remove cathodic protection test posts, aerial markers, field boundary markers transformer rectifier kiosks and electricity cabinets;

(viii) rights to prevent anything being done or caused or permitted to be done on the 24.4m wide strip of land that is calculated or likely to interfere with or cause damage or injury to the authorised development or its operation and to require that all reasonable precautions are taken to prevent such interference, damage or injury;

(ix) rights to prevent without the prior written consent of the undertaker (such consent not to be unreasonably withheld or delayed) a material alteration being made or caused or permitted to be made to, or the deposit of anything being made on, any part of the 24.4m wide strip of land so as to interfere with or obstruct the access to the said strip of land or to the authorised development or so as to lessen or in any way interfere with the support afforded to the authorised

development by the surrounding soil including minerals or so as materially to reduce the depth of soil above the authorised development.

4.3.9 Referred to in this book of reference as "**Temporary - general**", the temporary possession powers to which the land tinted dark grey and light grey relate are more particularly described in articles 28 and 29 and Schedule 9 of the Order and, in summary, authorise the temporary possession of the relevant land for the construction and (for the duration of a five year maintenance period where the undertaker so chooses) the maintenance of the authorised development on the terms set out in the those provisions.

4.3.10 Referred to in this book of reference as "**Temporary - drainage**", the temporary possession powers for "drainage works" (defined in article 2 of the Order) to which the land tinted dark grey and light grey and the land shown cross-hatched relate are more particularly described in articles 28 and 29 and Schedule 9 of the Order and, in summary, authorise the temporary possession of the relevant land for the construction of the drainage works and (for the duration of a five year maintenance period where the undertaker so chooses) the maintenance of the authorised development on the terms set out in the those provisions.

4.4 Statutory instrument

The Order seeks to apply and modify certain statutory provisions as set out below in this explanatory memorandum, in particular in relation to compulsory acquisition, under section 120(5) of the 2008 Act. Accordingly, pursuant to section 117(4) of the 2008 Act, the Order is set out in the form of a statutory instrument.

4.5 Other ancillary matters

Other ancillary matters include, for example, the maintenance and operation of the Onshore Scheme, the improvement, alteration and temporary stopping up of lengths of existing highways necessary for the Onshore Scheme, the creation of new private means of access, the interaction between leases of the Onshore Scheme and landlord and tenant law and provision for disputes and appeals under the Order. These are more particularly described at paragraph 5 below.

5 THE DRAFT ORDER

The purpose and effect of the Order are summarised as follows:

5.1 Preamble to the Order

As with every statutory instrument, the Order is introduced by a preamble, which amongst other things, recites the powers under which the instrument would be made.

5.2 Part I of the Order - Preliminary

Part I of the Order contains preliminary provisions.

Article 1	*(citation and commencement)* provides for the commencement and citation of the Order.
Article 2	*(interpretation)* follows article 1 of the DCO Model Provisions and provides for the interpretation of words and phrases used in the Order. The definitions in article 1 of the DCO Model Provisions have been amended and supplemented to reflect the particular circumstances of the authorised development. Amongst other things: • "approved plans" means the plans listed in Part 4 of Schedule 2 (*plans*) to the Order, with which the authorised development must be carried out in ~~general~~ accordance (unless otherwise set out in the Requirements, for example where approval of detailed design is to follow the making of the Order). The matter of approved plans is dealt with at Requirement 3 in Schedule 3 (*requirements*); • The term "drainage works" is defined for the purposes of article 6(2), which clarifies that these can be constructed within the Order limits; • "Maintain" is defined as including "inspect, examine, monitor, test, repair, set up, configure, ~~clear,~~ dismantle and/or reconstruct the authorised development and/or replace part or a section of the authorised development with a part or section which materially serves the same purpose". Save for ~~"clear",~~ "dismantle" "examine", "monitor", "set up" and "configure" all of these elements are derived from Article 1 of Schedule 2 to the DCO Model Provisions. It is appropriate that maintenance should include the ability of

		the undertaker to inspect, examine, test and monitor the authorised development to ascertain the extent of maintenance required. "Set up" and "configure" relate to equipment and apparatus comprised in the authorised development. "Repair" and "dismantle", by way of their plain meaning, relate to development already constructed at the time of maintenance, rather than potential for the construction of new development. ~~It may be necessary to "clear" an area for the purposes of access for maintenance.~~ "Reconstruct" is necessary, particularly in the event that the authorised development, or part of it, were damaged such that reconstruction were required, and it would not be appropriate in such circumstances for a nationally significant infrastructure project to require a new development consent or planning permission, particularly when a plain English interpretation of "reconstruct" must relate to a reconstruction of what had existed previously rather than unenvisaged development and, in any event, article 5(a) (*maintenance of authorised development*) makes it clear that the power to maintain is subject to the proviso that following reconstruction, the authorised development may not, save in *immaterial* respects, vary from the description of it given in Schedule 1 (*authorised development*). "Replace", again from the DCO Model Provisions, is qualified twofold: first by clarification that replacement must be of part or a section of the authorised development with a part or section which materially serves the same purpose (rather than by unenvisaged development, for example); secondly by way of the proviso at article 5(a) that "maintenance" cannot vary from the description of the authorised development given in Schedule 1 (*authorised development*). The above amendments ~~result in narrower wording than in the DCO Model Provisions and~~ are permitted by section 120(5)(c) of the 2008 Act, as they give full effect to the power to maintain the authorised development under article 5 (*maintenance of authorised development*)~~;~~.

		The above definition of "maintain", as qualified in article 5 (*maintenance of authorised development*) also complies with the relevant case law tests, as it would not permit the construction of a project "which could be very different in scale or impact from that applied for, assessed or permitted" (*R (Midcounties Co-operative Ltd) v Wyre Forest DC* [2009] EWHC 964 (Admin)). This is because the Infrastructure Planning (Environmental Impact Assessment) Regulations (the "**EIA Regulations**") require the assessment of a project's likely "significant" effects. The undertaker has already considered and assessed the likely significant effects of the authorised development, as defined in Schedule 1 of the Order, in accordance with the EIA Regulations (see the Environmental Statement (document reference 6.0) and no materially new or different likely significant effects may arise as a result of maintenance of the authorised development, because either those maintenance works will not lead to any variation in the authorised development (the likely significant effects of which have been assessed) or, if they did, the variation in the authorised development would not be *immaterial*, and the effects would fall foul of the restriction in Article 5(b). If the Secretary of State is minded that it is appropriate in the public interest for the authorised development to be constructed and brought into operation (which would be consistent with what is said in the National Policy Statement about carbon capture and storage being "a priority for UK energy policy" – see paragraph 3.6.5) it is essential that the Order allows the authorised development to be kept in operation to fulfil its important function without undue restrictions, as set out in this definition. • the definition of "Order land" is brought in line with section 159 of the 2008 Act, which clarifies that for the purposes of Part 7 of the 2008 Act, "land" includes any interest in or right over land: it is appropriate that the

		same applies in this definition as the book of reference (Document Reference 4.3) provides for the acquisition of both land *and* interests in and rights over land. Further, it is clarified that the land within the Order limits may also be "used", i.e. in accordance with temporary possession powers pursuant to articles 28 (*temporary use of land for carrying out the authorised development*) and 29 (*temporary use of land for maintaining the authorised development*)~~.~~; • the definition of "relevant planning authority" has been amended to clarify that the relevant planning authority will be the district planning authority for any area of land to which any particular provision relates; and for clarity on the face of the draft Order, this article specifies who these bodies currently are; • the definition of statutory undertaker removes references to sections 128 and 129 of the 2008 Act as these were repealed by the Growth and Infrastructure Act 2013~~.~~; • the definition of "street authority" has the same meaning as in section 49 of Part 3 of the New Roads and Street Works Act 1991 (i.e. for publicly maintainable highway: the "highway authority"; for other highway: the "street managers"), as per the DCO Model Provisions, but for consistency it is made clear that the definition of "highway authority" in section 49 should relate back to the Order definition, meaning either East Riding of Yorkshire Council or North Yorkshire County Council, for the purposes of the Order; • at the request of North Yorkshire County Council, for the purposes of Article 17 (*traffic regulation*) a definition for "traffic authority" has been included, by reference to the Road Traffic Regulation Act 1984; • the definition of "watercourse" from article 2 of Schedule 1 of the DCO Model provisions relates only to article 19 (*discharge of water*), for which it was intended in the Model

provisions, and has therefore been inserted at article 19(8)(b) for ease~~. The different definition of watercourse provided here, however, relates to the means of laying the pipeline below the disused railway embankment.~~;

- A definition of "flood risk assessment" is provided for the purposes of Article 49 (*certification of plans etc.*) and Requirement 9 of Schedule 3 (*requirements*). Similarly "Barmston Pumping Station parameter plan", "Camblesforth Multi-junction parameter plan", "code of construction practice" and "drainage strategy" are defined for the purposes of Article 49 (*certification of plans etc.*). However, these definitions are provided by reference to meanings given in the Requirements: it is considered easier for the reader of the Requirements to find terms used only in particular Requirements in Schedule 3 (*requirements*) substantively defined in that Schedule rather than having to refer to the start of the DCO in Article 2 only because the documents appear in the certification list at Article 49 (*certification of plans etc.*).

Paragraph (2) provides that apart from the definition of the "*undertaker*", the definitions in paragraph (1) do not apply to Schedule 10 (*deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009*). This is because Schedule 10 has its own set of definitions and, whilst the deemed marine licence is in law merely another schedule of the draft Order to be made by the Secretary of State, rather than the Marine Management Organisation ("**MMO**"), in practice the licence is likely to be considered by contractors and agents as a self-contained document. Significant cross-references to the draft Order would then be unduly complex. Moreover, if the licence is varied by the MMO under section 72 (*variation, suspension, revocation and transfer*) of the Marine and Coastal Access Act 2009, the draft Order will become increasingly remote, making cross-reference to it more burdensome.

Paragraph (3) specifies that the definition of

	"*undertaker*" in paragraph 1 does not apply to Schedule 11 (*protective provisions*). This is because in Schedule 11, so as to avoid any confusion, National Grid Carbon is referred to as "the promoter" on the basis that in protective provisions the term "undertaker" is commonly used to relate to the relevant *statutory undertaker* in whose favour the protective provisions are made. Further, it is clarified: • at paragraph (4) that, as with recent DCOs, including at article 1(2) of the Hinkley Point C (Nuclear Generating Station) Order 2013, references to rights over land include rights in relation to and under that land as well as above it; • at paragraph (5) that all distances, directions and lengths referred to in the Order, such as in the works plan, land plan and other drawings, are approximate and distances between points on a work are to be taken to be measured along that work. In particular in respect of scheduled linear works referred to in this Order all distances are measured along the indicative pipeline route as shown on the works plans for that work. This is to ensure consistency between interpretation of the Order and the documents to which it refers; • at paragraph (6) that all areas described in metres in the book of reference are approximate; • at paragraph (7) that a reference in the Order to a work designated by a number, or by a combination of letters and numbers (for example "*Work No. 2*") is a reference to one of the works listed in Schedule 1 (*authorised development*); • at paragraph (8) that a reference in the Order to a document or plan required to be submitted for certification under article 49 (*certification of plans etc.*) is a reference to the version of that document or plan that has been so certified;

	• at paragraph (9) that a reference in the Order to legislation includes that legislation as amended.
Article 3	*(application, modification and disapplication of legislative provisions)* has similar effect to article 6 of Schedule 1 of the DCO Model provisions. Paragraph (1) would provide for the application, modification and exclusion of public general legislation set out in Part 1 of Schedule 12 (*miscellaneous controls*). This is only used as a drafting mechanism for the purposes of SSSI consent, and for applying certain regulations under the Pipeline Safety Regulations 1996 which would otherwise not apply to the authorised development, as more particularly explained in respect of Schedule 12 below. Paragraphs (2) to (4) would exclude byelaws and statutory provisions of local application having effect, but only so far as these would be inconsistent with powers exercised under the ~~draft~~ Order. Although the undertaker has made diligent efforts to search for relevant local legislation and byelaws, and sets out ~~certain~~amendments to particular known byelaws ~~for specific exclusion~~of internal drainage boards at Part 2 of Schedule 12 (explained more particularly in ~~respect of~~the row of this table which relates to that Schedule below), such searches can never be entirely definitive. Accordingly, paragraph (2) extends exclusion to any statutory provision of local application to avoid any unknown local legislation acting as an impediment to the Onshore Scheme. For the avoidance of doubt, paragraph (3) further clarifies that certain key activities necessary for the construction, operation and maintenance of the authorised development, which could otherwise be compromised by common provisions in local enactments or statutory provisions of local application, are allowed under the Order. East Riding of Yorkshire Council ("**ERYC**") has brought to National Grid's attention that, in its capacity as Lead Local Flood Authority, it will in due course bring forward byelaws which are likely to conflict with activities required for the carrying out of the authorised development but which may not provide scope for consent under the terms of those byelaws. Paragraph (5) therefore provides that any

	byelaws made by ERYC in its capacity as lead local flood authority are excluded if the provision: (a) would prevent or restrict the taking of any action under the Order; and (b) does not include provision that would permit the taking of that action with the consent of ERYC, an internal drainage board or the Environment Agency. This approach differs to that taken in respect of internal drainage boards described in respect of paragraphs 1 to 8 of Part 2 of Schedule 12. This is because those bodies currently have byelaws in place which may be amended for the purposes of the Order to enable scope for consent, whereas the terms of any ERYC byelaws are not known at this time. ERYC has agreed the terms of this provision and confirmed that it will at the appropriate time add savings provisions in its byelaws in respect of the Order to reflect that the relevant ERYC byelaws enable scope for consent rather than being outright prohibitions. Inserting savings for particular bodies or particular circumstances is common. This would mean that paragraph (5) may never have practical effect once ERYC includes those savings, as it would only apply to byelaws which do not allow scope for consent. Nevertheless, in the context of the certainty required by a nationally significant infrastructure project, it is important that this paragraph be included in the Order. ~~As~~Separately, as a safeguard, under paragraph (6) if the undertaker is notified by anyone that anything to be done under the Order would contravene a statutory provision of local application, the undertaker has to respond within 14 days setting out whether it agrees that there would be a contravention and the grounds on which it believes the article is excluded and the extent of that exclusion. The provisions of this article may be made pursuant to section 120(5)(a) of the 2008 Act. That section provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.

