



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Thorpe Marsh Gas Pipeline

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

Examining Authority

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7 December 2015

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ExA's findings and conclusions and recommendation in respect of the proposed Thorpe Marsh Gas Pipeline

File Ref EN070003

The application, dated 19 November 2015, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 20 November 2014.

The Applicant is Thorpe Marsh Power Ltd.

The application was accepted for examination on 12 December 2014.

The examination of the application began on 23 April 2015 and was completed on 7 September 2015.

The development proposed comprises a continuously welded buried steel pipeline of approximately 19.1km in length from an offtake approximately 1.5 km west of Camblesforth to the Thorpe Marsh CCGT Power Station site.

It will include the following elements:

- A Minimum Off-take Connection (MOC) to the National Transmission System (NTS) – to be constructed and operated by the National Grid;
- Offtake Above Ground Installation (AGI), adjacent to the National Grid offtake, which will contain pipeline control valves and Pipeline Internal Gauging (PIG) 'pigging' facilities;
- A cross-country pipeline between the offtake AGI and the proposed CCGT Power Station; and
- A Gas Reception Facility (GRF) at the power station within the power station site which will contain pipeline control valves and pipeline pigging facilities. The GRF has existing planning consent under the Electricity Act 1989 Section 36 as it is within the power station "Red Line" development area.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.



ERRATA SHEET – The Thorpe Marsh Gas Pipeline - Ref. EN070003

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 7 December 2015

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

Page No.	Paragraph	Error and Correction
1	1	For 'dated 19 November 2015', substitute 'dated 19 November 2014'
80	7.1.41	For 'prosed', substitute 'proposed'
87	8.2.3	For 'seven plots (1,2,3,4,86,87,88)', substitute 'eight plots (1,2,3,4,85,86,87,88)'
95	8.4.24	For 'four (plots 84, 85, 86, 87 and 88)', substitute 'four (plots 85, 86, 87 and 88)'
107	8.6.4	For 'xxxxx', substitute 'paragraph 9.4.24, below'
110	8.6.32	For 'excise', substitute 'exercise'
113	8.7.15	For 'paragraph 9.4.22', substitute 'paragraph 9.4.20'
114	8.7.19	For 'Section9.4of', substitute 'Section 9.4 of'
114	8.7.23	For 'paragraph 8.6.22', substitute 'paragraph 8.7.22'
115	9.1.14	For 'dart', substitute 'draft'
127	9.4.5	For 'Protective Provisions as Part 2 of Schedule 5', substitute 'Protective Provisions as Part 2 of Schedule 9'
129	9.4.16	For 'safety factor to the structural integrity', substitute 'safety factor to protect the structural integrity'
139	9.9.8	For 'I recommends' substitute 'I recommend'

17 February 2016

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1 INTRODUCTION

1.1 INTRODUCTION

- 1.1.1 The Thorpe Marsh Combined Cycle Gas Turbine (CCGT) Power Station, to be located at Marsh Lane, Barnby Dun in Doncaster, was given consent by the Secretary of State (SoS) for the Department of Energy and Climate Change (DECC) on 31 October 2011 (ref 01.08.10.04/461C). This consent was given under s36 of the Electricity Act 1989 (as amended).
- 1.1.2 An application for the proposed Thorpe Marsh Gas Pipeline by Thorpe Marsh Power Limited (the Applicant) was submitted to the Planning Inspectorate on 20 November 2014 under s37(2) of the Planning Act 2008 (as amended) (PA2008).
- 1.1.3 The proposed development subject to this application comprises the construction of a 19.1km cross-country pipeline (known as Thorpe Marsh Gas Pipeline) between the National Transmission System (NTS) for gas in Selby, North Yorkshire and the site of the Thorpe Marsh Power Station, together with associated development works. It is described in more detail in Chapter 2 of this report.
- 1.1.4 On 12 December 2014, the Secretary of State accepted the application. In doing so, he concluded that the application is for an order granting development consent, that development consent is required for all or part of the development to which the application relates, and that the Applicant has, in relation to a proposed application that became the Thorpe Marsh Gas Pipeline application, complied with the pre-application procedure set out in Chapter 2 of Part 5 of the PA2008 (as amended), including in respect of consultation with prescribed persons and the local community [PD-001] and [PD-002].
- 1.1.5 This proposal is a Nationally Significant Infrastructure Project (NSIP) by virtue of the fact that it would involve the construction of a pipeline other than by a gas transporter as defined in s14(1)(g) of the PA2008 and is a cross-country pipeline as defined in s.21(1) of the PA2008 in that it is over 16.093km (10 miles) long (paragraph 1.8.1(iv) of NPS EN-4). As the scheme is an NSIP, as defined by s14(1)(g) and s21(1) of the PA2008, development consent under s31 of the PA2008 is required before the development can proceed.
- 1.1.6 This document sets out, in accordance with s83(1)(b)(i) of the PA2008, the Examining Authority's (ExA) findings and conclusions in respect of the application and its recommendation to the Secretary of State for DECC under s83(1)(b)(ii) of the PA2008. Development consent can be granted only by the Secretary of State for DECC.

1.2 APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1 The application was accepted for examination on 12 December 2014. The Applicant then gave notice under s56 of the PA2008 to the persons prescribed that the application had been accepted and gave them an opportunity to make relevant representations (RR). The Applicant certified [OD-001] on 23 January 2015 that this had been done. A total of 14 RRs were subsequently received [RR-001 to RR-0014].
- 1.2.2 On 24 March 2015, I was appointed to conduct the examination of this application under s79 of the PA2008 [PD-004, Annex F]. I am therefore a single examining Inspector acting as the ExA.

1.3 THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.3.1 On 27 March 2015, I invited parties to attend the Preliminary Meeting (PM), which was held on 22 April 2015 [PD-004]. At that meeting, the Applicant and all Interested Parties (IPs), Statutory Parties and other parties were able to make representations about how the application should be examined. A note of that meeting was published [EV-001].
- 1.3.2 I sent a procedural decision under Rule 8 of The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (a Rule 8 letter) to the parties on 29 April 2015, setting out my procedural decisions following that meeting, including the timetable for the examination [PD-005]. In my letter, I invited parties to submit Statements of Common Ground (SoCG), written representations, comments on relevant representations, notice of a wish to be heard at a hearing and notice of their wish to attend a site inspection. This letter was accompanied by my first written questions [PD-006]. Responses to these questions were received for Deadline 1, on 20 May 2015.
- 1.3.3 Also in my Rule 8 letter, I invited the relevant Local Planning Authorities (LPAs) to submit a Local Impact Report (LIR) [PD-005]. Three LIRs on behalf of four LPAs were submitted for Deadline 1, on 20 May 2015 [LIR-001 to LIR-003].
- 1.3.4 During the course of the Examination, I held two hearings on 17 June 2015. These were an Issue Specific Hearing (ISH) to consider representations on the draft Development Consent Order (DCO) and a Compulsory Acquisition (CA) Hearing.
- 1.3.5 Following those hearings, I issued my second written questions on 3 July 2015 [PD-009]. Responses to these questions were received for Deadline 4, 24 July 2015.
- 1.3.6 I made a number of procedural decisions during the Examination. These include a decision, dated 29 April 2015, to accept submissions received before the PM into the examination [PD-005, Annex C]. Comments on these documents were received for Deadline 1, 20 May 2015. Under Rule 8(3) of the Infrastructure Planning (Examination

Procedure) Rules 2010 (EPR), I issued letters amending the examination timetable on 3 July 2015 [PD-008] and on 5 August 2015 [PD-011]. I also made two requests for further information in my letters dated 26 May 2015 [PD-007] and 5 August 2015 [PD-011].

1.3.7 I am satisfied that all those making representations had a full opportunity to participate in the examination, through written submissions and orally at hearings. Having considered the submissions made during the examination, I did not consider it necessary for my examination of the application to include the consideration of further oral representations about any other particular issue.

1.3.8 All documents, representations and submissions made, together with procedural letters and the note of the preliminary meeting, are set out in Appendix B of this report and are also available on the project website. The examination was completed on 7 September 2015 [PD-012]. The dates of the main examination events and a list of abbreviations used in this report are provided at Appendix C. The draft DCO, as recommended to be made by the Secretary of State, is at Appendix D.

1.4 SITE INSPECTIONS

1.4.1 In my letter of 29 April 2015 [PD-005], I informed all IPs, Statutory Parties and other persons invited to the PM that I had undertaken an unaccompanied site inspection to the extent possible using publically accessible land; and would be undertaking further inspections as necessary. My site inspections were principally undertaken over two days:

- The Northern part of the proposed route corridor starting from the proposed site of the Above Ground Installation (AGI), and viewing the proposed site for a pipe-dump at Burn Airfield to the Aire and Calder Navigation (21 April 2015), and
- The Southern part of the proposed route corridor starting from the Aire and Calder Navigation to the proposed site for the permissioned Thorpe Marsh CCGT power station near Barnby Dun (16 June 2015).

1.4.2 In that letter I invited all parties to make representations relating to the locations or features that (in their submission) I should view accompanied by the parties or where I would be required to enter on to private land to do so. Having considered submissions made in response to this request, I did not feel it was necessary to enter onto private land or undertake a further site visit accompanied by the parties.

1.5 OTHER CONSENTS REQUIRED

1.5.1 Other consents will or may be necessary for the scheme to proceed as follows [APP-033]. These include:

- Authorisation under the Pipeline Safety Regulations (PSR) 1996 for pipeline works (PWA) including the design and construction of the pipeline for safe operation and use;
- A licence under the Conservation of Habitats and Species Regulations 2010 (as amended) and Habitats Directive EC/92/43/EC and Birds EC Directive 2009/147/EC to carry out work affecting European Protected species (EPS Mitigation Licence);
- Orders under the Road Traffic Regulation Act 1984 and Town and Country Planning 1990 for the temporary closure of highways (roads and public footpaths);
- Consent under the Water Industry Act 1999 for discharging trade effluent to sewers;
- Licences under the Waste (England and Wales) (Amendment) Regulations 2014 for waste materials produced on-site which require to be moved from site to site;
- Consents under the Water Resources Act 1991 for work in, over, under or near a main river or a flood defence; and
- Consents under the Land Drainage Act 1991 for works on an ordinary watercourse within and Internal Drainage Board district.

1.5.2 These consents cannot be, nor are proposed to be, incorporated in the draft DCO. The consents would therefore be the subject of separate applications. No representations were submitted during the course of the examination on these and I have no reason to believe that they would not be granted at the appropriate time.

1.6 STRUCTURE OF REPORT

1.6.1 This report provides the Secretary of State with my findings, conclusions and recommendation following the examination of the application for development consent for the Thorpe Marsh Gas Pipeline under s83(1)(b)(i) of the PA2008. This report also contains my recommendation, under s83(1)(b)(ii) on whether to grant consent for the powers sought for the compulsory acquisition of land and rights, and on the terms of the DCO should the Secretary of State be minded to make such an Order.

1.6.2 Chapter 2 describes the main features of the scheme and the site before giving an outline of the legal and policy context for its consideration in Chapter 3. The findings and conclusions in relation to policy and factual issues are set out in Chapter 4, on good design in Chapter 5, and on Habitats Regulations matters in Chapter 6; before concluding in Chapter 7 with my recommendation on the case for granting development consent. Chapter 8 addresses the case made for compulsory acquisition and other land matters. Chapter 9 then considers the detail of the draft DCO, with my overall conclusions and recommendation on the application in Chapter 10.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

- 2.1.1 The proposed development is for the construction of a cross-country pipeline (known as Thorpe Marsh Gas Pipeline) for the conveyance of gas, covering a distance of approximately 19.1km. The pipeline would start from the NTS approximately 1.5km west of Camblesforth in the County of North Yorkshire, District of Selby and end at the proposed Thorpe Marsh CCGT Power Station to be constructed at Barnby Dun, in the Metropolitan Borough of Doncaster. The proposed development includes associated development works.
- 2.1.2 The proposed pipeline crosses four local authority areas including: North Yorkshire County Council (NYCC); Selby District Council (SDC); East Riding of Yorkshire Council (ERYC); and Doncaster Metropolitan Borough Council (DMBC).
- 2.1.3 The proposed route corridor for the pipeline consists of low-lying countryside, characterised by open, occasionally wooded arable landscapes, fragmented field enclosures, irregular drainage ditches and water features. The majority of the route corridor comprises farmland with a small proportion of semi-improved grassland, hedgerows and mature trees, one block of planted saplings, two wooded dismantled railway banks, ditches, roads, waterways, railways and dismantled railways. The topography of the proposed route corridor rises from 5m Above Ordnance Datum (AOD) in the north to 7m AOD in the far south near the proposed Thorpe Marsh CCGT Power Station. It crosses three watercourses from north to south, namely: the River Aire, the River Went and Thorpe Marsh Drain (Ea Beck). In addition, the proposed route corridor crosses the Aire and Calder Navigation Canal and 20 drains of variable sizes.
- 2.1.4 Whilst the proposed route corridor runs from an offtake which is approximately 1.5km west of Camblesforth and does not pass through any towns or villages, it runs within 2km of the town of Snaith and the villages of Carlton, West Cowick, Topham, Moss, Thorpe in Balne, Trumfleet, Fenwick, Sykehouse, Gowdall, Pollington and Camblesforth.
- 2.1.5 The DCO seeks powers for some permanent above ground development (i.e. the above ground installation (AGI), Cathodic Protection cabinets, pipe markers etc.) and some permanent sub-surface works (i.e. the pipeline). It also provides a range of permanent rights (e.g. to access and maintain the pipeline when operational) and temporary rights (e.g. to use land for construction or access purposes).
- 2.1.6 The DCO makes provision for various works which are required along the route corridor to install the pipeline, but which are needed only during the construction stage. In summary, these comprise temporary working widths and access routes, where access to the working width cannot be achieved from a public highway.

2.2 THE PROPOSED WORKS

- 2.2.1 The proposed development is described in the DCO as a series of works. The limits within which these works are proposed to take place are shown on the Works Plans [APP-005].

THE PIPE DUMP

- 2.2.2 Works 1, 2 and 3 are not part of the route of the pipeline; together they form a temporary works compound to the north of the proposed pipeline route. This area will house the site office and (since a primary activity in this area will be the storage of pre-fabricated sections of steel pipe during construction of the pipeline) it is referred to in the application documentation as a "pipe dump". These works are at Burn Airfield near the village of Burn.

THE CAMBLESFORTH OFFTAKE

- 2.2.3 Above-ground works at the extreme northern end of the proposed pipeline, required to connect it to the NTS at Camblesforth, are made up of Works 4, 5, 6, 7 and 8 combined. This area is made up of two adjacent but separately secured above ground compounds for the monitoring and control of gas as shown indicatively on the AGI plans [APP-008], one of which will be in the control of the DCO undertaker (Work 6) and one in the control of the operator of the NTS (Work 5).

THE GAS PIPELINE

- 2.2.4 The gas pipeline itself is supported by temporary works to provide working and laydown areas, amenity facilities and access periodically along its route, particularly around areas where it is proposed that the pipeline will be constructed by directional drilling or tunnelling.
- 2.2.5 The pipeline is proposed to be a high pressure welded steel gas pipeline, up to 24 inches (609.6 millimetres) in external diameter and laid underground.