6 PART II OF THE ORDER - WORKS PROVISIONS

6.1 Principal powers

Articles 4 to 7 of the Order contain provisions for the principal powers needed for the authorised development.

Article 4	*(development consent etc. granted by the Order)* is based on Article 2 of Schedule 1 of the DCO Model Provisions and grants development consent for the authorised development to be carried out within the Order limits and maintained. The authorised development means the development under sections 14(1)(g) and 21 of the 2008 Act and associated development under section 115 of the 2008 Act. Schedule 1 (*authorised development*) describes the authorised development. Development consent for the authorised development is subject to the requirements set out in Schedule 3 *(requirements)*. Sub-paragraph (b) of the article provides for consent to operate and use the authorised development for the purpose for which it is designed. Section 157(2) of the 2008 Act expressly allows the authorisation for use of a "building" for the purpose for which it is designed. However, the authorised development includes key elements, such as the pipeline, which are not buildings and therefore the clarification provided in sub-paragraph (b) is necessary. Such a paragraph may be included in the Order because such provision is sensible and section 120(3) of the 2008 Act allows a draft Order to make provision relating to the development for which consent is granted.
Article 5	*(maintenance of authorised development)* follows the wording of article 3 of Schedule 1 of the DCO Model Provisions, providing for the maintenance of the authorised development, save that it clarifies for the avoidance of doubt that following maintenance activities being completed the resulting works may not vary from the description of those works in Schedule 1 (*authorised development*).
Article 6	*(limits of deviation)* The works plans set out that the

	limits of deviation for where the pipeline is to be located are narrower than the construction corridor, i.e. the Order limits, required for construction of the pipeline. Accordingly, in terms of lateral limits of deviation, article 6 of Schedule 2 of the DCO Model Provisions has been tailored to clarify for the avoidance of doubt that whilst the ultimate *location* of works themselves fall within the limits of deviation, the *construction activities* for those works may be carried out anywhere within the Order limits (provided that they are permitted by the Order). This does not apply to the drainage works: it is clarified in the article that these may be located anywhere within the Order limits. In terms of *vertical* limits of deviation: • it should be noted that the Order does not use such limits in respect of development at above ground installations as a proxy for the concept of a building envelope, where instead the conventional approach for defining built development is adopted by way of Requirements 3 (*approved details*), 5 (*Barmston Pumping Station*) and 6 (*Camblesforth Multi-junction design*) and the approved plans listed in Part 4 of Schedule 2 (*approved plans*). • paragraph (3) clarifies that aerial markers, cathodic protection test posts and field boundary markers may be up to 3 metres high; • paragraph (4) specifies that the authorised development may deviate vertically from ground surface levels to any extent *downwards* as may be found to be necessary or convenient. This wording is directly from article 6(b)(ii) of Schedule 2 of the DCO Model Provisions and article 5(b)(ii) of the TWA Model Provisions. It is common in linear projects: see article 8(b)(ii) of the Network Rail (North Doncaster Chord) Order 2012 and article 7(b)(ii) of the Network Rail (Ipswich Chord) Order 2012, for example. Although a minimum depth of cover, in terms of how much ground must be kept *above* a pipeline, is relevant because of receptors above it,

	such as roads and rivers, for example (and such depths of cover are secured by way of the description in relevant Work Nos. in Schedule 1 (*authorised development*)), the amount of ground which is to lie *beneath* a pipeline does not need to be constrained. Indeed, an element of flexibility as to how deep a pipeline is to be installed is necessary so that installation can be carried out in line with the ground conditions ascertained during construction, and this is recognised in both the DCO and TWA Model Provisions. In any event, there is no material prejudice to land ownership the *deeper* a pipeline is installed.
Article 7	*(defence to proceedings in respect of statutory nuisance)* follows article 7 of Schedule 1 of the DCO Model Provisions and provides that no one can bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if: • the noise relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or it is unavoidable; or • the noise relates to premises used by the undertaker for the authorised development and the authorised development is being used in accordance with a scheme for noise management approved by the relevant planning authority as described in paragraph 15 of Schedule 3 *(requirements)* of the draft Order.

6.2 Benefit of Order

Articles 8 and 9 of the Order contain provisions relating to the benefit and transfer of the benefit of the Order.

Article 8	*(benefit of Order)* follows article 4 of Schedule 1 of

	the DCO Model Provisions and would, subject to article 9 (*transfer of benefit of Order*) of the Order, grant only National Grid Carbon Limited the benefit of the Order rather than allowing the benefit to run with ownership of the land as envisaged by the 2008 Act. Paragraph (2) excepts where works are carried out for the benefit or protection of persons or land affected by the authorised development, so that it is clear that in these cases the benefit of the "planning permission" equivalent of the Order, i.e. development consent, for those mitigation works is not personal to the undertaker but also for the users of the relevant land.
Article 9	*(transfer of benefit of Order)* follows article 5 of Schedule 1 of the DCO Model Provisions and would provide for the permanent or temporary transfer of the benefit of the Order, subject to the consent of the Secretary of State and the transferee being subject to the same restrictions, liabilities and obligations placed upon National Grid Carbon under the Order.

6.3 Streets

Articles 10 to 18 of the Order contain provisions relating to streets.

Article 10	*(street works)* follows article 8 of Schedule 1 of the DCO Model Provisions and would confer, for the purposes of the authorised development, authority on the undertaker to break open (including for the purposes of carrying out surveys); tunnel under; place or change the position of apparatus or execute any works incidental to these works in or under certain streets, which are specified in Schedule 4 (*streets subject to street works*) and within the Order limits, for the purposes of the authorised development. The authority given by this article 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 New Roads and Street Works Act 1991 (the "**1991 Act**"), which means that the Order replaces the need for a street works licence under the 1991 Act.

	Paragraph (3) confirms that the provisions of sections 54 to 106 of the 1991 Act apply to any street works (as defined in that Act) carried out under this power apart from the following exceptions: • an undertaker does not ordinarily need the consent of the street authority for placing apparatus in a protected street if it has a street works licence (see section 61(2) of the 1991 Act). The equivalent of that licence is comprised in paragraph (1). Accordingly, sub-paragraph (3)(a) confirms that this means that the undertaker does not need further consent from the highway authority for placing apparatus in the course of the authorised development. This is necessary because the highway authority has identified the A1034 and A1079 as "protected streets", the pipeline will be crossing these and the highway authority has in pre-application discussions not indicated any objection to that. • sections 62(2) and 62(4) of the 1991 Act allow the Secretary of State following the designation of a protected street to require removal or repositioning of apparatus already placed in the street, or if works are still in progress, to give directions in respect of those. It is therefore sensible for sub-paragraphs (3)(b) and (c) to disapply these in relation to apparatus placed in the course of the authorised development, in case streets in which the pipeline is placed are in future designated as protected streets, as the pipeline is a nationally significant infrastructure project requiring certainty that it will not have to be moved. • In this article, "apparatus" has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the draft Order this has been expanded to include aerial markers, cathodic protection test posts and field boundary markers as it will be necessary to place these along the pipeline route. Pipelines, transformer rectification kiosks and electricity cabinets are also

	clarified as being included within the definition of "apparatus".
Article 11	*(power to alter layout, etc., of streets)* is based on article 6 of Schedule 2 of the TWA Model Provisions and would allow for the layout of the existing streets specified in Schedule 5 (*streets subject to alteration of layout*) to be altered to ensure that these are appropriately configured to merge with the new roads comprised in Work Nos. 4C, 3G, 6C, 8B, 9C, 11C, 12 and 14B which connect the AGIs to the existing highway network in Schedule 1 (*authorised development*) of the Order. Paragraph (2) confers a broader power to alter the layout of *any* street within the Order limits for the purposes of constructing and maintaining the authorised development. However, this broader power is limited by the consent of the street authority, not to be unreasonably withheld or delayed. This provision falls under item 15 of part 1 of Schedule 5 of the 2008 Act, namely the carrying out of civil engineering or other works, and is permitted to be included in the draft Order under Section 120(3) of the 2008 Act. This provision is also necessary and expedient under Section 120(5)(c) of the 2008 Act to give full effect to article 4 (*development consent etc. granted by the Order*) which authorises the new roads comprised in Work Nos. 3G, 4C, 6C, 8B, 9C, 11C, 12 and 14B in Schedule 1 (*authorised development*) of the Order. Article 11 also has precedent in recent linear schemes authorised under the Transport and Works Act 1992 (e.g. at article 7 of the Network Rail Hitchin (Cambridge Junction Order) 2011) and the 2008 Act (e.g. article 10 of the Network Rail (North Doncaster chord) Order 2012) and article 8 of The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013. Paragraph (4) is not from the DCO Model provisions but sets out a list of the types of works to streets which may be carried out to the streets listed in Schedules 4 *(streets subject to street works)* and 5 *(streets subject to alteration of layout)*. These include

	the right to: • demolish, remove, replace and relocate any bus shelter and associated bus stop infrastructure; • execute any works to provide or improve sight lines required by the highway authority; • remove and replace kerbs and flume ditches for the purposes of creating permanent and temporary accesses; • execute and maintain any works to provide hard and soft landscaping; • carry out re-lining and placement of new temporary markings; and • carry out works required that are incidental to those kinds of works. These items are often added by promoters of development consent orders into the list of works to be carried out pursuant to the power equivalent to a street works licence under the 1991 Act, i.e. article 10 (*street works*) but such a licence relates to *the placing of apparatus* rather than works to streets of this kind not necessarily related to the placing of apparatus; and for that reason these items are moved to this provision in respect of alterations of highway layout as the more appropriate provision to which they relate. This element of the provision may be included in the Order because it provides for the carrying out of civil engineering or other works related to the authorised development, as permitted by sections 120(3) and (4) together with item 15 of Part 1 of Schedule 5 of the 2008 Act. The provision is also necessary and expedient to give full effect to the power to carry out the authorised development under article 4 of the draft Order (*development consent etc. granted by the Order*), as permitted under Section 120(5) of the 2008 Act.
Article 12	is based on article 10 of Schedule 2 of the DCO Model Provisions and creates a mechanism whereby any new street constructed under the Order will, if notice has been served on the highway authority, after a 12 month maintenance period, and provided

	that it is completed to the reasonable satisfaction of the highway authority be adopted for maintenance at the public expense. The equivalent DCO Model Provision, article 10, has only been modified so that *(construction and maintenance of new, altered or diverted streets)* : • adoption is by notice rather than automatic on the above criteria being met. This is because not all streets to be constructed under the Order, such as the access roads to the AGIs, are to be adopted and the intention is for them to remain private, save for elements of junctions joining existing highway to be determined following construction. Similar provision is made in paragraph (2) in the case of alterations and diversions, where it is expected that the highway authority would require all such alterations or diversions to be adopted, so the DCO Model Provisions are followed in this regard without reference to a notice system; • at the request of North Yorkshire County Council, paragraph (2) clarifies that the maintenance period, prior to adoption of works as public highway maintainable at the public expense, continues until the undertaker has reinstated and made good damage or defects in the works. Paragraph (3) of this article provides that any street constructed pursuant to the Order (which was not previously part of the public highway) will be deemed as dedicated as public highway on prior notice being given to the highway authority (and if different the street authority). This is intended to make provision for the dedication of new streets, or parts of streets, constructed under the Order. This mechanism for *dedication* is complementary to the mechanism from the DCO Model Provisions at paragraphs (1) and (2), which instead relate to the terms on which: • new streets (such as access roads to the AGIs) are to be *adopted as maintainable at the public expense* by the local highway authority; or • altered parts of streets (such as those which

	are altered or diverted in connecting AGI access roads to existing public highway) are to be *adopted as maintainable at the public expense* by the local highway authority. It is not proposed that any new streets constructed pursuant to the Order that will be private will also be left in the ownership of a third party land owner and the book of reference (Document Reference 4.3) secures the relevant land. Paragraph (4) of this article excludes from its scope the structure of any bridge carrying a street as the responsibility for maintaining the structure of any bridge will remain with the owner of the relevant bridge. Following article 10 of Schedule 2 of the DCO Model Provisions, further incidental provision is made for the undertaker to have a defence against claims for loss or damage resulting from failure to maintain any street under this article if he can prove that he took all care reasonably necessary in the circumstances to ensure that the relevant part of the street was not dangerous to traffic. The article sets out factors which a court can take into account in considering this defence. No offence is created.
Article 13	*(permanent stopping up of streets)* follows article 9 of Schedule 1 of the DCO Model Provisions and would provide for the permanent stopping up of any street so long as the prior approval of the local highway authority has been given. In relation to such streets, the local highway authority may require a substitute. There are other safeguards for where no substitute is to be provided for a street stopped up, including ensuring that the undertaker either owns the land either side of the street being stopped up, there being no right of access hindered or there being another reasonably convenient access. There is provision for compensation. Where a section of street is stopped up, all rights of way over the street are extinguished and the undertaker may use it for the purpose of the authorised development. No such permanent stopping up is currently

	envisaged but the undertaker considers it appropriate to include this provision for the following reasons: • the authorised development covers a wide geographical area, being an approximately 67km long cross-country pipeline between Camblesforth Multi-junction and the coast (plus approximately a further 5.6km between the Camblesforth Multi-junction and Drax); • there may be cases where in future it is asserted that the highway boundary is not as shown on the local highway authorities' plans of the extent of public highway (as such plans are never considered definitive) or highway is created within the Order limits after the Order is made but before it is constructed. The risk is all the greater because of the length and linear nature of the authorised development; • such newly asserted or simply new public highway could impede the construction, maintenance or operation of the authorised development if not permanently stopped up; • this residual power therefore provides certainty for the construction of a linear scheme the scale and length of the authorised development, proportionate to its urgency in policy: as set out above, paragraph 3.6.5 of EN-1 describes carbon capture and storage as "a priority for UK energy policy", even amongst the urgency of other nationally significant energy projects; • the 2008 Act provides that particular provision may be made in an order granting development consent for "The stopping or diversion of highways" (Sub-sections 120(3) and (4) and paragraph 17 of Part 1 of Schedule 5). Providing a mechanism for permanently stopping up highway is a matter which relates to or is ancillary to this development for the purposes of sub-sections 120(3); • a key objective of the Government under the 2008 Act is to provide as far as possible a

	"one stop shop" in terms of consents required for nationally significant infrastructure projects, so it is entirely appropriate for this residual power to be contained in the Order. The objective is not to compel promoters to seek powers such as this, which are available elsewhere, *outside* of the Order. This is not only for the purpose of facilitating the more expeditious authorisation and implementation of nationally significant infrastructure projects in the national interest. It is also (1) to ensure that the safeguards contained in the Order will apply to powers required for the project in question and (2) all parties can see and understand the extent of powers and restrictions on them in one place: in the Order.
Article 14	*(temporary stopping up of streets and public rights of way)* follows article 11 of the DCO Model Provisions but has been expanded to deal also with public rights of way because the DCO Model provisions contain no provision for the *temporary* stopping up of such rights of way but only for *permanent* extinguishment. This would provide for either the temporary stopping up, alteration or diversion: • of those streets and rights of way listed in Schedule 6 (*streets and rights of way etc. to be temporarily stopped up*) to the Order, following consultation with the relevant local highway authority; and • of *any* streets and rights of way (whether or not within the Order limits) subject to the consent of the relevant local highway authority, which may attach reasonable conditions to that consent but cannot unreasonably withhold or delay it~~;~~. The reasons for inclusion of residual provision for potentially temporarily stopping up currently unspecified streets and rights of way are the same as in respect of Article 13 *(permanent stopping up of streets)*, described in the row above. • ~~of those streets and rights of way listed in Schedule 6 (*streets and rights of way etc. to be temporarily stopped up*) to the Order,~~

	~~following consultation with the relevant local highway authority.~~ The Order may make provision for the stopping up of highways under sections 120(3) and 120(4) and item 17 of Part 2 of Schedule 5 of the 2008 Act. The rights of way to which this article refers are as much highways for the purposes of item 17, being another form of public highway, as the streets to which article 11 of the DCO Model Provisions refers and on which this article is based. Sub-paragraph (1)(a) of the article clarifies that both a class of traffic as well as traffic generally can be diverted under this power and is included to reduce inconvenience to the public where possible. This provision is necessary and expedient under section 120(5)(c) of the 2008 Act to give full effect to article 4 (*development consent etc. granted by the Order*) because the streets or rights of way listed at Schedule 6 *(streets and public rights of way to be temporarily stopped up)* need to be stopped up, primarily to allow the laying of the cross-country pipeline across these.
Article 15	*(apparatus and rights of statutory undertakers in permanently stopped up streets)* is derived from article 32 of Schedule 1 of the DCO Model Provisions and would provide that the undertaker may, where a street is permanently stopped up, require the statutory undertaker to relocate affected apparatus or provide other apparatus in substitution for the existing apparatus. The statutory undertaker is to be reimbursed in such circumstances. Otherwise, a statutory undertaker retains the same powers and rights in respect of its apparatus under permanently stopped up streets which it would have had if the Order had not been made.
Article 16	*(access to works)* follows article 12 of Schedule 1 of the DCO Model Provisions and confers upon the undertaker powers for the purposes of the authorised development to provide or improve access as specified in Schedule 7 *(access to works)*. Similar powers are conferred in relation to any other locations within the Order limits reasonably required in relation to the authorised development, provided

	that the relevant planning authority provides approval following consultation with the highway authority, which is not to be unreasonably withheld or delayed.
Article 17	(*traffic regulation*) is not from the DCO Model Provisions, but is based on article 41 of Schedule 2 of the TWA Model Provisions for tramways, i.e. for linear projects, and article 39 of the Network Rail (North Doncaster Chord) Order 2012. It would allow the undertaker to put in place temporary and traffic regulation measures subject to the consent of the traffic authority should this be necessary for the purpose of the construction, maintenance and operation of the authorised development, for example should the traffic authority require traffic lights and/or a left turn sign only as a result of junction modifications comprised in the authorised development. It can be included in the Order under sections 120(3) and 120(4) and item 20 of Part 2 of Schedule 5 of the 2008 Act.
Article 18	*(agreements with street authorities)* follows article 13 of Schedule 1 of the DCO Model Provisions and would allow the undertaker to enter into agreements with street authorities which could devolve the undertaker's powers under the Order to the authority in respect of the construction of new streets; the improvement of existing streets; the stopping up, alteration or diversion of streets; and street works listed in the Order. Note that this power is a separate matter to agreements under section 278 of the Highways Act 1980. Agreements under that section do not relate to powers under the Order but instead to a local highway authority devolving *its* powers *under that section* to a developer, rather than the developer devolving *its* powers *under the Order* to a local highway authority, which is the purpose of this article. Sub-paragraph 1(b) departs from the DCO Model Provisions and clarifies that an agreement may relate to strengthening, improving, repairing or reconstructing streets under the powers conferred by the Order. As permitted by section 120(5)(d) of the 2008 Act, this additional provision supplements the power in sub-paragraph 1(a) for an agreement to be entered into for the construction of a street as well as article 5 of the Order *(maintenance of authorised*

	development), which would allow for such streets to be repaired. It also has precedent in article 17 of the Nottingham Express Transit System Order 2009 and article 13 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011. At the request of North Yorkshire County Council, the article has also been revised to provide further legal context under the aegis of the Order, in addition to Article 12 (*Construction and maintenance of new, altered or diverted streets*) for the highways agreement which the undertaker is negotiating with it in respect of the adoption of certain works comprised in the authorised development as public highway maintainable at the public expense.

6.4 Supplemental powers

Articles 19 to 22 of the Order contain provisions relating to supplemental powers.

Article 19	*(discharge of water)* follows article 14 of Schedule 1 of the DCO Model Provisions and would enable the undertaker to discharge water into any watercourse, public sewer or drain in connection with the carrying out and maintenance of the authorised development with the approval of the authority to which the watercourse, public sewer or drain belongs and subject to certain other conditions. For the purpose of this article, public sewers or drains mean those which belong to the Environment Agency, an internal drainage board, joint planning board, local authority or a sewerage undertaker. Paragraph (6) clarifies the wording from the equivalent paragraph of the DCO Model Provisions' article 14 that nothing in this article requiring avoidance of releasing impurities into public watercourses or drains requires the undertaker to maintain either these or private drains comprised in the authorised development: whilst any private drains on land of which temporary possession is taken for the purposes of construction of the authorised development must be reinstated to the satisfaction of the landowner pursuant to article 28(4), once the undertaker has vacated that land, the responsibility for maintenance of any private drains on private land

	resides with the landowner, as it did prior to construction of the authorised development. The definition of "watercourse" at article 2 of Schedule 1 of the DCO Model provisions is inserted at sub-paragraph 8(b) of this article for ease, rather than at article 2 of this Order, as this meaning of watercourse is used only in this article. Reference to section 85 of the Water Resources Act 1991, which appears in the DCO Model Provisions, has been deleted. This is because this section has been repealed by, inter alia, paragraph 8(a) of Schedule 26 of the Environmental Permitting (England and Wales) Regulations 2010 (the "**Environmental Permitting Regulations**"). Instead, paragraph (7) of the article is updated to refer to the successor regime under the Environmental Permitting Regulations. This approach was accepted by the Secretary of State in article 13(7) of the Network Rail (Ipswich Chord) Order 2012 and at article 14(7) of the Rookery South (Resource Recovery Facility) Order 2011.
Article 20	*(protective work to buildings)* follows article 15 of Schedule 1 of the DCO Model Provisions and confers on the undertaker the right at its own expense to carry out protective works to buildings within the Order limits before or during construction of the authorised development, in the vicinity of the building and for up to five years after that part of the authorised development opens for use. Except in the case of emergency, there are requirements for prior notice to be given to owners and occupiers. Provision is also made for owners and occupiers to serve counter-notices questioning the necessity of such protective works, with recourse to arbitration and provision for compensation.
Article 21	*(authority to survey and investigate the land)* follows article 16 of Schedule 1 of the DCO Model Provisions and confers on the undertaker power to survey and investigate land, to make trial holes and remove soil samples, carry out ecological and archaeological investigations, place on/leave on/remove apparatus for use in connection a survey, investigation or trial holes. The power in the DCO Model Provisions is extended

	to include the ability to take, and process, samples of water, air, soil or rock, flora, bodily excretions, non-human dead bodies, or any non-living thing present as a result of human action found on, in or over the land. This wording is not contained in the DCO Model Provisions. It reflects the wording of section 53(3A) of the 2008 Act which clarifies that the right to enter land for the purposes of surveying includes the power to take and process certain types of samples. This may be included in a DCO under section 120(4) and item 12 of Part 1 of Schedule 5 of the 2008 Act, which makes particular provision for the inclusion of powers for carrying out surveys or taking of soil samples. The power to enter land and leave apparatus is subject to a requirement on the undertaker to give at least 14 days' notice to owners and occupiers of the land. The undertaker may be asked to provide evidence of its authority to enter the land. Trial holes cannot be made on public highway without the consent of the highway authority or on a private street without the consent of the street authority, not to be unreasonably withheld or delayed. There is also provision for compensation payments.
Article 22	*(removal of human remains)* is based on DCO Model Provision article 17. It requires the undertaker, before it carries out any development or works which will or may disturb any human remains in any land within the Order limits, to remove those remains. Before removing any human remains, the undertaker is required to publish notice of its intention to do so. Notice is also required to be displayed near the site and, as soon as reasonably practicable, after its publication a copy should be sent to the relevant planning authority. Any relative or personal representative of any deceased person whose remains are proposed to be removed from any land within the Order limits may undertake the removal of the remains themselves and arrange for those remains to be re-interred or cremated, the undertaker being responsible for the reasonable costs in doing so.

	In the event that such relative or personal representative does not remove the remains, the undertaker is required to comply with any reasonable request the relative or personal representative may make in relation to the removal and re-interment or cremation of the remains. Paragraph (12) clarifies that the removal of remains under this article must be carried out in accordance with any directions which may be given by the Secretary of State. Paragraphs (14) and (16) clarify that section 25 of the Burial Act 1857 (bodies not to be removed from burial grounds save under faculty, without licence of Secretary of State) and The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950 (the "**1950 Regulations**") are disapplied in relation to the authorised development. This is because this legislation contains procedures for removing human remains which conflict with or duplicate the procedures set out in the DCO Model provisions. Paragraph (15) applies to this Order sections 238 and 239 of the 1990 Act, which ordinarily allow the use of consecrated land or burial grounds in accordance with a planning permission notwithstanding ecclesiastical law, so that land acquired for the authorised development or temporarily used or in relation to which rights are acquired, has the same benefit of those 1990 Act sections as it would have done if the Order had been a planning permission.

7 PART III OF THE ORDER - ACQUISITION AND POSSESSION OF LAND

7.1 Powers of acquisition

Articles 23 to 27 of the Order contain provisions for the compulsory acquisition of land and for the payment of compensation.

Article 23	*(compulsory acquisition of land)* follows article 18 of Schedule 1 of the DCO Model Provisions. It authorises the compulsory acquisition of land shown on the land plan and described in the book of reference, so far as it is required for the authorised development, to

	facilitate it or is incidental to it. The article further makes provision for the discharge or suspension of rights, trusts and incidents to which the land was previously subject so far as their continuance would be inconsistent with the exercise of the powers under this Order. "Suspension" is not included in the relevant DCO Model Provision but is included here to allow the undertaker to minimise private rights discharged where it is of the view that *permanent* discharge is not necessary. This is a more proportionate approach than article 18 of Schedule 1 of the DCO Model Provisions which would otherwise "cleanse" the title of even those rights which the undertaker considers consistent with the authorised development. Paragraph (3) of the article specifies that a person who suffers the loss of a private right of way under this article is entitled to compensation, a paragraph which is repeated in article 37 of the Order ~~which specifically deals with~~, which creates a specific mechanism for the undertaker confirming that there is no need for the extinguishment of certain private rights of way. These provisions both replicate articles 18(3) and 22(4) of Schedule 1 of the DCO Model Provisions. Specific reference to "private rights of way" only in this article, duplicated in article 37, rather than to other private rights, mirrors articles 18(3) and 22(4) of Schedule 1 of the DCO Model Provisions. The DCO Model Provisions in turn mirror section 236 of the 1990 Act (extinguishment of rights over land compulsorily acquired), which states as follows: (1) Subject to the provisions of this section, upon the completion of a compulsory acquisition of land under section 226, 228 or 230— (a) all private rights of way […] on, under or over the land shall be extinguished […] (4) Any person who suffers loss by the extinguishment of a right […] under this section [i.e. a right of way over land] shall be entitled to compensation from the acquiring authority." In other words, the equivalent articles 18 and 37 from the DCO Model Provisions imitate the elements of

	section 236 which extinguish private rights of way and clarify that compensation in certain circumstances may be available for ~~such~~the extinguishment~~. It~~ of that particular species of private right. Following legal analysis, it is not clear why the DCO Model Provisions duplicate these elements in both their articles 18 and 37 but the undertaker has no objection to following the tendentious approach of the DCO Model Provisions in this regard, which supplement rather than replace the compensation code in this instance. However, as per section 236, it is not necessary or appropriate to extend reference to compensation for *other* private rights~~.~~: ~~A~~any person from whom an estate or interest in land is acquired compulsorily, i.e. who has a compensatable interest, has a right to a claim in compensation under longstanding heads of claim. Nevertheless, it is an established principle of the compensation code that this right is not expressly stated in any statute~~,~~: a large and complex body of case law relates to it and seeking to set out such a general right in shorthand here would be unprecedented, unhelpful and ~~inappropriate~~unnecessary. ~~For clarity on the face of the Order, paragraphs 4, 5 and 6 reflect subsections 135(1) and (2) of the 2008 Act: no interest in Crown land may be acquired pursuant to the Order unless the appropriate Crown authority consents to the acquisition; moreover, the Order only applies to Crown land so far as the appropriate Crown authority consents.~~
Article 24	*(compulsory acquisition of rights)* follows article 21 of Schedule 1 of the DCO Model Provisions and would confer on the undertaker the power to acquire existing rights or create new rights in the Order land as described in the book of reference. Upon acquisition or vesting, land over which new rights are acquired is discharged from existing rights insofar as the existing rights are inconsistent with the new rights. A person who suffers the loss of a private right of way under this article is entitled to compensation. Paragraph (4) and Schedule 143 (*modification of compensation and compulsory purchase enactments for creation of new rights*) are not from the DCO