WORKS COMPOUNDS, ACCESS AND CROSSINGS

- 2.2.6 Along the route of the proposed pipeline, the Applicant has identified a particular need for construction access and for temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and similar activities.
- 2.2.7 These works are intended to support the crossing of features such as roads, rivers and railways. There are 51 such crossings on the route of the proposed pipeline [AS-008 Table 1] and a number of temporary compounds areas. These include crossings of the rivers Aire and Went and the Aire and Calder Navigation; as well as the M62 motorway.

OTHER SURFACE WORKS

- 2.2.8 The application includes provision for pipeline marking. This includes aerial marker posts (approximately 3m high) set at intervals of approximately 2km (or closer where required); marker posts approximately 1m high set at every road, rail, drain, watercourse, fence, wall and hedgerow crossing; and any other marking required to comply with current or future legislation and regulations.
- 2.2.9 Cathodic protection test posts approximately 1m high and set at intervals of approximately 1km locations in close proximity to road crossings are also proposed, as well as an electrical compound on Moss Road, just east of Moseley House Farm.

2.3 RELEVANT PLANNING HISTORY

- 2.3.1 SDC and NYCC [LIR-002] have confirmed that the site history indicates that the proposed development should not have an impact on any existing or confirmed planning consents. DMBC do not identify any relevant planning history other than the above [LIR-001].
- 2.3.2 ERYC [LIR-003] is not aware of any planning history within the route of the proposed pipeline crossing through its administrative area.
- 2.3.3 The Applicant has not submitted any previous planning applications or applications for development consent in respect of the scheme.

3 LEGAL AND POLICY CONTEXT

3.1 PLANNING ACT 2008

3.1.1 S104(3) of the Planning Act 2008 (PA2008) requires that the Secretary of State must decide an application for development consent in accordance with any relevant National Policy Statement (NPS), except to the extent that the Secretary of State is satisfied that, in summary:

- doing so would lead to the United Kingdom being in breach of its international obligations;
- doing so would lead to the Secretary of State being in breach of any duty imposed on him under any enactment;
- doing so would be unlawful under any enactment;
- the adverse impact of the proposed development would outweigh its benefits; or
- that any prescribed condition for deciding the application otherwise than in accordance with the NPS would be met.

3.1.2 S104(2) of the PA2008 sets out the matters to which the Secretary of State must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPSs, any LIR; and any other matters the Secretary of State thinks are both important and relevant to the decision.

3.2 NATIONAL POLICY STATEMENT

3.2.1 The Overarching NPS for Energy (EN-1) sets out the Government's policy for delivery of major energy infrastructure. A further five technology-specific NPSs for the energy sector set out policy that relates to those technologies and include the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4).

3.2.2 These are relevant because the application is for a cross-country gas pipeline meeting the thresholds and conditions set out in the PA2008 and Section 1.7 of EN-4.

3.2.3 As a result, EN-1 read in conjunction with EN-4 (together 'The NPS' for the purposes of s104(3)) provide the primary basis for the decision on this application.

3.2.4 The NPS sets out the need for NSIPs of this type in Part 3 of EN-1; and assessment principles in Part 4 of EN-1. This report will direct itself to the impacts described at Part 5 of EN-1, and in Part 2 (and particularly part 2.19 to 2.23) of EN-4, to the extent that they are relevant to the circumstances of this scheme:

- Air quality and emissions;
- Biodiversity and geological conservation;
- Dust, odour, artificial light, smoke, steam and insect infestation;

- Flood risk;
- Historic environment;
- Land use including open space, green infrastructure and Green Belt;
- Landscape and visual;
- Noise and vibration;
- Pipeline safety;
- Socio-economic;
- Soil and geology;
- Traffic and transport;
- Waste management; and
- Water quality and resources.

3.2.5 The NPS (in paragraph 4.15 of EN-1) also identifies that Development Plan Documents or other documents in the Local Development Framework may be important and relevant matters; and that in event of a conflict between these or any other documents and an NPS, the NPS prevails given the national significance of the infrastructure to which it applies.

3.3 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

HABITATS DIRECTIVE (COUNCIL DIRECTIVE 92/43/EEC)

3.3.1 The Habitats Directive (together with Council Directive 2009/147/EC on the conservation of wild birds ('the Birds Directive')) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection.

3.3.2 Animal and plant species of interest whose conservation requires the designation of Special Areas of Conservation (SACs) are listed in Annex II of the Directive. Annex IV lists animal and plants species of interest in need of strict protection. All species listed in these annexes are identified as European Protected Species (EPS) and protected under the Conservation of Habitats and Species Regulations 2010 (The Habitats Regulations 2010).

BIRDS DIRECTIVE (COUNCIL DIRECTIVE 2009/147/EC)

3.3.3 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (AS AMENDED) - THE HABITATS REGULATIONS

3.3.4 The Conservation of Habitats and Species Regulations 2010 (as amended) are the principal means by which the Habitats Directive is transposed in England and Wales.

- 3.3.5 Where EPS are concerned, statutory provisions apply to which the competent authority must pay due regard. These are that adequate surveys must establish the presence or absence of the species concerned and predict the likely impact of the proposal upon the species. This information must also accompany an application for a Habitats Regulations licence to the appropriate authority which is required to ensure that the proposed development can proceed lawfully.
- 3.3.6 Amendments made by the Conservation of Habitats and Species (Amendment) Regulations 2012 placed new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of the Habitats Directive and the Birds Directive are transposed clearly.
- 3.3.7 The forgoing directions and regulations are relevant to this application in view of the European sites identified in the Applicant's Habitats Regulations Statement – No Significant Effects Report (NSER) [APP-031] and listed in paragraph 6.2.3 of this report.
- 3.3.8 The SoS is a competent authority for the purposes of the Regulations.
- 3.3.9 The relevance of the Habitat Regulations is discussed in Chapter 6 of this report.

INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2009 (as amended)

- 3.3.10 The application is also subject to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (IP (EIA) Regulations).
- 3.3.11 The IP (EIA) Regulations establish the minimum information to be supplied by the Applicant within an ES, as well as information that the examining authority can request as being reasonably justified given the circumstances of the case. Part 2 of Schedule 4 represents the minimum requirements for an ES under the IP (EIA) Regulations and this is reinforced by Regulation 3(2), which sets out the core duty of the decision maker in making a decision on EIA Development. Regulation 3(2) of the IP EIA Regulation states:

"the decision-maker must not make an order granting development consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so."

WATER FRAMEWORK DIRECTIVE

- 3.3.12 The "Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy" (the Water Framework Directive) has a number of objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of

floods. It includes the production of river basin management plans (RBMPs) which are designed to integrate the sustainable management of rivers. This directive is relevant to the application as the proposed development is located within the Humber River Basin District, which is covered by a RBMP.

3.4 OTHER LEGAL AND POLICY PROVISIONS

UNITED NATIONS ENVIRONMENT PROGRAMME CONVENTION ON BIOLOGICAL DIVERSITY 1992

3.4.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to this Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In particular, I find that compliance with the UK provisions on environmental impact assessment and transboundary matters, referred to below, satisfies, with regard to impacts on biodiversity, the requirements of Article 14.

3.4.2 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.

3.4.3 The Convention is of relevance to biodiversity, ecology, landscape and visual matters in respect of the proposed development. These matters are discussed in Chapter 5 of this report.

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

3.4.4 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCB) (Natural England (NE) in England). The Act also contains measures for the protection and management of SSSIs. The Shirley Pool SSSI is located approximately 2.4km to the west of the application site.

3.4.5 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III relating to public rights of way and Part IV relating to miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence could be required from the SNCB. The need for any such licences is discussed in Chapter 5 of this report.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 (NERC ACT)

- 3.4.6 The NERC Act made provisions for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this duty, regard must be had to the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- 3.4.7 The NERC Act is relevant to the proposed development in view of the wildlife sites identified in the ES and the biodiversity, ecological and landscape and visual matters which are discussed in Chapter 5 of this report.

The Pipelines Act 1962 and the Pipelines Safety Regulations 1996

- 3.4.8 The Pipelines Act and Pipelines Safety Regulations make provision for the Secretary of State to control the construction and operation of pipelines, in the interests of ensuring their safety.
- 3.4.9 The Pipelines Safety Regulations are the means by which control is exercised by the Health and Safety Executive over pipelines such that they are designed, constructed and operated so that the risks are as low as is reasonably practicable.

3.5 NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 3.5.1 The NPPF sets out the Government's planning policies for England and how these are expected to be applied.
- 3.5.2 The NPPF does not contain specific policies for NSIPs for which particular considerations apply. The NPPF explains that these are to be determined in accordance with the PA2008 and relevant NPSs for major infrastructure and '...any other matters that are considered both important and relevant (which may include the NPPF)', as explained above.
- 3.5.3 In this case, the NPPF is of limited relevance and importance as there are two relevant designated NPSs.

3.6 LOCAL IMPACT REPORTS

- 3.6.1 The proposed development crosses the administrative boundaries of four local authorities, NYCC, SDC, ERYC and DMBC. Three LIRs have been submitted as described below, representing the four authorities.

Doncaster Metropolitan Borough Council

3.6.2 The main potential local impacts identified in the LIR submitted by DMBC are:

- Archaeology;
- Ecology/biodiversity;
- Noise and dust;
- Traffic;
- Trees and hedgerows; and
- Visual impacts.

3.6.3 The report is generally supportive of the scheme. It identifies a need for the project, and concludes that, subject to the provisions of the draft DCO, the scheme would accord with local policy.

East Riding of Yorkshire Council

3.6.4 The LIR submitted by ERYC identifies the following principle matters:

- Biodiversity;
- Drainage and flood risk;
- Ecology and trees;
- Groundwater protection;
- Heritage assets;
- Highways;
- Landscape and visual impact;
- Public Rights of Way; and
- Residential amenity.

3.6.5 The report is generally supportive of the scheme. It concludes that, subject to the provisions of the draft DCO, the scheme would accord with local policy.

Selby District Council and North Yorkshire County Council

3.6.6 A joint LIR has been submitted by SDC and NYCC. It identifies the following impacts:

- Air quality;
- Ecology;
- Highways and transportation;
- Historic environment;
- Hydrology and flood risk;
- Landscape, visual and green infrastructure;
- Noise, vibration and lighting; and
- Public Rights of Way.

3.6.7 The LIR concludes that the proposed development is acceptable subject to the controls included in the application; except in respect of the historic environment, where it declines to reach a conclusion given uncertainty around the significance of unevaluated assets.

3.7 THE DEVELOPMENT PLAN AND OTHER LOCAL POLICIES

DONCASTER METROPOLITAN BOROUGH COUNCIL

3.7.1 The development plan for DMBC comprises the Core Strategy adopted in May 2012, supported by certain policies of the Unitary Development Plan saved under the provisions of the Planning and Compulsory Purchase Act 2004. The core strategy is a relatively recently adopted document, postdating the publication of the NPPF and thus its pertinent policies I see to be important and relevant. The Unitary Development Plan is an older document (adopted 1998), but I am satisfied that the policies identified in the Council's LIR [LIR-001] and listed below are generally consistent with the NPPF and are also seen to be important and relevant.

3.7.2 The Council's LIR referred me to the following policies within the Core Strategy as being relevant to the application:

- CS1 'Quality of Life' provides support for applications that contribute to the Core Strategy objectives, and particularly to the five criteria set out in the policy itself. These are strategic objectives, including economic and social opportunity, community cohesion, placemaking and accessibility.
- CS3 'Countryside' sets out principles for the protection and enchantment of the countryside, including designation of a Countryside Policy Protection Area through which the proposed pipeline would pass. A non-exclusive list of development likely to be appropriate in this area is provided in part B of the policy, which includes essential infrastructure.
- CS4 'Flooding and Drainage' sets out the approach taken to proposals within designated flood plains, including the application of a sequential test. The proposal passes through designated flood plains (Flood Zones 1 to 3) along its route.
- CS15 'Valuing Our Historic Environment' sets out principles for the preservation, protection or enhancement of the historic environment, and provides a non-exclusive list of sites which contribute to the distinct identity of the borough.
- CS16 'Valuing our Natural Environment' similarly sets out principles for the preservation, protection or enhancement of the natural environment, including the protection of nationally or internationally important designated sites.
- CS18 'Air, Water and Agricultural Land' sets out principles for conservation, protection or enhancement of Air, Water and Agricultural Land in the context of the efficient use of natural resources. It supports proposals which protect high quality agricultural land and support the primary purpose of food production.

3.7.3 In respect of the Unitary Development Plan, the Council's LIR referred me to the following policies as being relevant to the application:

- ENV2, beneath the heading 'Countryside Policy Area Designation', gives effect to the designation of a Countryside Policy Area, through which the proposed route of the pipeline would pass; and sets out the purposes of that policy.
- ENV4 sets out the purposes other than for which development within the Countryside Policy area will not normally be permitted. These purposes include essential service provision (although this is qualified to that provided by Statutory Undertakers.)
- ENV21, beneath the heading 'Trees and Woodlands', states that the council will seek to protect existing trees and woodlands.
- ENV36 requires simply that where the information about the archaeology of a site is insufficient to determine a planning application, the Applicant will be required to provide an archaeological evaluation of the site to the satisfaction of the borough council.
- ENV41, beneath the heading 'Sites of Regional/Local Importance for Nature Conservation' provides protection for Sites of Scientific Interest, local Nature Reserves or non-statutory nature reserves, requiring that any application having an adverse effect on such a site be justified such as to outweigh it.

3.7.4 The Council also identified the following Supplementary Policy Documents as relevant in the LIR:

- Landscape Planning on Development Sites; and
- Planning for Trees and Hedgerows

EAST RIDING OF YORKSHIRE COUNCIL

3.7.5 The Development Plan for ERYC comprises those policies from the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire (2005) and the Boothferry Borough Local Plan (1999) saved under the provisions of the Planning and Compulsory Purchase Act 2004. I am satisfied that the policies identified in the Council's LIR [LIR-003] and listed below are generally consistent with the NPPF and, therefore, I see them as being important and relevant.

3.7.6 The Council in its LIR also drew my attention to the emerging East Riding Local Plan, which was submitted to the Secretary of State on 29 April 2014, and was subject to consultations on proposed modifications between 30 March and 11 May 2015. Although this has not been adopted, I consider that it is at an advanced stage of preparation, has been subject to consultation, and, therefore, I see them as being important and relevant..

3.7.7 In respect of the Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire, the Council's LIR referred me to the following policies as being relevant to the application:

- DS4 'Development strategy – rural areas' provides that limited development will be supported in existing villages if this meets local needs and helps to sustain the role of the settlement.

- DS7 'Development infrastructure' explains that schemes should make provision for infrastructure directly related to and necessary for the scheme to proceed.
- SP1 'Settlements and their settings' provides that features contributing to the character and distinctiveness of settlements and their settings will be enhanced; with specific reference to four matters relating to their built form.
- SP4 'Landscape Character' sets out protections for the Yorkshire Wolds, Jurassic Hills, Vale of York, Holderness, Humber Estuary and Ouse and Trent Levels' Regional Landscape Character Areas.
- SP5 'Design of new development' sets as a goal, and describes some of the characteristics of, a high standard of design in proposed schemes.
- ENV3 'Species protection' states that development having an adverse effect on species identified by the UK Wildlife Acts, Regulations and Biodiversity Action Plans will not be allowed in the absence of adequate justification and/or mitigation.
- ENV6 'Built and historic assets' explains that the setting, character or appearance of strategically important buildings, features and areas of historic or architectural interest should be protected.
- ENV7 'Archaeological remains' sets out that development affecting nationally important archeologically remains will not normally be allowed, that the need for development affecting other remains must be demonstrated, and that mitigation of damage should be sought.