	Model Provisions but mirror the wording of article 27(3) and Schedule 11 of the Hinkley Point C (Nuclear Generating Station) Order 2013. These impose modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired), and is commonplace in Transport and Works Act orders and other compulsory purchase orders made by local authorities. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
Article 25	*(acquisition of subsoil only)* is based on article 24 of Schedule 1 of the DCO Model Provisions and would authorise the undertaker to compulsorily acquire so much of, or such rights in, the subsoil of land referred to in article 23(1) instead of acquiring the whole. Further, the article confirms that in taking such a subsoil interest, the undertaker would not be required to acquire an interest in any remaining part of that land.
Article 26	*(power to override easements and other rights)* does not derive from the DCO Model Provisions but closely mirrors section 237 of the Town and Country Planning Act 1990 (the "**1990 Act**") in keeping with similar approaches at article 25 of the Hinkley Point C (Nuclear Generating Station) Order 2013 and article 18 of the Rookery South (Resource Recovery Facility) Order 2011. This article addresses the fact that it is not clear whether the reference to discharging "rights, trusts and incidents" in articles 23(2) (*compulsory acquisition of land*) and 24(2) (*compulsory acquisition of rights*) of the draft Order, taken from the DCO Model Provisions, includes the discharge of items listed in section 237, namely easements, liberties,

	privileges, rights or advantages annexed to land and adversely affecting any other land, including any natural right to support or restrictions as to the user of land resulting from a contract. In particular, this resolves the doubt over the applicability of these provisions to restrictions on user. This lack of clarity would not be a concern for a local planning authority promoting compulsory purchase powers to facilitate a development because under section 237 it is entitled to carry out works on land which it has acquired or appropriated for planning purposes, notwithstanding any interference with the items listed in that section. However, the undertaker in this draft Order is not a local planning authority, so it is necessary to apply section 237 in an amended form appropriate to the proposed development. Sections 120(3) and (4) and item 2 of part 1 of Schedule 5 of the 2008 Act confirm that the draft Order may make provision, such as that in this article, relating to the compulsory suspension, extinguishment or interference with interests in or rights over land. Moreover, this article is supplementary (under section 120(5)(d) of the 2008 Act) to articles 23 (*compulsory acquisition of land*) and 24 (*compulsory acquisition of rights*) of the draft Order and is necessary and expedient to give full effect to the development consent in article 4 (*development consent etc. granted by the Order*) of the draft Order (as permitted by section 230(5)(c) of the 2008 Act). Sub-paragraphs 26(1)(a) and (b) mirror section 237(1). The definition of "authorised activity" in this article is based on the list of activities in sections 237(1) and 237 (1A) of the 1990 Act but modified to be bespoke to the authorised development and the draft Order and its powers: sub-paragraphs 2(a) and 2(b) specify such activities as being the erection, construction, carrying out, maintenance, or operation of any part of the authorised development or the exercise of any power authorised by the Order. Sub-paragraph 2(c) clarifies that "use of any land" includes the "temporary use of land". This gives full effect to the powers under articles 28 *(temporary use of land for carrying out the authorised development)* and 29

	(temporary use of land for maintaining the authorised development) of the Order, which ought to be capable of use without constraint by the interests etc, rights or restrictions described in paragraph (3) of this article. Article 26(3) reflects section 237(2) of the 1990 Act but also applies to restrictions as to the user of land arising by virtue of contract. No drafting is included to reflect section 237(3), because it may be necessary to alter the apparatus of statutory undertakers in accordance with the Order and the relationship between the undertaker and statutory undertakers is provided for in the protective provisions included at Schedule 11 (*protective provisions*) of the Order. Article 26(4) makes provision for compensation and is based on section 237(4) of the 1990 Act and comments of the (now abolished) IPC in relation to the Rookery South (Resource Recovery Facility) Order 2011 in relation to removal of reference to the Land Clauses Consolidation Act 1845. Section 237(6) of the 1990 Act is not reflected in the article because the undertaker is not a local planning authority and, as the promoter of the authorised development itself, it will not have an indemnity agreement from a promoter relating to compensation liability. Article 26(5) mirrors the wording of section 237(7) of the 1990 Act.
Article 27	*(application of the Compulsory Purchase (Vesting Declarations) Act 1981)* follows article 23 of the DCO Model Provisions and would provide for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 (in this paragraph the "**1981 Act**"), which makes provision for vesting procedures for land subject to compulsory purchase. Some wording has been added to this article to ensure that the 1981 Act is applied properly to the undertaker and the draft Order. This is because article 23(1) of the DCO Model Provisions was drafted on the assumption that the undertaker is a public authority

	under section 1(2) of the 1981 Act. However, as the undertaker is not a public authority, the additional wording has been included to clarify that it is to constitute a public authority for the purposes of the 1981 Act, so that its vesting procedures would apply to the Order. It is noted that the draft Order does not contain an express provision incorporating Part I of the Compulsory Purchase Act 1965. This is because section 125 of the 2008 Act already applies that Part to a development consent order authorising the compulsory acquisition of land.

7.2 Temporary possession of land

Articles 28 to 29 of the Order contain provisions for the temporary possession of land for the purposes of or in connection with the authorised development.

Article 28	*(temporary use of land for carrying out the authorised development)* follows article 28 of Schedule 1 of the DCO Model Provisions and confers upon the undertaker a right to enter on and take possession of: • land specified in Schedule 9 (*land of which temporary possession may be taken*) to carry out those elements of the authorised development listed in that Schedule. This is the land tinted light grey or shown cross-hatched on the land plans (Document Reference 4.3); • any other Order land where no notice of entry has been served and no general vesting declaration made, i.e. where compulsory acquisition powers have not yet been exercised. This is the land tinted dark grey on the land plans (Document Reference 4.3). This approach means that the undertaker may use temporary use powers *to construct* the authorised development in the particular Order land described in paragraph 28(1)(a)(ii) and, *following construction*, once the exact location of the pipeline is known, the undertaker may compulsorily acquire the 24.4 metre wide easement strip required for the ongoing use,

	access and maintenance of the pipeline. This approach does not preclude the undertaker from instead both (i) exercising its compulsory acquisition powers pursuant to article 24 (*compulsory acquisition of rights*) to acquire the 24.4 metre wide easement strip for carrying out the authorised development (i.e. laying the pipeline) and at the same time (ii) pursuant to temporary use powers also taking possession of land necessary for construction in the wider Order limits described in paragraph 28(1)(a)(ii) outside of that easement strip. In this way, the minimum width of land possible will be burdened by the permanent rights comprised in the easement strip. This is because, once the pipeline has been located in that 24.4 metre wide easement strip, the remaining land of which possession was taken only temporarily for construction will be returned to its owners in accordance with this article without being subject to permanent rights. The AGIs are likely to be subject to compulsory acquisition alone but circumstances may arise in which it is sensible to make provision for temporary possession powers as well, so as not to burden any land with permanent rights where this can be avoided. Both of the above alternatives allow flexibility for the undertaker; at the same time, for landowners they allow the compulsory acquisition of land or rights to match the final location of the authorised development, which in certain Work Nos., such as the pipeline, will not extend to the full width of the limits of deviation, whilst allowing land necessary for carrying out the authorised development to be returned to its owners after only temporary use. Separately, land listed in paragraph 28(1)(a)(i), by way of a Schedule in the Order, i.e. the land tinted light grey or shown cross-hatched on the land plans (Document Reference 4.3), relates to areas where there are to be no permanent works remaining following construction and temporary use is necessary for the duration of construction only, with no subsequent permanent rights or land to be taken compulsorily (although protective works and surveys, it is clarified, can still be carried out on that land pursuant to articles 20 (*protective work to buildings*)

	and 21 (*authority to survey and investigate the land*). Use of the two paragraphs 28(1)(a)(i) and (ii) is a slightly different drafting approach to the Model DCO Provisions but has the same effect: it simply means that it is not necessary to schedule out in Schedule 9 (*land of which temporary possession may be taken*) all plots set out in the book of reference but only those where no permanent rights or land are subsequently to be taken. This approach also allows the ~~under taker~~undertaker to provide clarity to the owners of paragraph 28(1)(a)(i) plots that the proposals affect their land *only* in terms of temporary use *and not the compulsory acquisition of rights over land or of land itself*. Separately, the owners of paragraph 28(1)(a)(ii) plots know that the easement strip could be located on their land but other than that 24.4m strip, possession rights for construction will be only temporary, pursuant to this article. This approach has previously been adopted at article 23 of the Network Rail (Ipswich Chord) Order 2012, article 40 of the Able Marine Energy Park Development Consent Order 2014 and article 23 of the Network Rail (Redditch Branch Enhancement) Order 2013. Sub-paragraphs (1)(b), (c) and (d) further confer upon the undertaker the right to remove any building and vegetation, construct temporary works and buildings and carry out any mitigation works specified in Schedule 9 (*land of which temporary possession may be taken*). Prior notice to owners and occupiers is required and the article makes further provision for restoring land after temporary use and compensation. The article clarifies at paragraph (3) that the undertaker may not (unless the landowners agree) remain in possession: • in relation to the land specified in Schedule 9 (*land of which temporary possession may be taken*), i.e. where no permanent land or rights are to be taken, for longer than one year after the authorised development has been completed; or • in relation to other Order land, i.e. where permanent land or rights might be taken, for

	longer than one year after the authorised development has been completed, unless the undertaker exercises compulsory acquisition powers over it by serving a notice of entry or making a general vesting declaration. Paragraph (3) amends the DCO Model Provision equivalent so that the year runs from when the undertaker has certified that the entire Onshore Scheme is first capable of being brought into operational use for the purpose for which it was designed rather than from when the works on that land in isolation are complete. This is a critical amendment for a linear scheme such as a cross-country pipeline where construction on any given element is not complete, potentially requiring testing, back-checks and further works (as necessary) depending on construction matters arising further down the line, until the entire linear scheme can be considered to be complete. The undertaker is best placed to certify such completion and, in practice, the compensation provision at paragraph 5 means that there can be confidence that undue delay in issuing appropriate certificates would be minimised. Paragraph 11 also clarifies that nothing in this article prevents the taking of possession more than once in relation to land specified in Schedule 9 (*land of which temporary possession may be taken*). Sub-paragraph 4(b) and (c) extend the DCO Model Provisions to clarify that in restoring land, the undertaker does not have to restore areas where permanent mitigation works listed in Schedule 9 *(land of which temporary possession may be taken)* remain and also cannot be required to remove ground strengthening works. Sub-paragraphs (8)(a) and (b) expand the DCO Model Provisions to clarify that even though land listed in paragraph (1)(a)(i) cannot be acquired, nor can interests in it be acquired or created compulsorily, the undertaker can still carry out protective works and surveys under other provisions of the Order. The additions to this article may be included under section 120(3) of the 2008 Act as they make important provision for the development for which consent is sought, namely in respect of rights

	required for its construction.
Article 29	*(temporary use of land for maintaining the authorised development)* follows article 29 of Schedule 1 of the DCO Model Provisions and provides that the undertaker may take temporary possession of land within the Order limits reasonably required for the purpose of maintaining the authorised development and constructing such temporary works and buildings on the land as may be reasonably necessary. Sub-paragraph 1(b) of the article extends article 29 of the DCO Model Provisions to include a right to enter on any land within the Order limits for the purpose of *gaining access* where this is reasonably required to maintain the authorised development. This supplemental provision clarifies that the undertaker can secure appropriate access within the Order limits to those parts of the authorised development which need to be maintained, giving full effect to the maintenance powers granted under sub-paragraph (1)(a). This article is subject to safeguards: • The above powers may only be exercised during the "maintenance period". As per article 29(12) of Schedule 1 of the DCO Model Provisions this is 5 years but this runs from the date on which the *entire* authorised development is first brought into operational use for the purpose for which it was designed rather than the completion of only a part of it. This amendment to the DCO Model Provision equivalent is critical for a linear scheme such as a cross-country pipeline where the maintenance period cannot be allowed to run in a "rolling" set of consecutive dates when the scheme must be treated as an interacting whole, with issues (if any) in one location potentially requiring attention further down the line on sections completed earlier; • Provision is made for notice, restoration and compensation; • The undertaker must give 28 days' notice before entering on and taking temporary

		possession of land for the purposes of maintenance, except where there is an identified potential risk to the safety of the authorised development, the public or the surrounding environment (in which case such notice, if any, as is reasonably practicable should be given).

7.3 Compensation

Articles 30 to 32 of the Order contain provisions clarifying existing principles of compensation in relation to the compulsory acquisition and temporary possession of land in connection with the authorised development.

Article 30	*(disregard of certain interests and improvements)* is not contained in the DCO Model Provisions but follows article 26 of Schedule 1 of the TWA Model Provisions. It would provide for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition, where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation. It complies with section 126 (*Compensation for compulsory acquisition*) of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The wording of this article mirrors section 4 *(Assessment of compensation)* of the Acquisition of Land Act 1981 (in this paragraph the "**1981 Act**"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the draft Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions section 1 (*application of Act*)) and neither the 2008 Act nor the DCO Model Provisions apply section 1 of the 1981 Act to the draft Order. Sections 120(3) and 120(5)(a) and item 36 of part 1 of Schedule 5 allow the application in an Order of statutory provisions which relate to the payment of

	compensation.
Article 31	*(set-off for enhancement in value of retained land)* is not contained in the DCO Model Provisions but follows article 27 of Schedule 1 of the TWA Model Provisions. It would provide that in assessing the compensation payable to any person in respect of the acquisition of any land, the Lands Chamber of the Upper Tribunal shall set off against the value of the acquired land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development. These provisions comply with section 126(2) of the 2008 Act. This is because it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The principle in this article is established in section 7 of the Land Compensation Act 1961 *(effect of certain actual or prospective development of adjacent land in same ownership),* which needs to be applied. Sections 120(3) and 5(a) and item 36 of part 1 of Schedule 5 allow the application in an Order of statutory provisions which relate to the payment of compensation.
Article 32	*(no double recovery)* is not contained in the DCO Model Provisions but predominantly follows article 44 of the TWA Model Provisions. It provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, this article provides that there is to be no double recovery under two or more different provisions of this Order, precedence for which can be found in numerous TWA Orders. The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more and no less than his loss, is long established and no part of the compensation code conflicts with this principle. Accordingly, this article complies with section 126(2) of the 1990 Act and is a supplementary provision under section 120(5)(d) of the 2008 Act as well as a

	provision relating to the payment of compensation under sections 120(3) and (4) and item 36 of Part 1 of Schedule 5 of the 2008 Act.