3.7.8 In respect of the Boothferry Borough Local Plan the Council's LIR referred me to the following policies as being relevant to the application:

- EN1 'Sustainable development policy' explains that all development should meet present needs without compromising the environment for the future.
- EN2 'General development policy' sets out impacts which, when significant, unmitigated and adverse, will be a barrier to development. These include the character of the locality and amenity of local residents, and the quality and versatility of agricultural land.
- EN7 'Open countryside' sets out the criteria that will be applied when considering new development in the open countryside, particularly with regard to visual impact and design.
- EN19 'Landscape value' states that otherwise acceptable development which would be prominent in the landscape and visible over long distances will only be permitted if the authority is satisfied that all reasonable measures have been taken to minimise its visual effect.
- EN22 and EN23 'Tree protection' explain that the authority will use Tree Preservation Orders and planning conditions to protect trees where appropriate; and that new buildings should be kept a reasonable distance from existing trees where possible.

- EN24 'Protection and enhancement of hedgerows' explains that the authority will use its powers to protect, enhance and create hedgerows.
- EN25 'Landscape improvement' says that the council will promote landscape improvement and the planting of trees via planning conditions and engaging with landowners.
- EN26 'Public rights of way' explains that the council will use its powers to protect, extend and enhance the Rights of Way network.
- EN27 and EN28 'Development affecting nature conservation sites' sets out that development negatively affecting an SSSI will not be permitted until it is justified on balance; and development within sites of nature conservation importance as shown on the proposals map, and on land in close proximity to designated sites, will be permitted only in exceptional circumstances.
- EN30 'Impact on Wildlife' and EN30A 'Species Protection' provide that in considering planning applications the local planning authority shall endeavour to minimise the impact of new development on valuable wildlife or physical features.; and that which may have an adverse effect on badgers and other species protected by the wildlife and countryside act will only be permitted where harm to the species can be avoided.
- EN32 'Management of nature conservation sites' explains that the council will seek to safeguard and create areas of wildlife value.
- EN33 'Disturbed land' explains that the council will support the natural regression of surplus land into wetland or other wildlife habitat.
- EN46A 'Setting of Conservation Areas' says that when considering proposals for development in the locality of a conservation area, the local planning authority will take care to ensure that the setting of, and the views into and out of the conservation area will remain unspoilt.
- EN51 'Setting of listed buildings' reflects the statutory protections afforded to listed buildings.
- EN62 'Light pollution' states that the authority will seek to minimise light pollution, and that applications will be expected to demonstrate that any lighting that they include is the minimum necessary.
- EN63 'External lighting schemes' says that applications including external lighting may be subject to conditions to minimise light pollution impacts.
- EN64 'Land drainage' says that the local planning authority will require that development proposals take account of the need to secure effective land drainage measures and encourage the control of the level of water in the land drainage system.
- EN65 'Surface water' requires that new development will only be granted planning permission where adequate means of disposal of foul sewage and surface water are demonstrated.
- EN66 'Flood plains' requires that development which adversely affects the function of a flood plain or has a detrimental effect on a water course or river corridor will not be permitted.

- EN67 'Rivers, streams and groundwater' says that the local planning authority will seek to prevent pollution of, and improve the quality of, rivers, streams and groundwater.
- EN68 'Foul drainage disposal in rural areas' says that, where a proposed development is not served by a municipal sewer, any discharge of foul sewage will not be permitted unless it is shown that it will have no negative effect on water quality.
- LT9 'Recreational footpaths, cycleways and bridleways' says that the authority will maintain and seek to improve the network of long distance recreational footpaths, cycleways and bridleways, and that applications for supporting developments such as amenity areas are likely to be acceptable.

3.7.9 In respect of the emerging East Riding Local Plan, the Council's LIR referred me to the following policies as being relevant to the application:

- S1 'Presumption in favour of sustainable development' explains that the authority will adopt a presumption in favour of sustainable development and support the development of Neighbourhood Plans.
- S2 'Addressing climate change' explains how the authority will support a reduction in greenhouse gas emissions and adaptation to the expected impacts of climate change.
- S4 'Supporting development in villages and the countryside' sets out the forms of development that will be supported inside villages, and also those that will be supported outside of the development limit where they respect the intrinsic character of their surroundings; which include energy development and associated infrastructure.
- S8 'Connecting people and places' requires that new development should ensure that people and places are well connected, and the function of the strategic road network should be protected.
- EC5 'Supporting the energy sector' states that proposals for the development of the energy sector, including gas supply infrastructure, will be supported, and sets out potential effects of development that should be considered when deciding whether or not it is appropriate.
- EC6 'Protecting mineral resources' gives effect to the designation of Mineral Safeguarding Areas, and sets out the criteria that must be met for an application to be supported within them.
- ENV1 'Integrating high quality design' provides that development will be supported where it achieves a high quality of design, and sets out some of the characteristics of such developments.
- ENV2 'Promoting a high quality landscape' requires that proposals should be have regard to the landscape; and some characteristics of such developments.
- ENV3 'Valuing our heritage' sets out the value of heritage assets and some of the key features that contribute to the areas historic character; it provides that development affecting archaeological sites is acceptable in principle but that mitigation of damage

through preservation of the remains in situ as a preferred solution will be sought.

- ENV4 'Conserving and enhancing biodiversity and geodiversity' sets out the protection that will be afforded to local, national and internationally designated sites of biodiversity and geodiversity importance.
- ENV6 'Managing environmental hazards' sets out how ecological hazards will be managed, including the application of a sequential test in respect of flood risk.
- A4 'Goole & Humberhead Levels sub area' defines and supports the plan objectives for the Goole & Humberhead Levels sub area.

SELBY DISTRICT COUNCIL

3.7.10 The Development Plan for Selby District Council is made up of the Selby District Core Strategy Local Plan (October 2013) and those policies in the Selby District Local Plan (2005) saved under the provisions of the Planning and Compulsory Purchase Act 2004.

3.7.11 As a current and recently adopted Core Strategy which postdates the publication of the NPPF, I consider that the former of these plans should be seen to be important and relevant. I note that the Core Strategy was subject to legal challenge during the course of the Examination, but the Court of Appeal has subsequently dismissed that legal challenge. I am satisfied that the policies in the older Selby District Local Plan identified in the Council's joint LIR [LIR-002] and listed below are generally consistent with the NPPF and, therefore, I see them as being important and relevant.

3.7.12 In their LIR, the council have drawn my attention to the following policies in the Selby District Core Strategy Local Plan:

- SP1 'Presumption in Favour of Sustainable Development' explains that the authority will adopt a presumption in favour of sustainable development.
- SP2 'Spatial Development Strategy' provides that the location of future development within Selby District will be structured according to the principles in the policy, which (in summary) focus development firstly in Selby itself, then in identified Local Service Centres; and identifies villages with potential for additional residential and small-scale employment growth. It also sets out a sequential approach to site allocation.
- SP3 'Green Belt' provides that inappropriate development in the Green Belt will not be allowed except in very special circumstances; and sets out how modifications to the Green Belt boundary will be approached.
- SP13 'Scale and Distribution of Economic Growth' set out the authorities approach to promoting economic growth, and supports development leading local employment opportunities or expansion of businesses and enterprise in rural areas.
- SP15 'Sustainable Development and Climate Change' sets out the councils policy to deliver sustainable development, including that

development in areas of flood risk is avoided wherever possible through the application of the sequential test and exception test.

- SP16 'Improving Resource Efficiency' sets resource efficiency standards for housing and strategic development sites.
- SP17 'Low Carbon and Renewable Energy' supports development which promotes or adopts low carbon or renewable generation technologies. It sets criteria for applications for low carbon generation and related infrastructure.
- SP18 'Protecting and Enhancing the Environment' explains that the historic and natural environment will be safeguarded, including those sites with local, national and international designations.
- SP19 'Design Quality' provides that development will be supported where it achieves a high quality of design, and sets out some of the characteristics of such developments.

3.7.13 In respect of the earlier Selby District Local Plan, the Council's LIR referred me to the following policies as being relevant to the application:

- ENV1 'Control of Development' supports schemes that achieve a good quality of development and sets out matters that will be considered when assessing applications.
- ENV2 'Environmental Pollution and Contaminated Land' requires that development affected by or giving rise to unacceptable levels of noise, nuisance, contamination or other environmental pollution including groundwater pollution should incorporate appropriate mitigation; and development on contaminated land should be subject to and implement a site investigation and assessment.
- ENV9 'Sites of Importance for Nature Conservation' requires that proposals for development which would harm a local nature reserve, a site of local importance for nature conservation or a regionally important geological/geomorphological site must be justified such as to outweigh the harm.
- ENV11 'Ancient Woodland' provides that development will not be permitted where it is likely to cause loss of, or damage to, an ancient woodland, unless the reasons for the development outweigh the nature conservation value of the woodland.
- ENV12 'River and Stream Corridors' provides that proposals for development likely to harm the natural features of or access to river, stream and canal corridors will not be permitted unless the importance of the development outweighs these interests, and adequate compensatory measures are provided.
- ENV13 'Ponds' sets out the criteria that must be met by any scheme negatively affecting the landscape, townscape, historical or wildlife value of a pond; that it must be justified, managed, and provide for replacement habitat.
- ENV27 'Scheduled Monuments' sets out a presumption in favour of the physical preservation of scheduled monuments or other nationally important archaeological sites.

- ENV28 'Other Archaeological Remains' requires that an archaeological assessment/evaluation be carried out where a scheme impacts upon archaeological remains, and that preservation in situ is preferred.
- T1 'Development in Relation to the Highway Network' provides that development proposals should be well related to the existing highways network and will only be permitted where existing roads have adequate capacity and can safely serve the development, unless appropriate off-site highway improvements are undertaken by the developer.
- T2 'Access to Roads' provides that new road access must be acceptably located and not be detrimental to highway safety, and must not be onto a primary or district distributor road unless it is safe and there is no alternative road.
- T8 'Public Rights of Way' requires that any scheme with a significant adverse effect on a public right of way must provide an equivalent alternative route, along with signage.
- RT8 'Trans-Pennine Trail' states that proposals to extend the route of the trans-Pennine trail, to enhance access along the trail and to establish links with other rights of way will be encouraged.

3.7.14 The authority also drew my attention to the Landscape Assessment of Selby District (1999) which accompanied the 2005 Local Plan.

NORTH YORKSHIRE

3.7.15 In their joint LIR with SDC, NYCC drew my attention to the emerging North Yorkshire County Council Minerals and Waste Joint Plan. This plan is at a relatively early stage of preparation, with submission anticipated in 2016, and I conclude that its policies are less important and relevant.

3.7.16 The current minerals plan for the NYCC area comprises the saved policies of the North Yorkshire Minerals Local Plan (1997). Although no policies from this plan have been drawn to my attention by the council, I consider it is important and relevant to the extent that it may be applicable.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 MAIN ISSUES IN THE EXAMINATION

4.1.1 Based on the matters raised in the RRs and my reading of the application documents, I made an initial assessment of principal issues, which was included as Annex C to my Rule 4 and 6 notification letter to all IPs [PD-004]. The principal issues were as follows:

- The AGI and MOC;
- Compulsory Acquisition;
- EIA;
- Ecological impact and mitigation;
- Flooding;
- Funding;
- HRA;
- Landscape;
- Noise and vibration;
- Order limits;
- Socio-economic impacts;
- Public Rights of Way;
- Traffic and transport; and
- Water quality and resources.

4.1.2 This initial list of issues was not subject to challenge at the PM. I therefore used the above list to inform the structuring of my written questions and to act as a reference point when assessing the information submitted.

4.1.3 My written questions were structured using the following themes:

- Compulsory acquisition and funding;
- DCO;
- ES;
- EIA process and methodology;
- Project need, alternatives and route selection;
- Project description;
- Construction, operation and decommissioning;
- Safety and environmental management;
- Agriculture and soils;
- Water resources and flood risk;
- Ecology;
- Archaeology and cultural heritage;
- Noise and vibration;
- Landscape and visual amenity;
- Traffic and transport;
- Socio-economics;
- Indirect, secondary and cumulative effects; and
- HRA.

4.2 ISSUES ARISING FROM WRITTEN SUBMISSIONS

4.2.1 I have taken careful account of all matters raised in the written submissions provided during the Examination. They informed my initial assessment of principal issues, many of my written questions and matters discussed at the hearings.

4.3 CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES

4.3.1 All representations, even if not explicitly mentioned, have been fully considered in reaching the conclusions set out. The principal matters (including those addressed by the local policy referred to above) raised in the submitted Local Impact Reports (LIRs) are covered the principal issues I identified [PD-004 and PD-005] at the beginning of the examination.

4.3.2 Those principal issues I identified at the beginning of the examination were largely consistent with guidance contained in the NPS relevant to the examination of and decisions on applications for gas supply infrastructure and gas and oil pipelines infrastructure. The following chapter of my report therefore responds to the requirements of the NPS in respect of the application.

4.4 THE PRINCIPLE OF THE DEVELOPMENT

4.4.1 The proposed pipeline is required to provide fuel to a consented CCGT Power Station, which is situated on the site of the former Thorpe Marsh Power Station, which closed in 1994. It will connect the power station to a National Grid Gas (NGG) supply pipeline, which runs to the south of Camblesforth, near Selby.

4.4.2 The CCGT Power Station at Thorpe Marsh was consented under s.36 of the Electricity Act 1989 on 31 October 2011. The consent required that the commencement of any phase of the development shall not be later than five years from the date of this consent, or such longer period as the Secretary of State may hereafter direct in writing.

4.5 CONFORMITY WITH NPSS, MPS AND MARINE PLANS AND OTHER KEY POLICY STATEMENTS

4.5.1 In summary:

- (i) There is a clearly demonstrable need for the pipeline as it will carry gas from the gas grid to an already consented gas-fired power station. The need for nationally significant gas infrastructure is set out in section 3.8 of NPS EN-1;
- (ii) As this proposal is for a project entirely on land, the relationship with any Marine Plan is not relevant in this case;
- (iii) There were no development consent obligations that the Applicant had agreed with local authorities.

4.5.2 Aspects of the technical feasibility of this proposed scheme are discussed in Chapter 6 of this report.

4.5.3 I have looked at the financial viability of the scheme and, in particular, the potential resources required to fund any potential compulsory acquisition in Chapter 8 of this report.

4.6 ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

4.6.1 On 26 October 2012, the Applicant notified the Planning Inspectorate under regulation 6(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) that an Environmental Statement (ES) would be provided in respect of the proposed development. Therefore the proposed development was determined to be an EIA development in accordance with Regulation 4(2)(a) of the EIA Regulations. The DCO application was accompanied by an ES which satisfied the definition in Regulation 2(1) of the EIA Regulations [APP-035 to APP-105] and the requirements of NPS EN-1¹.

4.6.2 A range of issues have been assessed in the ES. The ES includes details of measures proposed to mitigate any likely significant effects (LSE) identified by the Applicant. Additional information was provided by the Applicant throughout the Examination, including in response to my written questions and two requests for information in my letters dated 26 May 2015 [PD-007] and 5 August 2015 [PD-011]. I have addressed these matters in Chapter 5 of this report.

4.6.3 The Applicant provided information within the ES on the main alternatives studied [APP-048]. These included transportation options, construction techniques, different routes and a 'do nothing' scenario, together with alternative locations and layouts for the AGI. I am satisfied that the ES, together with the additional information provided during the course of the Examination, was adequate and meets the requirements under the EIA Regulations.

4.7 TRANSBOUNDARY ISSUES

4.7.1 On the basis of the information available from the Applicant, and having regard to the Secretary of State's transboundary screening under Regulation 24 of the EIA Regulations [ODO-005], which concluded that the proposed development is not likely to have a significant effect on the environment in another European Economic Area (EEA) State. This is kept under constant review but at the close of the Examination I agree with the SoS that the proposed development is not likely to have significant effects on the environment in another EEA State.

¹ NPS EN-1, para 4.2

5 GOOD DESIGN

5.1.1 Section 4.5 of EN-1 requires the Secretary of State to be satisfied that the proposed development of the Thorpe Marsh Gas Pipeline is sustainable and, having regard to regulatory and other constraints, is as attractive, durable and adaptable as it can be. Section 2.3 of EN-4 cross refers to 6.1.2 Section 4.5 of EN-1. Subsequent sections of this report consider a range of aspects of this broad definition of good design.

5.1.2 In respect of aesthetics, however, I have borne in mind that the scheme is primarily an underground pipeline and it is the Applicant's intent to re-instate the ground subsequent to laying the pipeline. On this basis I consider that the lasting impact on the area through which the pipeline passes would result from the presence of the Minimum Off-take Connection (MOC) and Above-ground installation (AGI) and, to a lesser extent, the related developments of marker posts, a cabinet and kiosk. The visual impacts of both the MOC and AGI were considered in detail and are addressed specifically in section 5.14, below.

5.2 CUMULATIVE EFFECTS

5.2.1 Cumulative effects were identified as an issue in respect to this development due to its location in relation to other major development in the locale including the Thorpe Marsh Power Station itself and the Yorkshire and Humber Carbon Capture and Storage (CCS) pipeline

5.2.2 The cumulative assessment is presented in Chapter 18 of the ES [APP-045]. The Applicant identified 42 schemes where cumulative effects with the proposed development may arise. These are listed in Appendix 2.3 of the ES [APP-058]. The Applicant provided a description of the site selection process in response to Question PM 1.1 of my first written questions, and confirmed that the relevant local authorities were consulted on the scope of the assessment. The Secretary of State advised in their Scoping Opinion that the Applicant should consider the cumulative effects with other NSIPs where relevant. In Question PM 1.2 of my first written questions [PP-006] I asked the applicant whether consideration had been given to another NSIP proposal in the locale called the Yorkshire and Humber CCS pipeline.

5.2.3 The Applicant confirmed that consideration had been given to potential cumulative impacts in terms of traffic and transport during the construction of the development, but due to the anticipated construction routing of both schemes, no cumulative effects were identified. NYCC confirmed [REP4-004] in response to Question PM 2.1 of my second written questions that this assumption was correct, that Requirement 5 of the draft DCO provides an adequate framework to control any overlapping of construction vehicle routing, and that they do not anticipate any significant cumulative effects.

- 5.2.4 The Applicant considers that due to the nature of the proposed development, significant cumulative effects are not anticipated during the operation of the development and cumulative effects are only likely to arise where construction phases overlap.
- 5.2.5 The Applicant confirms that the most relevant scheme where cumulative effects may arise is the Thorpe Marsh CCGT Power Station. The construction of the Power Station and the pipeline are likely to overlap for a period of one year (ES paragraph 18.17) [APP-045].
- 5.2.6 The Applicant assessed potential cumulative effects in respect to noise and vibration, landscape and visual impacts, and socio-economics only and concluded that these were not significant. I received no submissions to the Examination to counter this assessment.
- 5.2.7 ***I conclude, therefore, that cumulative effects are not an issues that need to be dealt with further in the consideration of this application.***

5.3 AIR QUALITY AND EMISSIONS

- 5.3.1 Section 5.2 of EN-1 sets out matters that I need to take into account in considering the effects on air quality and the impacts of emissions arising from the proposed development. Sections 2.19 and subsequent of EN-4, dealing with gas and oil pipelines do not provide additional specific policy guidance in respect of air quality and emissions related to gas pipelines.
- 5.3.2 The potential effects on air quality and emissions were assessed in Chapter 13 of the Applicant's ES [APP-040]. The information on baseline air quality was established using the 2014 Defra background air quality maps.
- 5.3.3 At the close of the Examination, Doncaster MBC had five Air Quality Management Areas (AQMAs); alongside the A630, Junction 36 of the A1(M) and extending along the A18, a section of the A18 between the junctions with the A638/Bawtry Road and A638, along a section of the M18 Motorway, crossing the A638, and in Conisborough. East Riding of Yorkshire and Selby District Councils did not have any AQMAs.
- 5.3.4 The ES does not identify any AQMA's within or in the area surrounding the proposed order limits and therefore an assessment of potential significant effects on AQMA's was not conducted by the applicant. The applicant's assessment in respect to AQMA's was not disputed by any IPs during the course of the examination.
- 5.3.5 The Chapter also states that the assessment of potential construction impacts follows the guidance published by the IAQM (IAQM, 2013, Guidance on the assessment of dust from demolition and construction). The ES states that the IAQM guidance considers three separate effects as applicable to any resulting increase in dust as follows: annoyance due to dust soiling; harm to ecological receptors; and the risk of health effects due to potential increases in exposure to

particulate matter (PM₁₀). Paragraph 13.50 of the ES confirms that no ecological sites sensitive to dust impacts have been identified within the distance specified in the IAQM guidance. Human health receptors are identified in Table 13.4 of the ES and largely comprise of residential properties. Construction vehicles themselves would form another potential source of emissions but the analysis in the ES found that, given the maximum of 50 HGVs movements per day at any one location, there would be a negligible effect on local air quality based on the criteria set out in the EPUK guidance (Environmental Protection UK, 2010. Development Control: Planning for Air Quality (2010 Update)).

- 5.3.6 The ES concluded that no impacts to air quality are anticipated during the operational / decommissioning phases of the proposed development and therefore the assessment focused on potential effects during the construction of the development. The Applicant's ES has assessed the impacts resulting from emissions of coarse and fine dust that could affect air quality during construction. The construction activities leading to these emissions include excavation, earthmoving, materials storage and movement of construction vehicles; and construction plant, which emit a mixture of exhaust gases.
- 5.3.7 The distances to human health receptors with the potential to be affected by dust emissions are identified in Table 13.4 of the ES [APP-040]. These were considered against mitigation embedded in the design of the project and additional mitigation applied specifically to activities necessary during the construction period.

Examination Issues

- 5.3.8 The analysis found that during the construction phase, emissions of dust had the potential to cause a loss of amenity for occupiers of properties immediately adjacent to access roads. However, the Applicant has argued that dust effects from all construction activity could be effectively controlled through the implementation of suitable mitigation measures, which would be set out within the proposed development's Construction Environmental Management Plan (CEMP) secured in Requirement 4 of the draft DCO in Appendix D.
- 5.3.9 Neither the Environment Agency (EA) nor Natural England (NE) included air quality as a matter of concern in their representations to the Examination or in their SoCGs.
- 5.3.10 In their LIR North Yorkshire CC and Selby DC [LIR-002] agree that the impacts on air quality during construction can be controlled through such a CEMP to be agreed. Similarly, Doncaster MBC considers that an engineering operation of this scale, involving a degree of top-soil; stripping is likely to result in some dust emissions. However, Doncaster MBC agrees that these can adequately be controlled through the submission and approval by the Council of the CEMP. The East Riding of Yorkshire Council did not consider air quality or emissions amongst its key issues.

5.3.11 *Taking into account the evidence above, I conclude that air quality effects would be limited to the construction phase of the proposed development and temporary in nature. Taking into account the proposed measures to mitigate air quality effects within the DCO, I am content that the policy requirements of EN-1 have been satisfied.*

5.4 BIODIVERSITY, BIOLOGICAL ENVIRONMENT, ECOLOGY AND GEOLOGICAL CONSERVATION

5.4.1 I have had regard to the advice given, inter alia, in paragraphs 5.3.1 to 5.3.11 and 5.3.13 to 5.3.20 of EN-1. In this section, I deal firstly, with the issues related to the biological environment, secondly with the need for environmental enhancements and finally I deal with issues related to geological conservation. Issues relating to Habitat Regulation Assessment (HRA) are addressed separately in Chapter 6, below.

5.4.2 The Applicant's ES assesses impacts to the biological environment and ecology at Chapters 11 [APP-038] and Chapter 18 [APP-045] which assesses the cumulative impact of the scheme with other development. Chapter 11 establishes the relevant national and local policy context, including the issues raised during the scoping stage and whilst establishing the appropriate survey methodology. The baseline assessment has been established using a combination of desk based analysis and an Extended Phase 1 Habitat Survey. The habitat survey area extends to 500m. The Applicant confirmed that this covered the Stage 1 Assessment Corridor (400m) plus a 100 metre buffer. The development corridor has been narrowed to a width of 30m within the Stage 1 Assessment Corridor.

5.4.3 The ES states that no statutory conservation sites are present within the order limits or within 1 km of the Stage 1 Assessment Corridor or the proposed Site Office / Pipe Dump location (including no European designated sites within 5 km). The closest statutory site is Shirley Pool Site of Special Scientific Interest (SSSI), approximately 2.4 km west. This was not assessed in the relevant chapter of ES [Chapter 11: Ecology, APP-038] as it lay outwith the Stage 1 Assessment Corridor.

5.4.4 The Application Area crosses two non-statutory wildlife sites, the Bentley Tilts and Course of Old Ea Beck Local Wildlife Site (LWS), and the Went Valley (part) LWS. The Thorpe Marsh Nature Reserve managed by Yorkshire Wildlife Trust (YWT), within 1km of the order limits, is also a designated LWS.

5.4.5 Within the Stage 1 Assessment Corridor, the desk and field surveys identified evidence of, inter alia:

- great crested newts (covered in paragraph 5.4.14, below, in this report);
- a few badger setts;
- water vole;

- breeding birds including: kestrel, reed bunting, lapwing, yellow wagtail, yellowhammer and tree sparrow and corn bunting (the only species listed on Schedule 1 of the Wildlife and Countryside Act 1981, (as amended)); and
 - fourteen trees confirmed as bat roosts for two species (noctule and common pipistrelle).
- 5.4.6 In addition, desk based records show evidence of otters and the field survey identified suitable habitats in major water courses. These were not surveyed further as the fact that these watercourses would be crossed by trenchless methods, as specified in section 10.2 of the revised Outline Construction Environmental Management Plan (OCEMP) [REP4-013] which is secured in Requirement 4 of the recommended draft DCO at Appendix D, would mean that these habitats should not be disturbed.
- 5.4.7 None of the above features were identified within the order limits, although habitats with the potential to support commonly occurring bird species and water voles were identified.
- 5.4.8 Habitats identified within the Stage 1 Assessment Corridor include arable crop land, trees, woodland, hedgerows and ponds. The ES confirms that that the following habitats are located within the order limits:
- 31 individual semi-mature or mature trees)
 - 57 hedgerows – (26 'important' under the Hedgerow Regulations 1997); and
 - 20 drains, one pond and 4 major watercourses.
- 5.4.9 Potential effects on habitats and species are described in paragraphs 11.119-11.129 of the ES. Potential construction effects include the fragmentation of habitats, degradation of habitats due to pollution, and disturbance and harm to species. Potential operational effects include disturbance due to lighting and, during temporary operational maintenance, effects similar to those experienced during the construction period. The ES concludes that mitigation measures are required to reduce or avoid impacts on habitats and particular species as described later in this section.
- 5.4.10 The Applicant explains that a hierarchical approach to ecological mitigation has been adopted:
- Impact avoidance;
 - Impact reduction;
 - Impact mitigation; and
 - Enhancement measures.
- 5.4.11 The ES describes how the development has been designed to avoid impacts. This include re-routing parts of the proposed development to avoid particular habitats, a small number of badger setts and identified bat roosts and, as stated above, by using trenchless techniques to avoid disturbance to identified habitats.

- 5.4.12 The ES describes that impact reduction has been achieved by routing the proposed pipeline through arable land which is, itself, subject to regular disturbance through agricultural activities. Species will be protected by the initial use of manual clearance, overseen by an ecological clerk of works and the staged clearance of vegetation to encourage species, such as reptiles to move of their own accord to adjacent habitats. Pre-construction surveys would be undertaken prior to the commencement of the construction phase to establish the presence of water voles on and adjacent to the site. In addition, vegetation would be strimmed from the banks of drains subject to open cut crossings to reduce the suitability for water voles. A last resort would be to arrange for the trapping of water voles via a Natural England licence. If any badger setts are found within the working width, a licence to continue construction will be sought from Natural England. To avoid disturbance to bats, the use of lighting both during construction and during the operation of the AGI will be minimised and when lighting is required this will be cowed and directional.
- 5.4.13 Other mitigation measures include the reconstruction and re-profiling of ditches to match their original condition following the installation of the pipeline and the reconstruction of any reptile and amphibian refugia uncovered during construction.
- 5.4.14 The mitigation measures for great crested newts are set out in Chapter 11 - Ecology of the Environmental Statement [APP-038] informed by Appendix 11.3: Proposed Newt Fencing [APP-084] and Appendix 11.5: Table of Great Crested Newt Survey Results [APP-086]. The Applicant confirms that potential effects were minimised by design measures including moving the proposed route corridor east at Fenwick Hall and north of Moss to be as distant from ponds containing great crested newts as possible and removing a proposed access to the works at Fenwick Hall to avoid cutting through great crested newt habitat. At each location where the proposed route crosses within 250m of ponds containing great crested newts, measures to ensure no individuals are harmed during the works will be put into place, including great crested newt fencing, trapping and relocation - with translocation sites being identified where necessary in the year prior to works commencing; great crested newt fencing will also be erected at Sickle Croft where newts using terrestrial habitats have been identified.
- 5.4.15 The mitigation measures will also be detailed within the Protected Species Licence which will be applied for once the DCO has been granted. NE's Relevant Representation [RR-007] confirmed that a Letter of No Impediment has been issued in response to the draft great crested newt licence application.
- 5.4.16 In respect to impact mitigation, the issue of the removal and replanting of hedgerows and trees is covered in paragraphs 5.14.17 to 5.14.21, below.

- 5.4.17 In respect to enhancement, the ES confirms that measures including landscaping at the AGI site, small scale habitat creation within the order limits, and the installation of bat and bird boxes have been included within the application.
- 5.4.18 The Applicant confirmed that all these measures will be delivered in accordance with an Ecological Management Plan (EMP) secured in Requirement 15 of the draft DCO. In addition, an Outline Construction Environmental Management Plan [APP-064] (OCEMP) was submitted by the Applicant with the application and a revised OCEMP [REP4-013] during the course of the Examination. Chapter 11 of the revised OCEMP deals with ecological management procedures and commits to the production of an EMP. The OCEMP would address mitigation during the construction phase of the development and the EMP would address ecological mitigation during the operation of the development. The OCEMP deals with mitigation measures in relation to great crested newts, reptiles, water vole, potential bat roosts, and badgers and other mammals.
- 5.4.19 Requirement 16 addresses European protected species and requires the Applicant to establish that no European protected species are present on any of the land affected prior to the commencement of any stage of the authorised project. The Requirement also establishes a procedure; including the postponement of the commencement of works should a species be found to be present. This Requirement was not amended during the course of the Examination. The proposed development would also be subject to any necessary EPS licence and its attached conditions.