7.4 Supplementary

Articles 33 to 40 of the Order contain supplementary provisions relating to the compulsory acquisition provisions in Part III of the Order.

Article 33	*(acquisition of part of certain properties)* follows article 26 of Schedule 1 of the DCO Model Provisions, replaces section 8(1) of the Compulsory Purchase Act 1965 and would enable the undertaker to acquire a part rather than the whole of properties subject to compulsory acquisition. Further, it contains a procedure enabling the relevant owner to require the whole to be taken, in certain circumstances, with disputes to be determined by the Lands Chamber of the Upper Tribunal.
Article 34	*(statutory undertakers)* is based on article 31 of Schedule 1 to the DCO Model Provisions. It authorises the undertaker to (1) compulsorily acquire land belonging to statutory undertakers shown on the land plans, (2) remove or reposition any statutory undertakers' apparatus, where it is anywhere within the Order limits and (3) acquire compulsorily new rights over land belonging to statutory undertakers. Sections 120(3) and (4) together with item 14 of part 1 of Schedule 5 of the 2008 Act allow particular provision relating to the removal, disposal *or re-siting* of apparatus.
Article 35	*(recovery of costs of new connections)* follows article 33 of Schedule 1 of the DCO Model Provisions and would provide for an owner or occupier of premises to recover from the undertaker the costs of reconnecting to public utilities/communications services if these are removed pursuant to article 34 of the Order *(statutory undertakers)*.
Article 36	*(time limit for exercise of authority to acquire land compulsorily)* follows article 20 of Schedule 1 of the DCO Model Provisions and would impose a time limit of eight years from the Order coming into force for the exercise of the proposed powers of acquisition and temporary

	possession. Sections 154(3) and (4) of the 2008 Act and regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allow the Order to prescribe a period longer than five years for exercise of such powers. Eight years is considered to be necessary in respect of the Order for the reasons set out in the statement of reasons (Document Reference 4.1) which accompanies the application for the Onshore Scheme.
Article 37	*(private rights of way)* follows article 22 of Schedule 1 of the DCO Model Provisions and enables extinguishment of private rights of way over land subject to compulsory acquisition under the Order. Private rights of way over land of which the undertaker takes temporary possession are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land. There is no need to amend this article from the DCO Model Provisions to refer to other types of private right as these are addressed in articles 23(2) and 24(2). This provision can be disapplied by a notice from the undertaker or by agreement with the owner of the right of way. It also makes provision for persons suffering loss as a result of the suspension or extinguishment of such private rights of way to be entitled to compensation. It is important to note that there are key differences in purpose between Articles 37 and Articles 23(2) and 24(2): • Article 37(3) specifies that private rights of way over land of which National Grid takes *temporary possession* under Articles 28 and 29 are suspended and unenforceable for as long as National Grid remains in lawful possession of the land; Articles 23(2) and 24(2), however, do not deal with temporary possession, only the permanent acquisition of land. • Separately, Article 37 is intended to provide a useful mechanism for *reducing* the interference with private rights of way of landowners (likely to be the most prevalent private rights along a long, rural, linear route) where compulsory acquisition has had to be used:

	• Article 23(2), for example, extinguishes rights where they are *"inconsistent with the exercise of powers under [the Order]"*. This would be a question to be assessed objectively on the facts in each case. • Article 37, however, allows the undertaker (by way of notice) to clarify to a person with the benefit of particular right of way that, so far as *it*s engineers are concerned, i.e. a subjective judgment in favour of that person, the right is not inconsistent with its powers under the Order and the person may continue to use it. In other words, this assist persons with the benefit of private rights of way. The value of the article, for the reasons given above, has been recognised by the Secretary of State by its inclusion in the following made Orders: • Article 28 (Private rights of way) of the Hinkley Point C (Nuclear Generating Station) Order 2013; • Article 46 (Private rights of way) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
Article 38	*(rights under or over streets)* follows article 27 of Schedule 1 of the DCO Model Provisions and provides that the undertaker may use the subsoil under and airspace over a street required for the authorised development without being required to acquire any part of the street or any easement or right in the street. Provision is made for compensation.
Article 39	*(incorporation of the mineral code)* is derived from article 19 of the DCO Model Provisions. Part 2 of Schedule 2 of the Acquisition of Land Act 1981 (in this paragraph the "**1981 Act**") would be incorporated into the Order to provide that the undertaker would not be entitled to any mines of coal, ironstone, slate and other minerals under the land acquired under the draft Order unless they have been expressly purchased, apart from minerals necessarily extracted or used in the construction of the authorised development. Part 3 of Schedule 2 of the 1981 Act regulates the relationship between the owner of the mines

	which lie below the land taken for the authorised development and the undertaker.
Article 40	*(open space)* Under section 132 of the 2008 Act, an order granting development consent is subject to special parliamentary procedure to the extent that it authorises the compulsory acquisition of a right over land, forming part of, amongst other things, open space, unless: • the Secretary of State is satisfied that certain statutory criteria under that section apply; and • his satisfaction and the relevant subsection are recorded in the Order. Land referencing commissioned in connection with the Onshore Application has identified that there are potentially ~~three~~four plots listed in the book of reference (Document Reference 4.3) accompanying the application for the Onshore Scheme which constitute open space and in respect of which the Order authorises the compulsory acquisition of rights. These are Plots ~~23~~1102, ~~233~~1106, 1277 and 12~~6~~80. The letter from Berwin Leighton Paisner LLP on behalf of the undertaker dated June 2014 to the Secretary of State, care of the National Planning Casework Unit, contains an application setting out the subsection of section 132 which the undertaker submits apply to these four Plots, with supporting information for this view. If the Secretary of State concurs with the undertaker's submissions in that letter, he is invited pursuant to section 132 to record his satisfaction and the relevant subsection in the form proposed in Schedule 8 (*record of the satisfaction of the Secretary of State pursuant to section 132 of the 2008 Act*) of the Order.

8 PART IV OF THE ORDER - MISCELLANEOUS AND GENERAL

Articles 41 to 5~~3~~4 of the Order contain a number of miscellaneous and general provisions.

Article 41	*(application of landlord and tenant law)* follows article 35 of Schedule 1 to the DCO Model Provisions and would override the application of landlord and tenant law in so far as it may prejudice the operation of any

	agreement for leasing the whole or part of the authorised development or the right to operate the same and any agreement for the construction, maintenance, use or operation of the authorised development or any part of it entered into by the undertaker.
Article 42	*(deemed consent under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009)* does not make reference to deemed consent under section 34 of the Coast Protection Act 1949 as per article 37 of Schedule 1 of the DCO Model Provisions. This is because that provision has been repealed by the Marine and Coastal Access Act 2009 (the "**2009 Act**"). Section 149A of the 2008 Act allows provision in a development consent order for a deemed marine licence under the 2009 Act. Accordingly, this article would constitute deemed consent under section 65 of the 2009 Act, the successor provision to section 34 of the Coast Protection Act 1949. Schedule 10 (*deemed Marine Licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009*) sets out the terms on which the deemed licence would be granted by the Secretary of State. The Marine Management Organisation has reviewed the form of licence and discussions between it and the undertaker in respect of the application are ongoing. The terms of the licence are explained more particularly below in this explanatory memorandum where Schedule 10 is explained. For information, an overlay of the deemed marine licence coordinates over the relevant works plans with drawing number 10-2574-GND-01-05-0056 Rev A accompanies the Onshore Scheme application (Document Reference 2.7).
Article 43	*(operational land for the purposes of the 1990 Act)* follows article 36 of Schedule 1 of the DCO Model Provisions and provides that, for the purposes of section 264(3)(a) of the 1990 Act, the development consent granted by the Order is to be treated as specific planning permission.

Article 44	*(felling or lopping of trees or shrubs)* follows article 39 of Schedule 1 of the DCO Model Provisions (save in relation to hedgerows). It would enable the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised development and danger to people constructing, maintaining, operating or using the authorised development. In the case of unnecessary damage, provision is included for the payment of compensation for loss or damage. Reference to "passengers" at sub-paragraph (1)(b) of the equivalent DCO Model Provision has been removed as this is not relevant to the authorised development. This article departs from the DCO Model Provisions in that paragraphs (3) to (6) remove the need to obtain a hedgerow licence under the Hedgerow Regulations 1997. The removal of hedgerows shown on the hedgerow plans (listed in Part 5 of Schedule 2 (*plans*) and given Document Reference 2.5) is instead to be consented in this article or, should the removal of any hedgerows other than those shown on the hedgerow plans be required (if any), consent from the local planning authority will be needed. This is similar to the approach taken at article 15 of the Brechfa Forest West Wind Farm Order 2013. Section 120(5)(a) of the 2008 Act enables a DCO to exclude a statutory provision which relates to any matter for which provision may be made in the Order. Sections 120(3) and (4) together with item 15 of Part 1 of Schedule 5 of the 2008 Act allow a DCO to make a provision for carrying out civil engineering or other works. The authorised development, a civil engineering work, will necessitate the removal of hedgerows, particularly for the laying of the pipeline. Accordingly, the Hedgerow Regulations 1997 are excluded under the Order.
Article 45	*(trees subject to tree preservation orders)* departs from article 40 of Schedule 1 of the DCO Model Provisions in that the undertaker has assessed the Order limits and determined that no trees subject to an existing tree preservation order will be adversely affected by the carrying out of the authorised development. However, the undertaker considers that it would be prudent and sensible to include a provision allowing it to fell or lop any tree, or cut back

	its roots, which has been made the subject of a tree preservation order since the date of its application for development consent. This power will only be exercisable where the undertaker reasonably believes it to be necessary to prevent obstruction or interference with the construction, maintenance or operation of the authorised development or to prevent a danger to people constructing, maintaining, operating or using the authorised development. The permission granted by the article would constitute a deemed consent under a tree preservation order.
Article 46	*(~~R~~resumption of land use following certain works)* is derived from article 10 of the Hinkley Point C (Nuclear Generating Station) Order 2013. It is intended for the protection of landowners so that after their land has been used under temporary possession powers for office accommodation and pipe stores, for example, irrespective of the duration of that use, it will be clear that they do not need planning permission to resume a use which predated the making of this Order. This is done by appropriately applying section 57(2) of the Town and Country Planning Act 1990 - this clarifies that where planning permission is granted for a limited period, once it expires, permission is not needed for the original use.
Article 47	*(application of the Community Infrastructure Levy)* provides that the Order is to be treated for the purposes of the Community Infrastructure Levy Regulations 2010 as a planning permission granted for a temporary period. The community infrastructure levy (CIL) is not chargeable on temporary planning permissions, so this would have the effect of excluding the authorised development from the CIL charging provisions. Similar provision was made in article 11 of the Hinkley Point C (Nuclear Generating Station) Order 2013.
Article 48	*(protective provisions)* gives effect to Schedule 11 *(protective provisions)* which would contain specific safeguards for statutory undertakers within the Order limits.
Article 49	(*certification of plans etc*) follows article 41 of Schedule 1 of the DCO Model Provisions and would require the undertaker to submit copies of key

	documents referred to in the Order to the Secretary of State for certification as true copies following the making of the Order.
Article 50	(*service of notices*) would make provision as to the manner in which notices or other documents required or authorised to be served under the Order are to be served. The article mirrors section 229 of the 2008 Act (which applies only to notices under that Act rather than under an Order made under it) and its inclusion is permitted as an incidental provision under section 120(5)(d) of the 2008 Act.
Article 51	*(arbitration)* follows article 42 of Schedule 1 of the DCO Model Provisions and would make provision for differences or disputes arising under any provision of the Order to be settled by arbitration. Additional wording is included to exclude differences or disputes referred to the Lands Chamber of the Upper Tribunal (because that is the appropriate forum for disputes relating to the compensation relating to the compulsory acquisition of land and rights etc.) and allows parties to agree to methods of dispute resolution other than arbitration. There is significant precedence for such additional wording in TWA Orders and has been accepted in recent development consent orders, including at article 42 of The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013. Sections 120(3) and (4) together with item 37 of part 1 of Schedule 5 of the 2008 Act also permit the inclusion of provisions relating to the submission of disputes to arbitration. Further, the DCO Model Provision equivalent has been amended so that if the parties fail to agree on an arbitrator, one will be appointed by the Secretary of State rather than the Institute of Civil Engineers. This approach was proposed by PINS and was followed at article 34 of the National Grid (King's Lynn B Power Station Connection) Order 2013.
Article 52	*(requirements)* introduces Schedule 3 (*requirements*) which contains requirements corresponding to

	conditions which, under section 120(2) of the 2008 Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the 2008 Act planning regime. Such requirements may be imposed in the Order under section 120(1) of the 2008 Act. Paragraph (2) has been added to the article as part of the mechanism within the Order of dividing the authorised development between those parts subject to the Requirements in Schedule 3 (*requirements)*, with the local planning authorities as the appropriate approving bodies, and those parts subject to the deemed marine licence conditions in Schedule 10 (*deemed Marine Licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009*) with the MMO as the appropriate approving body. Paragraph (2) therefore clarifies that the Requirements at Schedule 3 (*requirements)* will not apply to parts of the authorised development which fall within the UK marine area (apart from the listed exceptions, which should apply across all the Work Nos. irrespective of whether they fall within the UK marine area or otherwise). This is because, for the most part, it is appropriate for areas submerged at mean high water springs that the authorised development should be governed only by the licence conditions attached to the marine licence at Part 2 of Schedule 10 (*deemed Marine Licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009*), so as to avoid inconsistency with the Requirements.
Article 53	*(procedure in relation to certain approvals etc.)* gives effect to Schedule 1~~5 (*appeals relating to decisions made by*~~4 (*procedure in relation to* certain ~~*authorities pursuant to this order*~~*approvals etc.)* which is not derived from the DCO Model Provisions but follows the wording of article 46 and Schedule 14 of the Hinkley Point C (Nuclear Generating Station) Order 2013. The Schedule sets out procedures for determinations made by the relevant discharging authority pursuant to: • the Requirements set out in Schedule 3

	(*requirements)*;
	
	• the deemed marine licence conditions in Schedule 10 (*deemed Marine Licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009*);
	
	• consent from the relevant planning authority in respect of the removal of hedges not set out on the hedgerow plan (if required) pursuant to article 44;
	
	• provisions in the Order requiring the consent of the highway authority in respect of street works (including pursuant to consents under the incorporated provisions of the 1991 Act), the alteration of layout of streets, the construction and maintenance of streets, the temporary and permanent stopping up of streets, traffic regulation or where consent is required for surveying land comprised of highway;
	
	• the issuing of notices and consents under the Control of Pollution Act 1974 ("**COPA**")~~.~~; and
	
	• the following byelaws:
	
	  • the Selby Area Internal Drainage Board Byelaws 1999;
	
	  • the Beverley and North Holderness Internal Drainage Board Byelaws 2012;
	
	  • the Ouse and Humber Internal Drainage Board Land Drainage Byelaws; and
	
	  • those made by East Riding of Yorkshire Council in its capacity as lead local flood authority.
	