Examination issues

- 5.4.20 Natural England (NE) submitted a Relevant Representation [RR-007] which contained a summary of what it considered the main nature conservation issues to be in relation to the DCO. It listed the European protected species that may be affected by the proposed project as being; great crested newts, bats and otters and the nationally protected species that may be affected as being nesting birds, reptiles, water vole, and badger.
- 5.4.21 As a result of my first questions [question Ec1.20, PD-006] the Applicant submitted a framework for an Ecological Management Plan [REP1-020]. This draft framework set out indicative contents, including proposed sections on updating newt and bat surveys and newt fencing and on the marking of features, such as bat roosts, to be protected during construction works and, more generally, coverage of Natural England licencing.
- 5.4.22 The preparation, approval and application of the Ecological Management Plan are secured in the recommended draft DCO at Appendix D through Requirement 15. The preparation of this Plan is to be done in consultation with Yorkshire Wildlife Trust and the approval is to be carried out by the relevant local planning authority.

- 5.4.23 I also sought confirmation from the Applicant in my first questions that no built structures with bat roost potential are to be demolished or directly impacted during construction of the proposed development [question Ec 1.11, PD-006]. The Applicant responded [REP1-014] that no existing built structures are to be demolished or directly impacted as a result of the Proposed Development.
- 5.4.24 NE concluded that, in respect of great crested newts, that sufficient mitigation measures have been proposed. In respect of the other species listed (see paragraph 5.4.5, above) NE stated in its Relevant Representation [RR-007] that it is satisfied that all issues relating to the protected species listed above (including any licensing requirements under the Habitats Regulations or the 1981 Wildlife and Countryside Act) have been satisfactorily addressed, and appropriate mitigation measures set out in the Environmental Statement.
- 5.4.25 NE's overall position as stated above is repeated in the Statement of Common Ground (SoCG) submitted by NE with the Applicant [REP1-035]. This stated that the Applicant and NE agree that sufficient mitigation measures have been proposed with regard to potential impacts on great crested newts and that all issues relating to bats, otters, nesting birds, reptiles, water vole and badger have been satisfactorily addressed and appropriate mitigation measures are set out in the environmental statement (proposed to be secured through Requirements 15 and 16 of the DCO).
- 5.4.26 Paragraph 8.51 of the Local Impact Report from Doncaster MBC states that:
- ... the ES is a well carried out piece of work that covers all of the receptors that were identified at the initial scoping stage. The impact assessment that has been carried out covers baseline conditions most adequately. The mitigation hierarchy ... has been applied consistently. A number of minor points were raised by the Council ... and the intention to cover these minor issues, under Requirement 15 is considered to be acceptable.*
- 5.4.27 The East Riding of Yorkshire points out in paragraph 5.2.8 of its LIR [LIR-003] that the draft DCO includes Requirements 15 and 16 which prevent the development from commencing until an ecological management plan has been approved and measures put in place to safeguard protected species. The Council concludes that these requirements are considered to be sufficient to secure the necessary ecological protection and enhancement.
- 5.4.28 The joint LIR from North Yorkshire and Selby Councils [LIR-002] states in paragraph 12.5 that their view is that the scope of the ecological survey work undertaken is acceptable and they would not have any significant concerns regarding the impacts of the proposals on protected and/or notable species in the North Yorkshire County Council/Selby District Council Area.

- 5.4.29 Yorkshire Wildlife Trust (YWT) identified in their relevant representation [RR-004] that the proposed development has the potential to significantly impact the Thorpe Marsh Nature Reserve. They clarify in response to Question Ec 1.4 of my first written questions that the proposed development would be approximately 325m from the Nature Reserve at its nearest point and whilst there would be no direct impacts, they did not consider that potential indirect impacts had been fully assessed by the Applicant in the ES. The SoCG between the Applicant and the YWT [REP4-018] sets out the Applicant's consideration of indirect effects on the Nature Reserve.
- 5.4.30 Having regard to this information, YWT concluded that potential indirect effects on the Reserve have been appropriately considered and that no further assessment was required.
- 5.4.31 YWT confirm in their SoCG with the Applicant [REP4-018] that effects on protected species with the exception of water voles had been satisfactorily addressed and appropriate mitigation measures set out in the ES and secured in Requirements 15 and 16 of the draft DCO. YWT raised concern in their response to Question Ec1.13 of my first written questions that effects on water vole had not been fully considered in the ES and further details on proposed mitigation measures was required. In respect to the design of flume pipes, YWT and the Applicant go on to agree in the SoCG that a commitment to agree the design of the flume pipes will be included in the EMP under Requirement 15 of the draft DCO and within the draft OCEMP, secured in Requirement 4 of the DCO.
- 5.4.32 The revised OCEMP [11.3.3, REP4-013] commits that:
- the size of flume pipes will be designed to take into account local water level / flow conditions and the effects on local water vole populations. The size of flume pipes will be confirmed in the EcMP.*
- 5.4.33 The only outstanding matter not agreed in the SoCG [REP4-018] was the potential significance of short term effects / potential for habitat fragmentation as result of the proposed development. I sought clarification from YWT on the nature of their outstanding concerns in my Rule 17 request for information dated 5 August 2015 [PD-011]. YWT advised that they had been concerned that no mitigation has been put in place to support wildlife in the interim period post construction until such habitats had matured and were able to support wildlife. However, as re-iterated in paragraph 5.4.48, below, it concludes its concerns relating to this issue have been satisfied.
- 5.4.34 Taking account of the clear advice from the Environment Agency and of the final unanimity in the positive conclusions of relevant local authorities and the regional wildlife trust, and having regard to the secured mitigations described above, I have included in the recommended draft DCO requirements to secure the necessary protection for species and habitats.

- 5.4.35 The question of the need for, and applicability of, environmental enhancements formed an important part of the Examination of this proposal.
- 5.4.36 In examining this issue, I had particular regard to paragraph 5.3.4 of EN-1 which states that:
- The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.*
- and to paragraph 5.3.18, which states that:
- ... the applicant should demonstrate that ... opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals.*
- 5.4.37 I also took into account the advice in Paragraph 4.1.7 of EN-1 which states that the decision maker:
- ...should only impose requirements in relation to a development consent that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.*
- 5.4.38 I examined the need for enhancements through my first questions [questions Ec 1.2 and Ec 1.3, PD-006] and through a Request for further information under Rule 17 of the Planning Act issued on 5 August 2015 [PD-011].
- 5.4.39 The perceived need for environmental enhancements was raised by both the Environment Agency [RR-011] and Yorkshire Wildlife Trust [RR-004] in their Relevant Representations. Yorkshire Wildlife Trust stated that it would recommend a stronger commitment to delivering biodiversity gains along the route of the pipeline as part of the project as the Trust does not feel that the proposals include adequate mitigation or ecological enhancements. The Environment Agency recommended that Applicant should provide a clear schedule of enhancement measures and how these will be delivered, and provided examples of potential offsite enhancement opportunities for the Applicant to consider.
- 5.4.40 The LIR prepared jointly by Selby District and North Yorkshire County Councils [LIR-002] also suggests that there may be opportunities for contributing to wider environmental enhancements stating in paragraph 6.10 that:
- Enhancement does not need to be tied down to a site. Consideration may therefore be given to an off-setting type fund or contribution, e.g: a contribution to Buglife to put into their B-lines project for bees, as one runs close by and crosses the pipeline route in North Yorkshire. Another opportunity would be to contribute to projects related to the*

Leeds City Region 'Fresh Aire' initiative or to the North Yorkshire and York Local Nature Partnership.

5.4.41 In response to my first questions, the Applicant [REP1-014] stated that:

there is no significant opportunity to meaningfully provide enhancements within the nature and location of the Proposed Development and that the development will not have an effect which requires mitigation on a wider basis, and so opportunities to enhance biodiversity in off-site locations do not present themselves.

5.4.42 The Applicant continued that *it is also mindful of the need to pass other national policy tests, in respect of the circumstances where planning obligations can be sought. The applicant does not wish to fund potential enhancement opportunities where there is no relationship to the project or its effects and that it is making significant improvements and payments towards nature conservation in the vicinity of the power station site.*

5.4.43 With reference to the Applicant's claim that the permitted Thorpe Marsh CCGT power station is committed to making payments towards nature conservation in the vicinity of the power station, I note that the DECC decision letter on that scheme, dated 31 October 2011 (<https://www.og.decc.gov.uk/EIP/pages/projects/ThorpeDecision.pdf>) states that:

5.4.44 *... the Section 106 Agreement includes provision for a financial contribution of £150,000 to be made to the Yorkshire Wildlife Trust for the purposes of funding improvements to the Thorpe Marsh Nature Reserve and for a financial contribution of £1,587,000 towards the future management and maintenance of the Thorpe Marsh Nature Reserve. There is also a contribution of just over £8,000 towards the funding of a project officer to work on the Ea Beck Biodiversity Project.*

5.4.45 In the response [REP1-014], the Applicant provided two appendices. Appendix 6 provided a Schedule of Ecological Enhancements that the Applicant is intending to undertake and Appendix 7 provided a Schedule of Ecological Enhancement Opportunities proposed by the EA in their relevant representation [RR-011] that had been examined and rejected. The enhancements that are secured in the draft DCO are; landscaping at the AGI, small scale habitat creation, surveys of water voles, mink control and bird and bat boxes. All of these are secured through Requirement 15.1 in the draft DCO.

5.4.46 In its response to my first questions, the Yorkshire Wildlife Trust [REP1-013] adumbrated the enhancement measures it felt could be achieved stating that:

Thorpe Marsh Power could, for example, support a project to encourage local landowners to improve their land for wildlife, perhaps combining a community fund with Agri-environment, or other funding to deliver focussed environmental benefits. Likewise habitat

enhancements could be undertaken on Thorpe Marsh Nature Reserve prior to the commencement of works which would provide alternative foraging and refuge habitats for species during the construction phase of the development and until the compensation hedgerows have become established.

- 5.4.47 Furthermore, the Trust questioned the effectiveness of the suggested mink eradication scheme stating that;

Whilst we welcome the proposed surveying of water vole and mink populations in addition to the survey work required for the development application, we regard the suggested area for mink trapping too small to effectively control and eradicate mink from the area and provide net gains for water voles.

- 5.4.48 Subsequent to this, the Applicant and Yorkshire Wildlife Trust agreed a SoCG [REP4-018]. In respect of environmental enhancements YWT and the Applicant agree that:

given the exceptionally high contribution that the proposed Thorpe Marsh power station will be making to local wildlife, together with the mitigation measures along the proposed gas pipeline, that the ecological enhancement measures outlined in the Environmental Statement (ES) are satisfactory.

- 5.4.49 In addition, YWT and the Applicant agreed that individual landowners / occupiers along the route of the proposed gas pipeline should be informed of potential Agri-environment schemes which may enable benefit to local wildlife and that the enhancement measures for field margins and boundaries already agreed (see paragraph 5.4.45, above) will comprise where possible consideration of Buglife's B-Lines project (which incentivises the planting of wildflower rich habitats).

- 5.4.50 In respect of the suggested mink eradication programme the SoCG recorded an agreement first that that prior to undertaking these control works there will be an assessment of similar schemes operating at the time of the construction works and an evaluation of the benefit of the Applicant's American mink control proposals and that in the event that American mink control measures outlined above are not considered beneficial then as an alternative measures will be implemented to improve water vole habitat for watercourses subject to open-cut crossings. Although the SoCG records examples of possible improvement measures, details of such measures would be included in the Ecological Management Plan secured under Requirement 15.

- 5.4.51 The Environment Agency did not respond to my questions on environmental enhancement in its response to my first questions [REP1-003]. However, its Written Representation [REP1-005] maintains its concern about environmental enhancements stating, in paragraph 3.3. that:

In order to resolve this issue, we recommend that applicant should provide a schedule that clearly sets out how enhancement measures have been explored, selected (or otherwise) and how these will be delivered. We are of the opinion that the Inspector should then judge whether the enhancement proposals adequately reflect the scale of the proposals, and clearly demonstrate that the applicant has taken opportunities to provide meaningful enhancements through the scheme.

- 5.4.52 It then identifies four areas where there are opportunities for enhancement - listed in paragraph 5.4.54, below.
- 5.4.53 As shown in paragraph 5.4.45, above, the Applicant did provide the Appendices requested by the Environment Agency and I have taken these fully into account in coming to my conclusions on this issue.
- 5.4.54 The SoCG between the Environment Agency and the Applicant [REP4-017] stated in paragraph 5.1 that:

EA and TMPL have not reached agreement on whether sufficient investigation of the potential to deliver ecological enhancement through the scheme has been undertaken nor the need for this assessment.

and it identifies four local opportunities for enhancement at:

- (a) Burnet Heritage Trust Land, at Topham, close to the River Went
- (b) The River Went channel improvements and habitat creation
- (c) Ea Beck Revival Partnership
- (d) Environment Agency owned land around Ea Beck crossing

- 5.4.55 I sought clarification in a request for further information [PD-011] whether there were any opportunities to incorporate ecological enhancement into your flood risk mitigation design. The Applicant responded to confirm that, if open attenuation structures are used at the AGI, it is possible that this area could be planted to enhance biodiversity. These would be controlled through Requirements 8 and 15 [REP5-003].
- 5.4.56 Towards the end of the Examination period, the Environment Agency submitted 'Further Information in Relation to Environmental Enhancements' [REP5-008]. This submission referred to discussions held at the Examination of the White Rose CCS development at Drax in which, according to the EA submission, that applicant discussed the possibilities of contributing to specific off-site environmental schemes. The EA concluded that it:

... wanted to take the opportunity to flag this to the Examining Authority for consideration as we feel the precedent set through this agreement with regard to offsite enhancement may usefully inform approaches to be taken in the determination of the Thorpe Marsh Gas Pipeline insofar as the issue of ecological enhancement is concerned.

5.4.57 In its Response to Deadline 6 [REP6-001], the Applicant sought to differentiate between the White Rose CCS and the proposed Thorpe Marsh Gas Pipeline in terms, *inter alia*, of their relative potential impacts on habitat loss. The Applicant considers that the two schemes are materially different in nature and effect, the gas pipeline being predominantly a buried installation and White Rose CCS a large scale surface development. The Applicant reiterates that on-site ecological enhancement for the proposed development as outlined in the ES has been secured in the DCO, and the Thorpe Marsh Power Station development has committed to delivering £2m of ecological enhancement measures.

5.4.58 The position of Natural England in respect of environmental enhancements was set out at the outset of the Examination. Its Relevant Representation [RR-007] stated that:

Natural England welcomes the ecological enhancement measures set out in Sections 11.194 to 11.205 of the Environmental Statement and in the Biodiversity Strategy, which will have a positive effect on the natural environment by providing a range of biodiverse habitats on the site. This is in accordance with the principles set out in paragraph 118 of the National Planning Policy Framework, Section 5.3.4 of NPS (EN1) and Section 40 of the Natural Environment and Rural Communities Act (2006).

5.4.59 I have considered carefully the issue of the need for environmental enhancements over and above those already offered by the Applicant and listed, in brief, in paragraph 5.4.45, above. In coming to my conclusions on this issue, I have taken account of policy on this in EN-1, including on the scope for the imposition of Requirements, and all the evidence presented and, in particular, the facts that:

- The Applicant has offered environmental enhancements
- I note that mitigation is an EIA statutory requirement whereas enhancement is not
- The nature of the proposed development and, in particular, the fact that as it is to be undergrounded, means that the potential loss of habitat is reduced and has been further reduced by a hierarchy of mitigation which has not given rise to any objection by any relevant party to the Examination
- The application is for a proposed scheme which is clearly related to, and necessitated by, an already permitted scheme which will itself offer a sum of money for the support of environmental enhancements. I consider that this fact, whilst germane to my conclusion, means that any conclusion in this case should not be seen set a precedent for other cases
- Whilst EA remained committed to seeking environmental enhancements, Yorkshire Wildlife Trust has agreed in its SoCG [REP4-018] that the ecological enhancement measures outlined in the ES are satisfactory
- Natural England has welcomed the ecological enhancement measures

- Whilst references to practice on other schemes are useful to inform discussions, they cannot form the basis on other proposals which may differ significantly in terms of their characteristics and their potential for giving rise to the need for environmental enhancements, particularly in cases in which the Secretary of State is yet to issue a decision.
- 5.4.60 ***Taking into account these factors, I conclude that the draft DCO should not be amended to require the Applicant to provide environmental enhancements beyond those listed in the Appendix 6 to its response to Deadline 1*** [REP1-014].
- 5.4.61 Chapter 9 of the ES [APP-036] deals with Geology and Ground Conditions. This covers the geology and hydrology of the proposed corridor and the pipe dump and the protection of groundwater sources. It should be noted that the protection of groundwater sources and the Applicant's initial proposal to disapply the Water Resources Act 1991 (as amended) in the first version of the draft DCO [APP-009] is covered in paragraphs 5.22.12 and 5.22.13 of this Report.
- 5.4.62 In respect of geology and ground conditions, I have had regard to section 5.3 of EN-1 and to section 2.23 of EN-4.
- 5.4.63 The route of the proposed pipeline and the site of the AGI do not impinge on any sites that are designated for their geology and/or their geomorphological importance. The geology underlying the proposed route is considered in terms of its role as an aquifer in paragraph 5.22.5, below.
- 5.4.64 Potential effects on soil resources are assessed in Chapter 8 of the ES (Agriculture and Soils) [APP-053]. The classification of soil resources on the site was informed by an Agricultural Land Classification (ALC) Survey conducted in September 2013. Consideration was given in the assessment to the extent of the permanent soil loss and the potential degradation of soil resources during reinstatement. The ES concluded that assuming the use of appropriate soil handling, storage and land reinstatement techniques the residual impact of the proposed development would be negligible. Techniques for the management of soil resources are described in Chapter 6 of the ES (Construction, Operation and Decommissioning) [APP-051]. Details of measures for the handling, placing, compaction and management of soil must be included within the CEMP and must be agreed with the relevant planning authority in accordance with Requirement 4(2)(j) of the draft DCO [REP6-002]
- 5.4.65 Considering the above, ***I conclude that issues surrounding geology and soils have been dealt with satisfactorily in this Application and that necessary measures for soil management have been secured through the recommended draft DCO.***

5.5 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS

- 5.5.1 I have had regard to that part of the relevant National Policy Statement (NPS) which deals with civil and military aviation and defence interests (section 5.4 of EN-1). As this proposal is for a buried pipeline with the AGI proposed to be of a maximum height of 3.2m with the exception of a 4m ground pole with satellite dish, and, taking account of the fact that this issue was not raised by any party in any of the submissions to the Examination, I do not consider that there are any relevant issues related to civil and military aviation and defence interests overall.
- 5.5.2 However, there is a potential specific impact on local leisure flying activities. The proposed site office (Work No. 1) and pipe dump (Work No. 3) and temporary access (Work No. 2) for the construction of the project would be situated at Burn Airfield. An existing user of Burn Airfield, Burn Gliding Club, submitted a relevant representation [RR-005] which states that the part of runway 15/33 to be used by the Applicant for storing pipes etc. is very close to runway 07/25 leased by the club and which is the main runway used by the club. When operating the winch on runway 07/25 there is a danger that when the cable is released or accidentally breaks, it could fall across the part planned to be used by the Applicant.
- 5.5.3 In the Rule 6 letter, I requested that a SoCG be prepared by the Applicant and Burn Guiding Club. This SoCG [REP4-022] was published on 27 July 2015 and set out an agreed set of procedures and safeguards to seek to minimise and, if possible, obviate the impact of the temporary works on the Gliding Clubs activity and on the safety of site workers and operations.
- 5.5.4 These measures include rearranging the pipe dump and office areas to free up a 50m strip at the runway end of the site, the purchase by the Applicant of two new reels of cable and a communications strategy and management regime. These arrangements are secured through proposed Requirement 23 in the Applicant's final draft DCO [REP6-002] and the suggested layout of these temporary works is shown in a plan [REP3-007] published on 29 June 2015. Requirement 23(3) requires that the approved scheme must be substantially in accordance with the pipe dump plan. The pump dump plan is listed as a plan for certification under Article 40.
- 5.5.5 ***I consider that this set of arrangements provides a positive solution to a potential hazard and have included the new draft recommendation as Recommendation 23 in the recommended draft DCO at Appendix D to this report.***

5.6 CLIMATE CHANGE ADAPTATION AND MITIGATION

- 5.6.1 I have had regard to the duty placed on me by s.10 of the 2008 Planning Act (as amended) and to the guidance on climate change mitigation contained in EN-1 section 4.8.

5.6.2 However, I have also had regard first to the fact that the purpose of the proposed development is to link an existing source of energy to a scheme that has already been permitted. Thus, the principle, of securing energy from a CCGT power station in this location has already been examined and determined.

5.6.3 I consider that the risk of flooding may be relevant to mitigation of climate change. This aspect is considered in section 5.9.

5.6.4 ***I consider both that any issues surrounding climate change mitigation will have been examined already through the permitting of the proposed power station that this development serves and that the basic design of this scheme serves to maximise its contribution towards the mitigation of climate change.***

5.7 COMMERCIAL IMPACTS

5.7.1 As has been stated in this report, the prime justification for this proposed development is that it is required to link a consented CCGT Power Station with the National Transmission System (NTS) in order to provide a fuel gas supply. The ExA has, therefore, had full regard to the possible commercial impacts both on the local area and, nationally, on the provision of energy if a recommended refusal of this project results in an inability to construct the consented power station.

5.7.2 The direct commercial impacts of the proposed scheme in terms of, for example, possible effects on the viability of affected agricultural businesses and on possible local job creation are considered in section 5.19.

5.8 COMMON LAW NUISANCE AND STATUTORY NUISANCE

5.8.1 The recommended draft DCO at Appendix D contains an Article - 10 - dealing with the defence to proceedings in respect of statutory nuisance. In considering this Article, I have taken into account the guidance contained in section 4.14 of EN-1.

5.8.2 The Applicant submitted an Environmental Protection Act (EPA) 1990 - Statement of Engagement [APP-032] with the application. Section 3.1 of this document confirms that the following sections of the Act may be engaged as a result of the development:

- air quality (in relation to Section 79(1)(d) of the EPA 1990);
- accumulations and deposits (in relation to Section 79(1)(e) of the EPA 1990);
- artificial light (in relation to Section 79(1)(fb) of the EPA 1990); and
- noise and vibration (in relation to Sections 79(1)(g) and (ga) of the EPA 1990).

5.8.3 The Applicant concludes that as a result of the mitigation measures described in the ES in respect to these nuisances and secured in the

draft DCO, it is considered unlikely that the proposed development will engage any of the matters set out in Section 79(1) of the EPA 1990. My consideration of potential statutory nuisances and measures proposed to mitigate effects are considered in the following sections of this report:

- Air quality (section 5.3);
- Geology and Ground Conditions (paragraph 5.4.61 onward);
- Artificial light (landscape and visual impacts) (paragraph 5.14.24); and
- Noise and vibration (section 5.15).

5.8.4 The Applicant confirms in paragraph 4.2 of the Statement [APP-032] that Article 10 in the draft DCO would provide a defence to proceedings for statutory nuisance should they be initiated against the Applicant or its successors. The revised Explanatory Memorandum [REP4-011] states that Article 10 is based on Model Provision 7 with the exception that, because of the nature of the proposed development and the provisions of Requirement 17 (operational noise), it is not anticipated that the proposed development will bring about operational noise and so the wording in Model Provision 7(1)(b)(i) and (ii) has been omitted.

5.8.5 The Applicant's conclusions in respect to statutory nuisance under the EPA 1990 were not disputed by any interested party during the course of the examination.

5.9 FLOOD RISK

5.9.1 I consider that issues surrounding flood risk were amongst the most significant issues dealt with in the Examination. In considering this issue, I have had regard to the policy guidance contained in section 5.7 of EN-1 and section 2.2 and 2.22 of EN-4.

5.9.2 Chapter 10 of the Environmental Statement [APP-037] assesses the impacts associated with Water Resources and Flood Risk. A stand-alone Flood Risk Assessment (FRA) was provided at Technical Appendix 10.1 [APP-081] to the ES and, following consideration of this issue during the Examination, by a Proposed Camblesforth Off-take Above Ground Installation Flood Risk Assessment Addendum [REP3-006].

5.9.3 A description of the baseline condition is provided in paragraphs 10.52-10.83 of the ES. The proposed development would cross, or is in close proximity to, the following watercourses:

- River Don
- Thorpe Marsh Drain (Ea Beck)
- Smallholme and Tilts Drain
- River Went
- Aire and Calder Navigation and
- River Aire.

- 5.9.4 The whole of the development is situated on a Principle Aquifer. The southern tip and northern extents of the Proposed Route Corridor are situated within groundwater Source Protection Zone III. Sixteen open drains are located along the pipeline route.
- 5.9.5 The FRA states that a large proportion of the Proposed Route Corridor is located within either Flood Zone 3 (high probability) or Flood Zone 2 (medium probability). The Site Offices and Pipe Dump area is located entirely in Flood Zone 1. The Camblesforth AGI / MOC is located in Flood Zone 2. The Proposed Route Corridor also passes through land of each risk category (Very Low to High) as categorised in the EA's Flood Map for Surface Water.
- 5.9.6 The Flood Risk Assessment (FRA) submitted as part of the Application documents [ES Appendix 10.1, APP-081] states that:

As the Proposed Gas Pipeline will be buried along its entire length and will not give rise to any change to existing ground levels or result in any permanent new structures within the floodplain once operational. The operation of the Proposed Gas Pipeline will not, therefore, lead to any impacts on flood risks in the vicinity of the Proposed Pipeline Corridor.

- 5.9.7 With the exception of the AGI, the FRA therefore only assesses risks during construction. The position in respect of the AGI is dealt with in paragraphs 5.9.19 onwards, below.
- 5.9.8 The ES [APP-037] concludes that, taking into account the proposed mitigation measures in the CEMP and the proposed timing and duration of the construction works, this would ensure a low likelihood of the construction sites being affected by extreme flooding and that in consideration of the mitigation measures to be employed, the ES concludes magnitude of impact is considered to be small.
- 5.9.9 The FRA set out mitigation measures that would be adopted during the construction phase of the pipeline. These include ensuring that all works in high risk areas are undertaken in the driest months, minimising the length of time during which trenches will be left open, using trenchless techniques for crossing water courses, the movement of heavy plant away from areas of highest risk to Flood Zone 1 in extreme weather conditions. These mitigation measures are secured in the draft recommended DCO through the CEMP in Requirement 4. In addition, Requirement 12 stipulates that details of a surface and foul water drainage system must be agreed prior to the commencement of each stage of the development [REF].

5.9.10 Examination Issues

- 5.9.11 In its Relevant Representation [RR-011], the Environment Agency focussed on three issues related to flood risk:
- Assessment of flood risk at the AGI

- The depth of under-passing the main rivers and flood defences and
 - The adequacy of the CEMP in securing the necessary mitigation.
- 5.9.12 In respect of concerns relating to the potential flood risk arising from the AGI, in its Relevant Representation [RR-011] the Environment Agency stated that the Camblesforth Above Ground Installation (AGI) is located in Flood Zone 3 and stated that the impacts to, and as a result of, the development are required to be assessed through a flood risk assessment. I note that, as shown in paragraph 5.9.4, above the FRA [APP-081] states that the MOC/AGI is in Flood Zone 2.
- 5.9.13 The EA's Written Representation [REP1-005] states that it:
- would expect this addendum to confirm that finished floor levels will be a minimum of 600mm above the 1:100yr climate change flood level, and where this is not possible the buildings (kiosks) will be designed to flood with any flood sensitive equipment raised to a minimum of 600mm above the 1:100yr climate change flood level.*
- 5.9.14 The EA also confirmed that the FRA would need to confirm for the trenchless main river crossings and flood defence crossing that the coring works will be carried out with enough clearance that the stability of the river channels and flood defences will not be affected.
- 5.9.15 In addition, the EA provided a suggestion for the rewording of Requirement 4 (CEMP) to address the temporary works in flood zones.
- 5.9.16 The Environment Agency stated (in paragraph 4.3 of RR-011) that it would have no objections to the proposal on flood risk grounds subject to the resolution of these matters. The LIR from North Yorkshire CC and Selby DC [LIR-002] states that these authorities had no specific concerns with respect to the impacts on flooding and that they would defer any further comments in this respect to the Environment Agency. The LIR from Doncaster MBC [LIR-001] mentions that the area at the southern extent of the pipeline route is washed over by Flood Zone 3 but does not list flooding as one of its main issues and considerations.
- 5.9.17 The LIR from the East Riding of Yorkshire Council [LIR-003] does list drainage and flood risk as being one of its key issues. This LIR points out that there are no significant above ground installations proposed within the administrative area of ERYC and rehearses the acceptability of having what it categorises as being essential infrastructure running through flood zones 1, 2 and 3. It states that Consent will be required from the Flood Risk Management Section of the Council for the proposed crossings of ordinary watercourses, prior to any works commencing on the site.
- 5.9.18 I asked two questions (WRF 1.3, WRF 1.4) related to flooding in my first questions [PD-006]. These related to the basis for the findings of no significant effects on flood risk and to the points raised by the Environment Agency in its Relevant Representation.

- 5.9.19 In response to my questions, the Applicant submitted an Addendum to the FRA which assesses flood risks in relation to the MOC/AGI site [REP3-006]. The Addendum confirmed that finished floor levels should be set a minimum of 600mm above the 1 in 100 year flood level for the AGI/MOC site. The FRA Addendum also advises that a sustainable urban drainage system (SUDS) could be required at the AGI site to manage surface water run-off.
- 5.9.20 The Environment Agency commented on the FRA Addendum [REP3-019] and confirmed that the content addresses the points raised in its Written Representation subject to the addition of an additional requirement in the DCO. The proposed requirement is to state that:
- (1) No part of the authorised development may commence until for that part there has been submitted to and approved in writing by (and deposited with) the relevant planning authority, in consultation with the Environment Agency and the relevant internal drainage board, a scheme for mitigation of flood risk during the construction and operation of the authorised development prepared in accordance with the principles set out in the flood risk assessment and flood risk assessment addendum.*
- (2) The scheme approved must thereafter be fully implemented and adhered to throughout the period of the construction and operation of the relevant part of the authorised development.*
- 5.9.21 The Applicant's final draft DCO [REP6-002] contained this Requirement, with some small changes in wording that had no implications for its effectiveness. The recommended draft DCO at Appendix D to this report contains this Requirement as Requirement 21.
- 5.9.22 Following the submission of the Addendum to the FRA, the Environment Agency and the Applicant submitted a SoCG dated 20 July 2015 [REP4-017]. On the three issues outstanding from the Environment Agency's original Representation, the parties agreed that:
- With reference to the AGI, subject to the approval of the relevant flood defence consents and the implementation of the identified mitigation measures the parties agree that the project will not increase the risk of flooding in the catchment area.*
- 5.9.23 With reference to the crossing methods, the parties agree that through the combination of the inclusion of Requirements 4 and 21, reference to the OCEMP and the need for the necessary flood consents to be obtained, adequate controls will be in place so far as relates to methods of crossing to ensure that the integrity of the main river channels and flood defences is not affected.
- 5.9.24 With reference to the content of the CEMP, the SoCG records both revised wording for Requirement 4 which includes the references both to managing flood risk and to consultation with the Environment

Agency that the Agency originally required. It also recorded the wording of a new Requirement - 21 - which dealt with the submission to the relevant LPA, following consultation with the Environment Agency, of a scheme for the mitigation of flood risk.