	Paragraph (1) of the Schedule sets out timescales for determinations. These mirror those in article 29(2)(b) (*time periods for decision*) of the Town and Country Planning (Development Management Procedure) (England) Order 2010, namely 8 weeks, other than in respect of COPA applications, which mirror the 28 days in section 62 of COPA. Reasonable timescales for

	requests for information are also addressed. Paragraph (2) of the Schedule sets out the fee to be paid in relation to the discharge of Requirements, as no provision is made in existing legislation – the fee follows the equivalent charge for conditions attached to planning permissions in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. Scope is provided for the fee to increase in line with amendments to those Regulations over time pursuant to sections 303 (fees for planning applications etc.) and 333(2A) (regulations and orders) of the 1990 Act. Fees for other consents to which this Schedule relates are provided for directly in existing legislation, unlike Requirements pursuant to a development consent order. Paragraph (3) of the Schedule sets out an appeal procedure to the Secretary of State which may be exercised in circumstances which mirror the wording of sub-sections 78(1) and (2) of the 1990 Act *(right to appeal against planning decisions and failure to take such decisions),* extended to: • where the undertaker does not agree that requests for information are reasonable: • deemed marine licence conditions (which are, as described in this explanatory memorandum, simply terms of the Order in the same way as Requirements, are the only difference being that the Secretary of State has designated a specialist discharging authority different to the relevant planning authority, namely the MMO, because of its particular marine expertise); ~~and~~ • if a notice further to section 60 of COPA is issued; and • the three sets of internal drainage byelaws referred to above. Although the byelaws contain a dispute resolution procedure before the Secretary of State, it is only open to local authorities and relates only to some of the byelaws in each set. The process for appeals in sub-paragraph 3(2) of the

	Schedule is broadly similar to the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, save that timescales are shorter proportionate to the need for expedition for nationally significant infrastructure projects and to the fact that appeals would not relate to entire applications for planning permission but to narrower consents. The DCO Model Provisions provide for items required under requirements to be submitted to the former IPC for approval. However, CLG Guidance for local authorities states that a draft Order can allow scheme promoters to appeal local authority decisions on a subsequent approval as with previous regimes. Indeed, it is now common practice for such an article to be included in Orders made under the 2008 Act: in addition to the Hinkley Point C (Nuclear Generating Station) Order 2013, this approach was accepted in the Rookery South (Resource Recovery Facility) Order 2011, Network Rail (Ipswich Chord) Order 2012 and the Network Rail (North Doncaster Chord) Order 2012; and Schedule 16 may be included in the draft Order as a supplementary provision under section 120(5)(d) of the 2008 Act.
Article 54	(*Saving for Trinity House*) Trinity House requested this provision, which confirms that nothing in the Order prejudices the rights, duties or privileges of Trinity House, which provides aids to navigation.
Article 55	*(Crown rights)* This article sets out protections for the Crown in accordance with the wording required by the Crown Estate.

9 SCHEDULES

Schedules 1 to 1~~5~~4 of the Order contain information referred to in the articles of the Order.

Schedule 1	*(authorised development)* lists out the particular Work Nos. comprised in the authorised development for which development consent is sought and which are to be read alongside the works plans. See paragraphs 3.1 to 3.5.1~~5~~4 above for further explanation.

Schedule 2	*(plans)* lists the works plans (Part 1), land plans (Part 2), access plans~~,~~ (Part 3), hedgerow plans (Part 5) and other plans submitted for approval (including plans where only certain parts are for approval)~~.~~ (Part 4). It also lists parameters (Part 6) for the purposes of any future applications made for certain further approvals pursuant to Requirement 3 of Schedule 3 (*requirements*) as well as a list of planting drawings (Part 7) for the purposes of excluding these from such applications. Other indicative and illustrative plans will be provided as part of the application. This approach to scheduling plans in a Schedule rather than in the Requirements themselves has precedence in Part 2 of Schedule 1 of the Hinkley Point C (Nuclear Generating Station) Order 2013.
Schedule 3	*(requirements)* contains requirements corresponding to conditions which, under section 120(2) of the 2008 Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the 2008 Act regime. Such requirements may be imposed in the Order under section 120(1) of the 2008 Act. The Requirements in Schedule 3 are based on the Requirements set out in Schedule 4 of the DCO Model Provisions, but these have been modified as appropriate for the Onshore Scheme and following dialogue with the relevant planning, highways and marine authorities. ~~The undertaker has consulted North Yorkshire County Council, East Riding of Yorkshire Council, Selby District Council and the Marine Management Organisation on the form and content of the Requirements and had regard to comments received: these bodies provided consultation responses during non-statutory and statutory consultation; further, throughout the course of planning performance agreement meetings the undertaker has provided opportunity to comment on draft Requirements and revisions of documents produced to secure environmental mitigation.~~ Appropriate Requirements in this Schedule have been

	amended to make a further body (such as the Environment Agency ("**EA**"), Natural England ("**NE**") or the local highway authority) a consultee in the approval process set out in the relevant Requirement. A number of DCO Model Provisions Requirements have not been included in Schedule 3 because the proposed development will not produce the kinds of effects which those Requirements seek to control. For example, it was not necessary to include Requirement 31 *(Control of insects)* from the DCO Model Provisions because the authorised development is not in a location, or of a nature, where there is a real risk of infestation or emanation of insects. Similarly, Requirement 29 (Control of smoke emissions) from the DCO Model Provisions is not necessary because construction of the authorised development will not result in smoke emissions. Other Model Provisions have been amended to make them applicable to the nature of the authorised development (i.e. a cross-country linear construction project). Several have been combined. An explanation of the Requirements in their current form can be found below. Reference to a Requirement in the DCO Model Provisions means the corresponding paragraph at Schedule 4 of those provisions. **Requirement 1** *(Interpretation)* sets out the meaning of words and phrases used in this Schedule which are in addition to the terms defined within the main body of the Order. Some definitions additional to those found in Requirement 1 of the DCO Model Provisions are necessary to define elements particular to the Project such as "AGIs", "Area B" and "Construction Compounds". It is also sensible to include a definition of "commence"/"commencement" of the authorised development for clarity on the triggers of discharge, which is common in development consent orders made by the Secretary of State, including, to give one example, paragraph 1(1) of Schedule 2 of the Hinkley Point C (Nuclear Generating Station) Order 2012. The Order, however, does not use a single definition of "commence" but instead three separate definitions (namely "commence (type 1)", "commence (type 2)" and "commence (type 3)"). These are to reflect that certain works with

	significant environmental effects should not take place prior to Requirements being discharged which are themselves intended to address those particular effects. In summary: • the first one is where there is no link between the Requirement and the commencement in terms of the potential for likely significant effects, i.e. all pre-commencement works can take place without there being any risk of an associated significant environmental effect occurring; • the second is where no pre-commencement work can take place, e.g. in respect of European protected species, the Barmston Pumping Station design and trees and hedgerows; • the third type of commencement is one that is a "middle ground". There are some specified activities that the undertaker would be able to carry out before a particular Requirement is discharged, as there is no relationship between the activity and the Requirement, but not other specified activities as those could lead to significant environmental effects occurring. The undertaker considers that this tiered approach avoids exactly the possibility that potentially significant works could be carried out before the relevant mitigation measures contained in the relevant Requirements are in place. The undertaker does not consider it "necessary" or "reasonable in all respects", for the purposes of paragraph 4.1.7 of EN-1, for works to be prevented before discharge of particular Requirements when those works would not give rise to any significant environmental effects prior to the discharge of those particular Requirements. It is important to bear in mind that the statutory definition in section 155 of the 2008 Act defines when development is considered to have begun, i.e. the "earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out" *for the purposes of stipulating when development consent will expire if it has not been so "begun", i.e.*

	implemented, rather than for any purpose associated with the proper securing of environmental mitigation. Whilst the tiered approach described above in this Order uses this definition as one of the types of commencement, and as a starting point for the other two, there is no requirement for it to apply across all of the Requirements provided that appropriate environmental mitigation is secured in each Requirement, as is the case here. By way of example, paragraph 1(5) of Schedule 3 (*requirements*) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 clarifies that where there are different sites, commencement before particular Requirements specific to a site mean only commencement on that site, i.e. in the context of a long, linear project, works unrelated to a particular Requirement are not to be delayed by discharge of that Requirement. Separately, the undertaker has agreed to include Requirement 1(2) at the request of North Yorkshire County Council, creating a statutory requirement on Selby District Council to consult it on certain Requirements. **Requirement 2** *(Time ~~L~~limits)* sets out a time limit within which the authorised development must be begun within five years of the Order being made, the period provided in regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010, and follows Requirement 2 of the DCO Model Provisions. Justification for this period is further set out in section 5 of the Statement of Reasons (Document Reference 4.1). **Requirement 3** *(Approved ~~D~~ddetails)* requires the authorised development to be carried out in ~~general~~ accordance with the approved details~~ shown on the drawings listed in Part 4 of Schedule 2 (*approved plans*). It follows Requirement 6 of the DCO Model Provisions, save that given the standard approach in development consent orders, reflected in article 6 (*limits of deviation*) of this Order, for works to be carried out within limits of deviation (both vertical and lateral) it is appropriate for works to be in *general* accordance with the approved plans so long as they fall within the limits of deviation specified in the Order; and Requirement 3(2) clarifies that "general" is~~

	~~to be interpreted in this manner for the purposes of this Requirement. .~~ The approved details would either be the approved plans listed in Part 4 (*approved plans*) of Schedule 2 (*plans*), or revised versions of those plans. If the undertaker wished to implement in accordance with revised plans, three criteria would then need to be met: • Firstly, the relevant local planning authority would need to approve any revision; • Secondly, any revised details would need to remain within certain parameters set by the DCO to reflect what has been assumed for the purposes of assessment. These are specified in Part 6 (*parameters*) of Schedule 2 (*approved plans*). Part 6 sets out tables for the Drax Pig Trap, Camblesforth Multi-Junction (but not Area B – see below), Tollingham Block Valve, Dalton Block Valve and Skerne Block Valve. Each table: • groups together the relevant parameters from the planning arrangement, elevation and operational site drawings for the AGI in question; • provides in paragraph (a) a single height restriction for development within the weld mesh security fence; and • sets out in paragraph (b), and in two columns below it, the maximum heights which particular elements within the AGIs cannot exceed. (Note that not all "approved plans" listed in Part 4 (*approved plans*) of Schedule 2 (*plans*) are referenced in Part 6 (parameters). These include, for example, the site location and highways access drawings for the AGIs. This is because those drawings do not set parameters, for the

	purposes of the environmental statement, within which AGI development must take place). The planting drawings are also not referenced in Part 6 (*parameters*) as they are not to be part of the mechanism for approvals to changes to approved plans in Requirement 3(1). This is clarified in Requirement 3(2); • Thirdly, the relevant local planning authority would need to be satisfied that the revisions would not give rise to any materially new or materially different significant environmental effects. Note that Requirement 3(1) clarifies that the above is separate to Requirements 5 (*Barmston Pumping Station*) and 6 (*Camblesforth Multi-junction*). Those Requirements contain bespoke provisions for reserved matters approvals for the Barmston Pumping Station and Area B of the Camblesforth Multi-junction in accordance with their own parameter plans, where detailed design is to follow at the appropriate later stage (for the reasons set out in this Explanatory Memorandum in relation to those Requirements), rather than, as in Requirement 3(1), where there *are* detailed design drawings but some minor details may be subject to later approval where it is necessary to capture any advances in technology. The need for this small but essential element of flexibility arises for the following reasons: • The proposed development may not be commenced for some years; • The front end engineering and design process has not been concluded, contractors have not been taken on and materials have not been ordered; • There is potential for some minor details to change as a result of the relatively new CCS technology and continued innovations in it, including in the layout within AGIs; • This is recognised in EN-1, which explains

		that "there is a high level of confidence that the technology involved in CCS will be effective" (paragraph 4.7.8) and that the demonstration projects such as the authorised development are a "priority for UK energy policy" (paragraph 3.6.5) but that CCS is "an emerging technology" (paragraph 4.7.1) and "at a relatively early stage of development" (paragraph 4.7.6); • Some examples of minor changes currently envisaged as possible include, as a result of the availability of certain specified materials at the time of construction and the technical design of equipment such as valve seals, flange seals, axillary pipework, vents, pressure points, valve actuators and electronic equipment, which might need to be subject to minor modification prior to construction. The point of the proposed mechanism in this Requirement, however, is to capture potential for currently unknown innovations, which will be essential to the operation of the authorised development but cannot be definitively listed at this stage; • The changes are not considered likely, realistically, to generate any controversy, or make any difference to the potential for likely significant environmental effects; • The principle is not new. Although more minor and different technically for the authorised development, this is a planning point broadly analogous to an element of The Hinkley Point C (Nuclear Generating Station) Order 2013 ("**Hinkley Point C DCO**"): there, the DCO was being promoted during a period in which a global reappraisal of appropriate safety mechanisms in new nuclear power stations had not yet been concluded. EDF therefore submitted detailed drawings for approval, and also parameters. This was to allow EDF to submit revised details in due course if needed, but any such revised details had to be within those parameters (see Requirement PW3 in the Hinkley Point C DCO (page 76)).