- 5.9.25 The SoCG with the EA [REP4-017] did not record any outstanding areas of disagreement in respect to flood risk.
- 5.9.26 The FRA Addendum also concluded that it is likely that the most suitable SUDS measure would be to construct a shallow detention basin in a small area in the south-west of the AGI/MOC site.
- 5.9.27 Consequently, I sought further information from the Applicant and from the Environment Agency [PD-011] to clarify which SUDS options remained under consideration whether these had been assessed in the ES and how these would be secured in the DCO.
- 5.9.28 The Applicant responded [REP5-003] to confirm that the precise design has not been completed and outlined the potential SUDS measures which remain under consideration. The Applicant refers to paragraph 10.89 of the ES which confirms that surface run off from the new impermeable area created at the AGI site will flow onto permeable land within the site boundary, or into SUDS measures if these are considered necessary, therefore reducing potential effects as a result of surface water run-off.
- 5.9.29 The Applicant's response demonstrates either where each potential option has been assessed in the ES, or where an option has not been assessed, that it would not result in a significant effect on the environment. The Applicant's response confirms that the SUDS design would be agreed through Requirement 12 of the recommended draft DCO at Appendix D.
- 5.9.30 In its response to my question, the Environment Agency [REP5-005] confirmed its previous responses that it is satisfied with the level of detail in the FRA Addendum at this stage noting that Requirement 4 of the DCO will require a scheme for the mitigation of flood risk to be submitted and implemented and Requirement 12 will require final details of surface water drainage for any stage of the development to be submitted for approval prior to the commencement of that development stage.

5.9.31 *Given the detailed examination undertaken of issues surrounding flooding, the preparation of a FRA Addendum by the Applicant to address concerns raised by the Environment Agency, the insertion of a further requirement into the draft DCO to deal with flooding issues alongside the securing of mitigation measures and the ultimate statement of content by the Environment Agency, I conclude that issues relating to flooding have been addressed satisfactorily in the requirements contained in the recommended draft DCO*

5.10 HAZARDOUS SUBSTANCES

- 5.10.1 This application does not contain any provision for the storage of hazardous substances in the terms set out in paragraphs 4.12.1 to 4.12.2 of EN-I.
- 5.10.2 However, Chapter 6 of the ES dealing with Construction, Operation and Decommissioning [APP-051] deals with Materials Storage and Handling and states in paragraph 6.168 that all potentially hazardous materials would be stored on areas of hard standing and enclosed within impervious bund walls. The minimum volume of each banded compound would be equivalent to 110 per cent of the tank capacity contained within.
- 5.10.3 It goes on to state in paragraph 6.169 that waste material would only be deposited at authorised waste treatment and disposal sites. Deposition of waste would be in accordance with the requirements of the Environmental Protection Act 1990 the Controlled Waste Regulations 1992 (as amended), the Hazardous Waste Regulations 2005 the List of Waste Regulations 2005 and the Duty of Care Code of Practice.
- 5.10.4 The revised Outline CEMP published on 27 July 2015 [REP4-013] deals with waste management principles (section 9.2) and confirms proposed legal compliance with, inter alia, the Hazardous Waste (England and Wales) Regulations 2005 SI 894 and the Hazardous Waste (England and Wales) (Amendment) Regulations 2009 SI 507 and the Duty of Care Code of Practice.
- 5.10.5 The approval of a CEMP for each stage of construction by the relevant planning authority in consultation with the Environment Agency, any relevant Internal Drainage Boards and the Canal and River Trust is secured in Requirement 4 of the recommended draft DCO at Appendix D to this report.
- 5.10.6 As stated in the section on Safety (5.17), below, the Health and Safety Executive did not engage with the Examination but no other concerns were raised by other relevant parties in respect of the storage and disposal of potentially hazardous materials.
- 5.10.7 ***Given the fact that the CEMP as secured in the recommended draft DCO deals in an effective way with the management and disposal of potentially hazardous materials, I conclude that this issue has been dealt with satisfactorily.***

5.11 HEALTH

- 5.11.1 Paragraph 4.13.3 of EN-1 states that the direct impacts on health may include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests.

- 5.11.2 All these factors are considered in other sections of this Chapter of the Recommendation report. More generally, I consider that the nature of the proposed project - an undergrounded pipeline connecting an already permitted CCGT power station to an existing high-pressure gas supply means that the potential impact on health arising from the project is very limited. In coming to this conclusion, I have taken into account the fact that the Applicant has stated [REP1-014] that Notification under the Pipelines Safety Regulations 1996 will be sent to the HSE.
- 5.11.3 The National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) does not deal directly with issues of health arising from such projects and there were no submissions to the Examination from parties that dealt with the issue of health *per se*, and NHS England confirmed that they had no comments to feed into the process [REP5-007].
- 5.11.4 ***Taking these factors into account, I conclude that there are no health issues for consideration in deciding whether or not to grant the DCO.***

5.12 HISTORIC ENVIRONMENT

- 5.12.1 In considering potential effects on the historic environment, I have had regard to the policy guidance contained in section 5.8 of EN-1. There are no specific policy requirements in EN-4 which relate to the historic environment considerations. The assessment of effects on archaeology and cultural heritage was provided in Chapter 12 of the ES [APP-039].
- 5.12.2 The Applicant conducted an assessment of the historic environment within a 1km study area from the Stage 1 Assessment Corridor. The results of this assessment are provided in Appendix 12.1 of the ES [APP-088]. Four designated heritage assets were identified within the Stage 1 Assessment Corridor including Fenwick Hall moated site Scheduled Monument, and three Grade II listed buildings associated with Fenwick Hall (Hall, barn and attached outbuildings). Within the wider 1km study area there are two additional Scheduled Monuments: Thorpe in Balne moated site (470m east) and a medieval cross in the churchyard of the Holy Trinity Church, Sykehouse (930 m south). A total of 38 Listed Buildings are recorded within the study area.
- 5.12.3 A concentration of 20 Listed Buildings are located within Snaith Conservation Area, at the northern end of the study area. These include one Grade I building (Church of St Lawrence). The remainder of the Listed Buildings within the study area are Grade II, with the exception of the remains of a chapel at Manor House Farm, Thorpe in Balne which is Grade II* listed. The proposed route corridor was subject to a geophysical survey to identify potential archaeological features, the results of which are presented in Appendix 12.2 of the ES [APP-089].

- 5.12.4 The Applicant considers that potential construction effects include the permanent, complete or partial loss of archaeological features/ deposits as a result of ground excavation, the permanent or temporary loss of the physical and/or visual integrity of a monument, and damage to resources as a result of ground vibration caused by construction traffic. The applicant does not consider that there are any potential effects on archaeology during the decommissioning of the development. The applicant concludes that the only potential operational effect could be the effect of the AGI on the visual character of a historic landscape defined as piecemeal enclosure with areas of 20th century agglomerated fields.
- 5.12.5 The ES [APP-039] describes mitigation measures which have been built into the design of the development, including an alteration to the route to avoid directly impacting known heritage assets within the Stage 1 Assessment Corridor, including Fenwick Hall Scheduled Monument. The Applicant acknowledges that the extent of the unknown archaeology, including crop mark features, is such that further assessment in the form of trial trenching would be required. The Applicant intends to agree the scope of a Written Scheme of Investigation (WSI) with the relevant statutory bodies and use the results of the survey to formulate an appropriate mitigation strategy. The need to produce and implement the WSI is secured in Requirement 14 of the DCO.

Examination issues

- 5.12.6 Within their relevant representation [RR-012] and LIR [LIR-001] DBC stated a preference that trenchless construction methods should be employed in areas of extant earthworks. DBC confirm in their LIR that they are content that the control of works in the area of upstanding archaeological earthworks will be dealt with under Requirement 14 of the draft DCO. I sought a response from the Applicant on this point in Question ACH 1.1 of my first written questions [PD-006]. The Applicant does not consider it appropriate to commit to methods in every location and considers that the use of such methods should be proportionate to the potential impact and agreed once the further investigation works have been completed [REP1-014].
- 5.12.7 I requested in Question ACH 1.3 of my first written questions [PD-006] that the Applicant provides an initial draft of the WSI which would demonstrate how the trial trenching would be conducted. The Applicant provided an initial draft in their WSI in their Deadline 1 response [REP1-015]. The preparation, approval and application of a WSI for each stage of the construction is secured through Requirement 14 in the recommended draft DCO at Appendix D.
- 5.12.8 The Applicant advised in the DCO hearing held on 17 June 2015 that DBC and NYCC were now content with the Applicant's approach to the further archaeological investigation (Applicant's Note of Oral Representations on the DCO) [REP1-015]. DBC [REP4-007] and NYCC [REP4-004] subsequently confirmed in their responses to Question

ACH 2.1 of my second written questions [PD-009] that they had no issues with the proposed approach.

- 5.12.9 This agreement has been reflected in paragraph 5.57 of the SoCG between the Applicant and DBC [REP4-019]. Within the SoCG between the applicant and NYCC, whilst NYCC reiterate that in principle trial trenching should always be undertaken at the pre-determination stage, the Applicant has been able to demonstrate that any archaeology present along the route can be dealt with post-determination with the controls in place (paragraph 5.39) [REP4-023].
- 5.12.10 The Humber Archaeology Partnership (HAP) on behalf of ERYDC stressed within correspondence issued to the Planning Inspectorate [AS-019] that "a major implication of these proposals would be their impact upon archaeological remains which are currently unrecorded" and proposes measures to ensure that such remains are recorded and protected. HAP also suggested proposed wording for a DCO requirement to secure archaeological mitigation measures. [AS-019].
- 5.12.11 In light of HAP's representation the Applicant confirmed their intention to amend the wording of Requirement 14 of the draft DCO to secure the need for consultation with HAP prior to the approval of the final WSI. The Applicant's final draft DCO contains the phrase 'and their respective archaeological advisors' following references to Doncaster MBC and East Riding of Yorkshire Council.
- 5.12.12 In the SoCG between HAP and the Applicant [REP4-024] it was agreed that following further discussions and the receipt of further information in the form of the draft WSI, HAP are now satisfied that the necessary mitigation would be delivered through Requirement 14 of the draft DCO without the need for an additional requirement.
- 5.12.13 Taking into account both the initial assessments by the Applicant on potential impacts on archaeology and on the historic environment and of the evidence submitted and conclusions reached by relevant parties during the Examination ***I conclude that the measures embedded in the recommended draft DCO are sufficient to ensure the protection of archaeology and on the historic environment.***

5.13 LAND USE

- 5.13.1 Paragraphs 5.10.1 to 5.10.4 of EN-1 draw attention to the potential effects that a proposal may have on specific land uses including high quality open space (including green infrastructure) and sports and recreation facilities and green belts.
- 5.13.2 Figure 15.2 [AS-013] shows that the proposed pipeline runs through the South Yorkshire Green Belt for some 1.5 kilometres north of Topsham. Chapter 11 of ES [APP-038] states that Thorpe Marsh Nature Reserve which is within 1km of the proposal is a Doncaster Council designated open space policy area.

- 5.13.3 Potential effects on recreation facilities are described in Chapter 17 of the ES [APP-044]. There is no indication that sports facilities would be affected by the proposed development.
- 5.13.4 There are no above ground developments associated with this proposed project in the green belt. The only above ground development in the vicinity of the Thorpe Marsh Nature Reserve is the Gas Reception Facility which has already been permitted as part of the development of the Thorpe Marsh CCGT power station.
- 5.13.5 The LIR from DMBC [LIR-001] states in paragraph 8.5 that, in relation to local policy, the proposed pipeline is considered to be an acceptable land use in principle.
- 5.13.6 The joint LIR prepared by NYCC and SDC states specifically that the proposal would not constitute inappropriate development in the Green Belt.
- 5.13.7 ***Taking into account the nature of the proposed development which means that there will not be any above ground infrastructure in either the green belt or affecting green infrastructure and sports and recreation facilities, I conclude that this proposed development would not have adverse effects on those land uses referred to in EN-1.***

5.14 LANDSCAPE AND VISUAL IMPACTS

- 5.14.1 In assessing the possible impacts on landscapes and visual amenity, I have had regard to the advice contained in paragraphs 5.9. of EN-1.
- 5.14.2 Issues relating to landscape and visual impacts were considered in Chapter 15 of the ES [APP-042]. Figure 15.1 [APP-101] illustrates Key Landscape Features, Figure 15.2 [APP-102] shows Local Planning, Heritage and Nature Conservation Designations and Figure 15.3 [APP-103] shows Landscape Character Areas.
- 5.14.3 In assessing the potential impacts on both the landscape and visual amenity, the Applicant selected a study area 700 metres either side of the Stage 1 Assessment Corridor. This width was chosen to reflect the low-lying and flat nature of the area. The proposed development does not cross any statutory or non-statutory landscape designations. However, as Figure 15.2 [APP-102] shows, the central part of the proposed development is located within a designated Green Belt and is near to two Areas of Special Landscape Value. I have dealt with the issues related to the Green Belt in the previous section - 5.13.
- 5.14.4 The proposed development lies within the Humberhead Levels National Character Area (NIA). This is low lying and predominantly flat with large fields often separated by hedgerows and some wooded areas with a pattern of ditches and larger water courses.
- 5.14.5 Landscape features within the site boundary include water features, woodland, trees and hedgerows. In respect of trees and hedgerows,

Chapter 15 of the ES [APP-042] states that, according to information provided by DMBC, ERYC and SDC, there are no trees with Tree Preservation Orders located within the Application Area and that a total of 31 individual semi-mature or mature trees fall within the Application Area, with no trees present at the Site Office / Pipe Dump.

- 5.14.6 The majority of these trees will be retained and protected, and the minimum necessary will be removed. A total of 26 sections of hedgerow along the route have been classified as important. These are illustrated in ES Appendix 11.2 [APP-083]. The ES confirms that the site boundary does not include any residential areas or individual properties, however, three villages (Gowdall, Moss and Thorpe-in-Balne) and five properties are located within 250km of the proposed development. The route would cross a number of transportation routes and sixteen Public Rights of Way PRowWs.
- 5.14.7 Chapter 15 of the ES [APP-042] confirms that temporary visual and landscape impacts would occur during construction due to the presence of temporary compounds, fencing, lighting, equipment required for the staged construction and the temporary pipe dump at Burn Airfield.
- 5.14.8 Current views and photomontages at agreed viewpoints are contained within Chapter 15 of the ES [APP-042]. Figure 15.4 [APP-104] illustrates the location and direction of the assessment viewpoints. Paragraph 15.157 of the ES confirms that the locations of the viewpoints were agreed in consultation with DMBC, SDC and ERYC.
- 5.14.9 The majority of the proposed development is to be underground and so permanent visual impacts and effects on the landscape would be largely restricted to the proposed AGI and MOC (Work Nos 5, 6 and 7) at the northern end of the route at Sandwith Lane south-west of Cambleforth and to a lesser extent to a free-standing steel cabinet and free-standing steel kiosk (Work No. 84) at Moss Road and pipeline route markers and cathodic protection test posts (Work No. 123).
- 5.14.10 The recommended draft DCO at Appendix D secures the dimensions of Work No. 5 at an approximate area of 522m² and all with a maximum height of 3.2m except Work No.5(j) with a maximum height of 4.0m (with Work No. 5(j) being an above ground pole with satellite dish) and Work No. 6 at an approximate area of 833m² with maximum heights of up to 4.0m for six lighting columns and three CCTV poles. The fencing will be up to 3.2m and the main valves will be at a maximum of 2.5m.
- 5.14.11 Chapter 15 of the ES [APP-042] confirms that effects during the decommissioning phase would be similar to those experienced during the construction phase, are not anticipated to give rise to significant effects and have not therefore been assessed in the ES. This scope was not disputed by any IPs during the course of the examination.