	Separately, the undertaker notes as follows: • The mechanism in Requirement 3 relates only to changes to the "approved plans", which show the above ground installations ("AGIs") at the Drax Pig Trap, Camblesforth Multi-Junction (but not Area B), Tollingham Block Valve, Dalton Block Valve and Skerne Block Valve. They do not show the below ground cross-country pipeline, i.e. the NSIP for the purposes of sections 14(1)(g) and 21 of the Planning Act 2008; • The cross-country pipeline is governed separately to Requirement 3, as is standard, by limits of deviation pursuant to Article 5 (*Limits of deviation*) shown on the works plans; • The proposed mechanism in Requirement 3 accords with the advice in paragraph 19.4 of PINS's "Advice note fifteen: Drafting Development Consent Orders", which stipulates that "the tailpiece (or other wording) should not allow the LPA to approve details which stray outside the parameters set for the development as part of the examination process and subsequent approval of the Secretary of State."; • There is no objection from the local planning authorities in relation to both the proposed AGI design or the principles for the proposed Requirement 3. The AGIs are a relatively small part of the circa 67km cross-country pipeline. **Requirement 4** *(Stages of authorised development)* sets out defined stages of the authorised development. This is because it is proposed that Requirements may be discharged separately for different elements of the authorised development for the purposes of carrying out the authorised development expeditiously. This approach is envisaged in Requirement 3 of the DCO Model Provisions and is common on linear schemes such as the authorised development.

	Requirement 5 *(Barmston Pumping Station)* requires certain details for the Barmston Pumping Station (including layout, scale, external appearance, surface treatments, method of drainage and planting) to be approved by the relevant planning authority (in consultation with the EA) before its construction can commence, which must be carried out in accordance with the approved details. The design and scale of the Barmston Pumping Station will be within the parameters set in the relevant parameter plan (Document Reference 2.14) and guiding principles established in Chapter 8 of the Design and Access Statement. The parameter plan sets out the maximum envelope within which the buildings and infrastructure will be constructed. However, the detailed design of the Barmston Pumping Station needs to take place on a flexible basis, for later approval, because precise equipment and its exact location within the site will be known closer to the point of implementation. As such, by seeking outline consent at this time, the undertaker can ensure that the detailed design of the Barmston Pumping Station reflects the appropriate equipment available at the time of construction. Separately, there are controls on the type and use of external lighting. **Requirement 6** *(Camblesforth Multi-~~J~~junction ~~D~~design)* requires certain details for the Area B of the Camblesforth Multi-Junction (including layout, scale, external appearance, surface treatments and ~~planting~~method of drainage) to be approved by the relevant planning authority (in consultation with the EA) before its construction can commence, which must be carried out in accordance with the approved details. ~~This is because~~Above ground structures installed within "Area B" of the Multi-junction are limited to 4 metres in height. The reason for this Requirement is that the proposed Camblesforth Multi-junction has been designed to *accommodate* up to four incoming pipeline connections (4 PIG traps) and one outgoing connection (1 PIG trap) into the cross country pipeline. However, general arrangement drawings, elevations and profiles comprised in the application for the Order show:

	• design for *two* PIG traps to accommodate an inlet PIG Trap for the pipeline connection from the White Rose CCS Project and *an* outlet PIG Trap to the cross country pipeline comprised in the authorised development; and • "Area B". Area B cannot yet be designed in detail as the capacity and rate at which the area is built out will depend on when third party connectors come forward and the direction from which they enter the facility. Capacity has been provided for three PIG Traps within this Area B and this Requirement secures detailed design approval by the relevant authority when such details become available. Separately, there are controls on the type and use of external lighting. **Requirement 7** *(European Protected Species)* follows Requirement 34 of the DCO Model Provisions and requires that prior to commencement of each stage of the authorised development, surveys need to be carried out to ascertain whether there are any European protected species present on land affected by the authorised development. Where such species are present, that stage of the authorised development cannot be carried out until, following consultation with Natural England, a scheme of protection and mitigation has been approved by the relevant planning authority; and the scheme must be complied with. **Requirement 8** *(Scheme of ecological mitigation and reinstatement)* requires each ~~pipeline~~ stage of the authorised development to be carried out in accordance with a scheme of ecological mitigation (and, for pipeline stages, reinstatement) approved by the relevant planning authority. There is provision for pre-submission consultation with the relevant planning authority as well as with the MMO as a consultee in its area. This has the same effect as Requirement 17 of the DCO Model Provisions, save that it relates specifically to pipeline stages. In addition, similar to Requirement 8 of the DCO Model Provisions, it provides for the replacement of any

	shrub, hedge or tree planted as part of the scheme that dies or becomes seriously damaged or diseased within five years of completion of the authorised development. **Requirement 9** *(Water)* requires construction works for the authorised development ~~must~~to be carried out in accordance with an approved construction water management plan and a pollution prevention and control plan. Further~~,~~ : • crossing methods for the authorised development in relation to watercourses must be undertaken in a manner which will not cause an increase in flood risk; • drainage measures to control surface water runoff in the flood risk assessment must be complied with during construction; • particular provision is made to reduce flood risk in the handling of spoil, including no permanent raising of the floodplain by the undertaker. **Requirement 10** *(Removal of trees and hedgerows)* is required because the laying of the pipeline is likely to require the removal of certain trees or hedges along the pipeline route, which is provided for in the Order. This Requirement means that the relevant planning authority must approve details of those trees and hedgerows to be removed during a particular stage of the authorised development before work on that stage can commence. The approach to tree planting following the installation of the pipeline is dealt with as part of the landscaping works under Requirement 8 above, as is the reinstatement of hedgerows. **Requirement 11** *(AGI hard landscaping, lighting and drainage)* prohibits a stage of the development commencing until details of hard surfacing materials, lighting and drainage methods for any AGIs in that stage have been submitted to and approved by the relevant planning authority. This Requirement does not apply to the Pumping Station or Area B of the Multi Junction because, as explained above, detailed design for these is to follow and would address hard surfacing and drainage so far as appropriate.

	Requirement 12 *(Archaeology)* follows the approach in Requirement 16 of the DCO Model Provisions and requires that each stage of the authorised development must be carried out in accordance with a written archaeological scheme approved by the relevant planning authority. The archaeological scheme will identify areas where a programme of archaeological investigation is required, and measures to protect, record or preserve any archaeological remains that are found. This is because construction of an underground pipeline may reveal undiscovered archaeological artefacts. The undertaker has remained in regular dialogue with English heritage on the progression of the Onshore Scheme. **Requirement 13** *(Construction Hours)* means that construction of the authorised development can only take place during set hours, other than in relation to certain listed operations, in cases of emergency or if otherwise approved by the relevant planning authority. More limited working hours have been introduced for works at the Barmston Pumping Station during winter months. This is because this is a location where construction activities will be carried out between October and February for the purposes of the two year build. The list of operations which may take place outside of the set time frames is included because either, due to the engineering nature of the activity, they require 24-hour working or, in the case of temporary possession of railway infrastructure, construction hours will be determined by third parties (like Network Rail). **Requirement 14** *(Code of Construction Practice)* follows Requirement 18 of the DCO Model Provisions and requires that construction works are carried out in accordance with the code of construction practice submitted with the application, unless otherwise agreed by the relevant local planning authority. The code of construction practice contains a series of measures and standards of work to be applied by the undertaker and its contractors during construction of the authorised development. **Requirement 15** *(Noise)* requires the authorised development to be constructed in accordance with specified construction noise levels at stated times.

	Further, Barmston Pumping Station must be operated in accordance with a noise report : • approved by the relevant planning authority~~,~~ : • demonstrating that noise for permanent fixed plant / machinery at the nearest residential receptor, Rose Cottage, will not exceed certain levels; and • considering low frequency noise. **Requirement 16** *(Land ~~D~~drainage)* requires that subject to any alternative approved in respect of AGIs pursuant to Requirement 11 above, the authorised development must be constructed in accordance with the Drainage Strategy submitted with the application. The authorised development is a long linear scheme excavating a trench for much of the pipeline. As such, some existing drains may be severed. The purpose of this Requirement is to secure compliance with that Drainage Strategy. This approach to land drainage, and the resultant likely effects on the Order limits as a result of drainage design, were detailed as part of the Stage 2 statutory consultation. **Requirement 17** *(Contaminated ~~L~~land and ~~G~~groundwater)* has the same effect as Requirement 15 of the DCO Model Provisions and requires that if previously unidentified contamination is found whilst carrying out the authorised development, it must be immediately reported to the relevant planning authority. It also requires that an investigation and risk assessment is completed in accordance with an approved scheme. Any necessary remediation must be carried out in accordance with an approved scheme, and following completion of the remediation, a verification report must be produced, and approved by the relevant planning authority. The purpose of this Requirement is to ensure that potentially significant effects of previously unidentified contamination (if any) along the pipeline route are dealt with in a responsible and satisfactory manner. **Requirement 18** *(Traffic Management Plan)* requires that the authorised development be carried out in accordance with a Traffic Management Plan to be submitted to and approved by the relevant

	planning authority in consultation with the highway authority. This would need to addresses the management of construction traffic, which includes deliveries of pipe, construction plant and materials as well as construction workers travelling to and from the temporary construction compounds and the construction working areas. **Requirement 19** (*Restoration of land used temporarily for construction)* follows Requirement 35 of the DCO Model Provisions and requires that any land used temporarily for construction must be reinstated to a condition fit for its former use within 12 months of completion of the relevant stage of the authorised development (though the undertaker may return for construction works in accordance with the powers under Article 28). Though the DCO Model Provision Requirement requires reinstatement of land to its "former condition", Requirement 18 provides for reinstatement to "a condition fit for its former use". This is to account for immaterial changes resulting from the installation of the pipeline which do not affect the landowner or occupier continuing with the former use of the land used for construction. **Requirement 20** *(Requirement for written approval)* follows Requirement 36 of the DCO Model Provisions and requires that any approvals by the relevant planning authority must be provided in writing. **Requirement 21** *(Amendments to approved details)* clarifies that where the relevant planning authority approves details with which the undertaker must comply, and later agrees compliance with amended details, the originally approved details are to be considered in light of the amendments which have been subsequently approved but only so far as those amendments ~~may lawfully be made by the relevant planning authority~~do not give rise to any materially new or materially different significant environmental effects from those assessed in the environmental statement. This follows Requirement 37 of the DCO Model Provisions with additional wording to ~~make clear that it will only apply to approvals that the planning authority can lawfully make~~limit the scope of the approvals. **Requirement 22** *(Decommissioning)* provides a framework for the relevant planning authority

	approving the approach to the authorised development at the end of its operational life. Accordingly, this Requirement sets out that at least six months before the operations of the authorised development come to a permanent end, a scheme of decommissioning, restoration and aftercare must be submitted for approval by the relevant planning authority. Following the end of operations, that scheme must then be implemented as approved. **Requirement 23** (*Driffield Construction Compound*) provides control over the extent of the buildings to be demolished, or not as the case may be, in accordance with the assumptions made in the course of the environmental impact assessment. **Requirement 24** (*Venting for AGI maintenance*) provides control over the planned maintenance venting of AGIs. It controls the frequency, duration and noise emission level of that activity. **Requirement 25** (*AGI venting for pipeline inspections*) provides control over the planned internal inspection of pipelines using PIGs and venting of PIG traps at AGIs for the purposes of the internal inspection of pipelines. It controls the frequency, duration and noise emission levels of that activity. **Requirement 26** (*AGI venting notifications*) governs how the public would be forewarned about venting operations described in Requirements 24 (*Venting for AGI maintenance*) and 26 (*AGI venting for pipeline inspections*).
Schedule 4	*(streets subject to street works)* sets out those streets referred to in article 10 *(street works)* subject to street works.
Schedule 5	*(streets subject to alteration of layout)* sets out those streets referred to in article 11 *(power to alter layout, etc., of streets)* subject to alteration of layout.
Schedule 6	*(streets and rights of way to be temporarily stopped up)* sets out those streets and rights of way referred to in article 14 *(temporary stopping up of streets and rights of way)* to be temporarily stopped up.
Schedule 7	*(access to works)* sets out the new accesses referred to in article 16 *(access to works)* to be constructed as

	part of the authorised development.
Schedule 8	*(record of the satisfaction of the Secretary of State pursuant to section 132 of the 2008 Act)* records further to article 40 that the Secretary of State (if he is so minded) is satisfied that a subsection of section 132 of the 2008 Act applies to Plots ~~23~~1102, ~~233~~1106, 1277 and 12~~6~~80 of the book of reference (Document Reference 4.3).
Schedule 9	*(land of which temporary possession may be taken)* sets out the land referred to in article 28 *(temporary use of land for carrying out the authorised development)* of which temporary possession may be taken.
Schedule 10	*(deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009)* sets out the marine licence referred to in article 42, which would be deemed to be granted for works comprised in the authorised development below mean high water spring tide and the conditions to which the licence would be subject. ~~There has been pre-submission dialogue with the Marine Management Organisation (the "**MMO**"). It has reviewed the form of licence and discussions between it and the undertaker are ongoing.~~ *Background to deemed marine licences* In terms of background, the MMO was established pursuant to the Marine and Coastal Access Act 2009 ("**2009 Act**"). The 2009 Act requires a Marine Licence to be obtained to carry out specified "licensable marine activities" in the area submerged at mean *high* water spring tide ("**MHWS**") and the waters of rivers so far as the tide flows at MHWS. The MMO would ordinarily, i.e. outside of the Planning Act 2008 ("**2008 Act**"), be the decision-maker responsible for determining whether to grant a Marine Licence under the 2009 Act. However, this is not the case for nationally significant infrastructure projects falling under the 2008 Act, such as the Onshore Scheme. Should the Secretary of State accept the Onshore Scheme for Examination, and that it is therefore subject to the 2008 Act, he will be the decision-maker responsible for determining whether to grant development consent in the form of

	the DCO for the Onshore Scheme, which will include the area within the Order limits of the DCO submerged at MHWS down to mean *low* water spring tide ("**MLWS**"). This would include the areas within the Order limits seaward of MHWS at Barmston Sands and the tidal reach of the River Ouse, which are shown for information only on the Deemed Marine Licence Co-ordinates drawing with reference 0-2574-GND-01-05-0056 (Document Reference 2.7). Section 149A of the 2008 Act allows a DCO made by the Secretary of State to *deem* that a Marine Licence has been granted pursuant to the 2009 Act. The draft DCO sought by the undertaker deems such a licence to have been issued in article 42 and sets out in this Schedule the terms of that *deemed* Marine Licence. In other words, the Secretary of State, rather than the MMO, is the decision-maker for the Marine Licence, deemed to be granted by the DCO and contained within it. There is therefore no "crossover" of jurisdictions and no separate Marine Licence is required from the MMO. However, the MMO plays the following important roles under the 2008 Act regime: (A) The MMO is a consultee on the deemed Marine Licence, whose representations, amongst other things, may inform what conditions are to be attached to the deemed marine licence by the Secretary of State; (B) The Secretary of State may specify in the deemed Marine Licence that the MMO is the responsible discharging body for conditions attached to that deemed Marine Licence. This is the case in the deemed Marine Licence contained in the DCO; (C) The MMO is responsible for enforcing breaches of the conditions attached to the deemed Marine Licence, with a choice of enforcement procedures under the 2008 and 2009 Acts. *Terms of the deemed marine licence* The terms of the marine licence can be summarised as follows: **PART 1: INTERPRETATION AND DETAILS OF**

	LICENSED MARINE ACTIVITIES **Paragraph 1** (*interpretation*) sets out the interpretation of certain words and phrases used in the licence and contact details for the MMO and other relevant organisations including, inter alia, the Environment Agency, Natural England and English Heritage. **Paragraph 2** (*details of licensed marine activities*) authorises the construction of those elements of the authorised development which fall within the English inshore region, i.e. the area submerged at MHWS for which marine licences are ordinarily required, and constitute licensable activities for the purposes of the 2009 Act. This includes the following: the deposit of specified substances at sea; the construction, inspection and maintenance of works in, under or over the intertidal area and the River Ouse; and sampling or investigative works required in connection with these. The paragraph also specifies the parameters of the licensed area within which the licensed activities are permitted. **PART 2: LICENCE CONDITIONS** **Paragraph 1** (*application of licence conditions*) provides that the licence conditions will not apply to areas of the authorised development which fall outside the English inshore region, i.e. the landward side of MHWS and for which the relevant local planning authority would be the appropriate discharging and enforcing body pursuant to the Requirements in Schedule 3. This has been agreed with the MMO. **Paragraph 2** (*licensed location*) specifies the area within which the licensed activities may be carried out. **Paragraph 3** (*notifications and inspections*) sets out the persons who must be given a copy of the Schedule, and where it will be available for inspection, as well as certain notification and publication requirements. The paragraph provides that only persons and vessels notified to the MMO are permitted to carry out the licensed activities, and each of these persons must be

	provided with a copy of the Schedule. The undertaker must also appoint suitably qualified liaison officers (Fisheries Liaison Officer(s) and Environmental Liaison Officer(s)) and their identities and responsibilities must be notified to the MMO. Prior to commencement of licensed activities, the undertaker must give notice to the MMO and mariners (mariners' notices must be updated at least once a week) and a notice must be published in the Kingfisher Fortnightly Bulletin. This is to ensure that other vessels in the vicinity can safely plan and conduct their passage. In addition, the undertaker must comply with notice requirements regarding completion. The undertaker must also provide access to the MMO to carry out any inspection of the works. **Paragraph 4** (*chemicals, drilling and debris*) restricts the use of chemicals, drilling fluids, coatings and treatments. It provides that all chemicals used in the construction of the licensed works must be selected from an approved list and the undertaker must ensure that any coatings and treatments are suitable for use in the marine environment and are used in accordance with specified Environment Agency and Health and Safety Executive guidelines. This is to ensure that hazardous chemicals that may be toxic, persistent or bioaccumulative are not released into the marine environment and are used appropriately. In addition, the undertaker is required to ensure that the storage, handling, transport and use of fuels, lubricants, chemicals etc. is carried out in a way so as to prevent releases into the marine environment. This is to prevent marine pollution incidents by adopting best practice techniques. The undertaker is also required to report any accidental spillages of coatings or treatments to the MMO within 6 hours. This is to ensure that any spills are appropriately recorded and managed to minimise the impact to sensitive receptors and the general marine environment. For any drilling works other than those using water-based mud, the MMO's approval is required in relation to the proposed disposal of any arisings from the drilling works.

Further, any waste, debris, equipment and temporary works must be removed within 4 weeks of completion. This is to prevent the accumulation of unlicensed material/debris and the potential environmental damage, safety and navigational issues associated with such material/debris.

Paragraph 5 ~~(*force majeure*) provides for the notification to the MMO of deposits made outside of the licensed location in the event of *force majeure*. This notification must be made within 48 hours, and the deposits must be removed on approval by the MMO. This is to manage the associated safety and navigation issues as the deposits (if any) could cause an obstruction or hazard to other sea or sea bed users.~~

~~**Paragraph 6**~~ (*pre-construction plans and documentation*) requires the undertaker to submit for the approval of the MMO, four months before commencement of licensed activities the following documents: a construction and monitoring programme; a construction method statement; a project environmental management plan; and a written scheme of archaeological investigation. Each of these documents must contain certain specified information. No licensed activity can commence until the relevant programme/plan has been approved by the MMO and all licensed activities must be carried out in accordance with the approved programmes/plans. Separately, the undertaker must:

- obtain consent from the MMO in relation to materials to be stored in temporary construction compounds and management arrangements for these;
- provide a detailed piling method statement before works in the landfill area are commenced;
- provide a method statement for monitoring and managing sediment arising from the cofferdam used in constructing the pipeline in the intertidal area; and
- provide details for approval of the pipeline to be placed temporarily in the River Ouse for

	the purposes of hydrostatic testing. **Paragraph ~~7~~6** (*reporting of engaged agents, contractors and vessels*) requires the undertaker to provide details to the MMO of agents, contractors and vessels that will be carrying out the licensed activities. **Paragraph ~~8~~7** (*equipment and operation of vessels engaged in licensed activities*) requires the undertaker to ensure all vessels being used to carry out the licensed activities meet specified technical requirements and are constructed and equipped to enable compliance with the licence conditions. **Paragraph ~~9~~8** (*pre-construction baseline*) requires the undertaker to submit a pre-construction baseline report to the MMO for approval prior to commencement of licensed activities. The form and content of the pre-construction baseline report must be agreed with the MMO in advance and must include certain specified information. **Paragraph ~~10~~9** (*construction monitoring*) requires the undertaker to submit environmental monitoring reports to the MMO during construction (in accordance with paragraph ~~6~~5). The monitoring reports must include certain specified information. **~~Paragraph 11~~Paragraph 10** (*post construction*) requires the undertaker to submit environmental monitoring reports to the MMO following construction of the licensed works (in accordance with paragraph ~~6~~5). **Paragraph 11** (*aids to navigation*) requires the undertaker to comply with certain safeguards in relation to aids to navigation for shipping, as set out by Trinity House, which is responsible for such aids. **Paragraph 12** (*amendments to approved details*) makes provision for any amendments lawfully approved by the MMO to be included in the approved details for the purposes of carrying out the licensed activities in accordance with the details provided.
Schedule 11	(*protective provisions*) sets out protective provisions for specified statutory undertakers who have been identified as having apparatus within the Order limits. The provisions have been based on those contained in

	several recent TWA Orders and Orders under the 2008 Act.
Schedule 12	(*miscellaneous controls*) part 1 of this Schedule applies, modifies and excludes specified general statutory provisions which relate to matters for which provision may be made in the Order: Paragraph 2 provides the consents necessary under the Wildlife and Countryside Act 1981 for the proposed non-intrusive installation of the pipeline beneath Kelk Beck, part of the River Hull Headwaters SSSI, and a bridge to allow access for construction traffic over it. The consents are subject to the provisions of the Order, particularly the requirements in Schedule 3 (*requirements*). This application of and modification to the Wildlife and Countryside Act 1981 may be made pursuant to section 120(5)(a) of the 2008 Act and the Planning Inspectorate have confirmed that this is an appropriate approach. The context of paragraph 3 is as follows: • The Pipeline Safety Regulations 1996 (the "**1996 Regulations**") (which are Regulations made under the Health and Safety at Work etc Act 1974) apply to the authorised development in general terms. • However, the authorised development is not a "major accident hazard pipeline", as defined under the 1996 Regulations, and therefore certain additional duties imposed on major accident hazard pipelines do not apply to the authorised development. • The specific Regulations under the 1996 Regulations that have been applied by this Order relate to the requirement to notify the relevant authorities prior to construction and prior to use, the need to have a major accident prevention document and to have in place certain emergency procedures. In other words, the undertaker, therefore, has adopted a precautionary approach and has elected to operate the proposed pipelines as if Carbon Dioxide were classed as a "dangerous fluid" under Part III of the Pipeline Safety Regulations 1996, even

	though this is not presently the case. • The provisions that have not been applied relate primarily to the incorporation of emergency shut-down valves into the design and the need to have an emergency plan approved by the relevant authority. These provisions are unnecessary given that the undertaker is voluntarily assuming certain duties that otherwise would not apply. The emergency shut-down valves are only relevant to offshore pipelines. In addition, the criminal provisions of the Health and Safety at Work etc. Act 1974 need to be disapplied because these duties are by virtue of incorporation into the draft Order "terms of a development consent order", breach of which is already a criminal offence pursuant to the section 161 (*breach of terms of order granting development consent*). Part 2 of this Schedule applies, modifies and excludes specified local legislation which relates to matters for which provision may be made in the Order. The approach in relation to the byelaws ~~listed~~of three internal drainage boards ("**IDBs**"), namely the Selby Area Internal Drainage Board Byelaws, Ouse and Humber Drainage Board Byelaws and Beverley and North Holderness Internal Drainage Board Byelaws, is as follows: • byelaws which do not conflict with the carrying out of the authorised development are not excluded or amended in the Order and remain unaltered; • byelaws which prohibit an activity required for the carrying out of the authorised development but which refer to scope for obtaining the consent of the relevant ~~independent drainage board ("**IDB**") or Environment Agency~~IDB are not excluded or amended in the Order and, it has been agreed with these bodies, such consents will be sought following the making of the Order; and • byelaws which conflict with activities required for the carrying out of the authorised

		development but which do not provide scope for consent under the terms of those byelaws are ~~listed in this Schedule as being excluded.~~ made subject to the mechanism described below: • Article 3(2)(a) (*Application, modification and disapplication of legislative provisions*) clarifies that the particular IDB byelaws listed in Part 2 of Schedule 12 do apply to the authorised development but only as amended in Part 2, i.e. they are no longer outright prohibitions on activities required for the authorised development *but requirements for consent*; • Under Article 3(2)(c), other IDB byelaws do not apply to the authorised development so far as they are inconsistent with what is specified in the Order. Nevertheless, requiring a separate consent is entirely consistent with the Order (as nothing in the Order removes the need for such consents), so this does not affect the application of IDB byelaws more widely. This is intended on a precautionary basis given the certainty required by a nationally significant infrastructure project (as described in respect of article 3 above) and also relates to provisions of local application more widely; • Then, for the purposes of the authorised development only, paragraphs 1 – 7 in Part 2 of Schedule 12 replace the particular IDB byelaws mentioned in it with equivalents which are no longer outright prohibitions on activities required for the authorised development but, instead, requirements for consent. • Separately, paragraph 8 provides an IDB with the residual option of consenting to actions under any of its

		byelaws if it considers this appropriate – this is prudent in the context of the complexity of matters which might arise in the construction of a nationally significant infrastructure project and the certainty which such projects require; • ~~It is understood that The Beverley and North Holderness Internal Drainage Board Byelaws have not yet been confirmed by the Secretary of State, so no date is given in the Schedule. It is understood that confirmation is likely to have taken place prior to the making of the Order (if made) and the relevant date can be inserted at that time.~~As described in respect of Schedule 14 above, Schedule 14 (*Procedure in relation to certain approvals etc.*) is a mechanism derived from previous DCOs made by the Secretary of State which sets out periods within which a promoter can appeal decisions made by local authorities etc. to the Secretary of State and the procedure for such appeals. Such a mechanism is important in the context of the certainty required for a nationally significant infrastructure project. If IDB byelaws are to remain in effect but subject to consents, it is appropriate for those consents to be subject to the same mechanism as other consents under the DCO. Schedule 14 has therefore been amended to incorporate IDB byelaws and directions so far as they apply to the authorised development.
Schedule 13	(*modification of compensation and compulsory purchase enactments for creation of new rights*) as explained above in relation to article 24(4) (*compulsory acquisition of rights*), mirrors the wording of Schedule 11 of the Hinkley Point C (Nuclear Generating Station) Order 2013 and imposes modifications to the compulsory purchase and	

	compensation provisions under general legislation which do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – namely, the creation of new rights and the imposition of restrictive covenants in particular.
Schedule 14	(*procedure in relation to certain approvals etc.*) sets out a procedure in respect of certain approvals to be determined pursuant to the Order, which is more particularly explained in this explanatory memorandum at article 53 above.

Berwin Leighton Paisner LLP

~~June~~April 201~~4~~5

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Appendix
Tracked change version of the Order against the DCO Model Provisions

Document comparison by Workshare Compare on 14 May 2015 14:12:33

Input:	
Document 1 ID	interwovenSite://VRT-DMS-01/Legal/32330277/13
Description	#32330277v13<Legal> - Humber Explanatory Memorandum (May 2014)
Document 2 ID	interwovenSite://VRT-DMS-01/Legal/32330277/21
Description	#32330277v21<Legal> - Humber Explanatory Memorandum REV G (April 2015)
Rendering set	no change numbers no summary

Legend:	
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~~Deletion~~	
~~*Moved from*~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	0
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