5.14.12 Mitigation measures to avoid and/or minimise landscape and visual effects are described in the ES. These include measures built into the design of the development including its routing to avoid sensitive receptors. In respect to the construction phase, the Applicant confirms that measures would be included in the CEMP including inter alia, use of screening, minimisation of working width and appropriate treatment of vegetation. Successful soil and vegetation reinstatement is crucial to minimising operational effects and would be implemented through Requirement 10 (Hedgerows and Trees). Landscaping at the AGI site would be secured through Requirement 8 of the draft DCO.

Examination Issues

5.14.13 In order to examine this issue, I asked six questions on landscape and visual amenity and one question on construction lighting in my first written questions [PD-006], having undertaken an unaccompanied site inspection in advance of the Preliminary Meeting and Issue Specific Hearings.

5.14.14 My concerns focussed on ensuring that all aspects of the proposed development had been assessed in the ES in respect of its impacts, the potential effects of lighting and with proposals in relation to the removal and re-instatement of hedgerows and trees.

5.14.15 In respect to the assessment of temporary acoustic fencing [question LVA 1.1, PD-006], the Applicant confirmed that the noise mitigation measures have yet to be finalised and may comprise an earth bund or acoustic fencing. The Applicant confirmed that these were assumed as a potential feature when conducting their assessment of construction related effects in Chapter 6 of the ES [APP-051]. With regard to permanent telecommunications infrastructure at the AGI site (ExA Question LVA 1.2, PD-006), the applicant confirmed that a worst case scenario would be one 6m telegraph pole onsite with other poles linking to an offsite network. The applicant concludes that landscape and visual effects as a result of these features would not be significant.

5.14.16 In my question LVA 1.3 [PD-006] I asked the Applicant to justify their decision not to consider views from private properties. The Applicant confirmed that representative views were considered from publically accessible locations where the most sensitive receptors are located. The Applicant reiterated [REP1-014] that the viewpoints were agreed with the relevant LPAs. No requests for the assessment of additional viewpoints were received during the course of the examination.

5.14.17 At my request [ExA Question LVA 1.4, PD-006], the Applicant provided a Schedule of habitat loss in Appendix 8 of their Deadline 1 submission [REP1-014]. This document clarifies that 5 trees would be lost; two at the crossing of Trumfleet Lane (Works Plan 89) and three trees where a dismantled railway is to be crossed (Works Plan 111). In addition, this document quantifies the temporary loss of hedgerows: 372m of species poor hedgerow and 312m of species rich hedgerow.

- 5.14.18 Article 9 of the recommended draft DCO at Appendix D modifies Regulation 6(1)(j) of the 1997 Hedgerows Regulations to add work for carrying out development authorised under the 2008PA to the list of permitted work under that Regulation. This was justified by the Applicant in its response to my question LVA 1.6 [REP1-014] stating that the proposed amendment to Regulation 6(1) would bring the development consent process in line with the permitted work under a planning permission pursuant to Regulation 6(1)(e). Were this not the case, the Applicant would need to seek consent from the relevant planning authority in respect of each proposed hedgerow removal.
- 5.14.19 The LIR from DMBC [LIR-001] states that the Council is content that, subject to the provision of both suitable and timely landscaping works as part of the re-instatement following the laying of the pipeline, the proposal will have no significant impact on the visual amenity of the area. Within their relevant representation DMBC commented that all of the hedgerows are 'important' on at least the historic criteria [RR-012], and further surveys would be required to inform the written plan for the management of hedgerow removal and reinstatement.
- 5.14.20 The Applicant clarified in their response to Question LVA 1.5 of the ExA's first written questions [PD-006] that only some of the hedgerows are classified as 'important' under the Hedgerow Regulations 1999 [REP1-014] and that all hedgerows affected by the works are to be fully re-instated, with species-poor hedgerow sections to be enhanced with a greater number of native species. DMBC and the Applicant subsequently agree in their SoCG [REP4-019] that Requirement 10 is appropriate to control future works which may affect hedgerows.
- 5.14.21 Requirement 10 in the recommended draft DCO at Appendix D requires the preparation and approval of a written plan for the management of the removal and (where appropriate) reinstatement of all hedgerows and/or trees (as applicable) for any stage of the authorised development that would affect any hedgerow and/or tree.
- 5.14.22 In their joint LIR [LIR-002] NYCC and SDC note that Requirement 3 of the DCO requires the detailed layout, scale and appearance of temporary compounds and the AGI to be approved before commencement and Requirement 8 of the DCO requires a landscaping scheme to be submitted and approved. They consider, therefore, that there would be adequate controls in order to ensure that the impacts from these elements of the scheme are minimised and to ensure compliance with local policy. The Applicant and NYCC / SDC agree in the SoCG that the DCO includes appropriate provision to secure landscape enhancements through Requirement 10 of the draft DCO.
- 5.14.23 In the LIR from ERYC [LIR-003], it is evident that it supports the scope of the assessment provided by the Applicant and agree with the Applicant's conclusion that the permanent landscape and visual effects are not anticipated to be significant. ERYC consider that the proposed mitigation measures are appropriate for the nature of the

development. EYRC consider that the provisions in Requirement 4 (CEMP) of the DCO in respect to the restoration of land and Requirement 10 in respect to the management of trees and hedgerow removal are sufficient to mitigate the effects of the development.

- 5.14.24 The possible effects of lighting both in the construction and operational phases was subject to examination. In respect of construction, Requirement 4 requires that:

any temporary external lighting to be installed at any of the construction sites during the construction of that stage, including measures to manage and mitigate artificial light emissions and prevent light spillage and measures to ensure that any temporary lighting does not distract drivers on roads in the vicinity of the Order limits

- 5.14.25 My question COD 1.1 [PD-006] queried both the assessment of the potential effects of operational lighting at the AGI and how the management of lighting is secured through the draft DCO, particularly any restriction on the times at which lighting will be operated. As a consequence of this question, the Applicant suggested a modification to Requirement 7 which added the phrase 'and measures to regulate the times at which the permanent external lighting may operate' to the details that must be submitted to, and approved by, the relevant planning authority.

- 5.14.26 ***I consider that the Applicant has taken adequate steps to ensure first that the temporary impact on the landscape and on visual amenity is minimised. Second, given that as the great majority of the scheme will be underground, I consider that, through the provision of landscaping, the control of design and the management of lighting, the visual impact of those elements that are above ground will also be minimised.*** In coming to this conclusion, I have taken into account the Applicant's secured commitment to replace all those hedgerows removed as part of the construction process.

5.15 NOISE AND VIBRATION

- 5.15.1 In assessing the potential noise and vibration impacts arising from the proposed development, I have had regard to the policy requirements contained in section 5.11 of EN-1.
- 5.15.2 The Applicant has considered noise and vibration impacts in relation to the proposed development in Chapter 14 of the ES [APP-041]. In line with paragraph 5.11.6 of EN-1, the potential noise and vibration impacts during construction have been assessed in accordance with British Standard (BS) 5228:2009[1]; and the potential noise impacts during operation have been considered in accordance with BS 4142: 2014[2]. Vibration during operation was not assessed.
- 5.15.3 There are residential properties in close proximity to the proposed route corridor, ranging from isolated properties, to more dense groups of properties. An office building is also located in proximity.

- 5.15.4 Noise and vibration from construction operations and noise from construction traffic are likely to result in disturbance to nearby residents as set out in paragraphs 14.168-14.169 and 14.171 of the ES [APP-041]. Significant effects on some of these properties have been identified, however residual effects are not considered to be significant. A description of the mitigation measures considered necessary to avoid and reduce adverse effects is provided in the ES and it has been confirmed that these measures would be delivered through the CEMP secured in Requirement 4 of the recommended draft DCO.
- 5.15.5 The ES confirms that operational noise emissions at the AGI plant are not yet known.

Examination Issues

- 5.15.6 In my first written questions [question DCO 1.5, PD-006] I queried why the DCO Explanatory Memorandum [APP-010] stated that: "it is not anticipated that the Proposed Development will bring about operational noise and so the wording in Model Provision 7(1)(b)(i) and (ii) has been omitted, whereas Paragraph 14.160 of Chapter 14 of Volume 2 of the Environmental Statement [APP-041] states that, at this stage, there are no details as to what level of noise will be generated by the plant, if any. The Applicant clarified that no operational noise is anticipated from an AGI utilised for conveying gas through pipelines, which would not include any moving parts [REP1-014].
- 5.15.7 To mitigate potential operational effects, Requirement 17 of the DCO secures the provision of noise monitoring and sets maximum noise levels at the AGI site. The wording of Requirement 17 of the DCO has been amended during the course of the Examination, in response to concerns raised in the LIR from NYCC and SDC [LIR-002] that the noise limits specified in the submitted draft DCO were not achievable.
- 5.15.8 My question DCO 2.9 [PD-009] asked North Yorkshire County Council and Selby District Council whether the revised limits set in this Requirement are acceptable. NYCC and SDC have confirmed that they are satisfied with the amended wording of Requirement 17 in their final SoCG [REP4-023].
- 5.15.9 DMBC, EYRC and NYCC/SDC indicate in their final SoCGs [REP4-019, REP4-021, REP5-001] that subject to the approval of the CEMP, secured under Requirement 4 of the DCO, noise effects during construction will be adequately controlled.
- 5.15.10 The Examination process has served to amend the upper noise limits permitted during the construction period to the satisfaction of the relevant local planning authorities. Additionally, there is no evidence to counter the Applicant's claim that the AGI will not produce operational noise. Given these two factors, ***I conclude that the Applicant has dealt satisfactorily with issues surrounding noise***

and that the required measures to minimise the impact are secured through the recommended draft DCO.

5.16 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES

- 5.16.1 In respect to pollution control, I have had regard to section 4.10 of EN-1.
- 5.16.2 I have considered effects on air quality in section 5.3, water quality in section 5.22, land quality in paragraph 5.4.62 onward and noise and vibration in section 5.15 of this Report.
- 5.16.3 A list of all consents required has been provided in the 'Other Consents Required' document [APP-033]. In respect to relevant issues considered during the examination, I explore the Applicant's proposed approach to disapply the Water Resources Act 1991 in the DCO in paragraphs 5.22.12 and 5.22.13. My acknowledgement of EPS licence issues is provided in the ecology section of this report.
- 5.16.4 I have not received any representations which indicate that the Applicant is unlikely to receive the necessary consents to facilitate the proposed development.
- 5.16.5 Taking the above into account, ***I conclude that there are no issues relating to Pollution Control and other Environmental Regulatory Regimes remaining outstanding at the end of the Examination period.***

5.17 SAFETY

- 5.17.1 In considering safety issues I have had regard to paragraphs 4.11.1 to 4.11.4 of EN-1 and paragraphs 2.19.4 to 2.19.6 of EN-4.
- 5.17.2 The ES deals with issues of Safety in Chapter 7 - Safety and Environmental Management [APP-052]. This Chapter covers the design of the pipeline and health and safety management in its construction. It commits the Applicant to comply with, *inter alia*, the Pipelines Safety Regulations 1996 and the Recommendations on Transmission and Distribution Practice - IGE/TD/1: Edition 5 Steel Pipelines and Associated Installations for High Pressure Gas Transmission in the design and operation of the pipeline.
- 5.17.3 It also commits that the contractor will develop Environmental, Health and Safety (EHS) procedures and will produce Method Statements, accompanied by safety risk assessments.
- 5.17.4 The recommended draft DCO at Appendix D secures the production of a construction environmental management plan (CEMP) for each stage of the proposed development and that the CEMP must set out written details of relevant health, safety and environmental legislation and compliance through Requirement 4. In addition, Requirement 18

requires that the HSE must be consulted on a written scheme for the decommissioning of the authorised development and the Protective Provisions for both National Grid Gas plc and National Grid Electricity Transmission plc require adherence to specified HSE guidance.

5.17.5 In line with paragraph 2.19.5 of EN-4, in my first questions [question SEM 1.1, PD-006] I asked the Applicant and the Health and Safety Executive (HSE) for a statement on the nature and outcomes of any discussions already held between the Applicant and the HSE in relation to Pipelines Safety Regulations 1996.

5.17.6 The HSE failed to respond to the question but the Applicant responded [REP1-014] that there has been no direct contact with the HSE, and HSE did not comment on the scheme.

5.17.7 This reflects the statement made by the Applicant in the report on Other Consents Required [APP-033] that:

HSE confirmed that they wished to comment through the consultation process. No response was received. Project experience suggests that they will wish to be involved in detailed design. All relevant safety measures will be utilised and therefore The Applicant does not envisage any issues with meeting the HSE's requirements.

5.17.8 An e-mail included at Appendix 5 of the Appendices to the Applicant's response to the first questions [REP1-014] recorded that the HSE had stated that it wished to respond through the pre-application duty to consult rather than make informal comments.

5.17.9 The Applicant expressed its opinion this was most likely because the scheme is not contentious and that there is no requirement to do so until the detailed design process (FEED) commences. The Applicant stated that, at that time, a F10 form will be submitted to the HSE in accordance with Construction (Design and Management) Regulations 2015. Also, a "Notification under the Pipelines Safety Regulations 1996" document setting out the proposed detailed design parameters will be issued to the regional HSE branch that covers this part of the UK.

5.17.10 I note, however, that there is no record in the Consultation Report [APP-017] of the HSE having provided any response to the Section 42 consultation.

5.17.11 ***I conclude that, despite the lack of any response from the HSE, safety of the design and operation of the pipeline is secured by the processes required by the Construction (Design and Management) Regulations 2015 and that processes and practices that seek to ensure safety in construction are secured in Requirement 4 as well as by Protective Provisions and that safety in decommissioning is secured through Requirement 18 in the recommended draft DCO.***

5.18 SECURITY CONSIDERATIONS

- 5.18.1 I have taken account of paragraphs 4.15.1 to 4.15.5 of EN-1. This proposed scheme has not been identified as 'critical' infrastructure in terms of this policy advice and ***I conclude that it does not present any national security implications beyond those presented by any NSIP not so identified and that, therefore, it does not require any specific measures to be put into place to protect national security over and above good working practice.***

5.19 SOCIO-ECONOMIC IMPACTS

- 5.19.1 Within this section of the report I have had regard to the section 5.12 of EN-1. I have also had regard to my responsibilities under the Public Sector Equality Duty under s149 of the Equality Act 2010.
- 5.19.2 The Applicant has considered the potential socio-economic effects of the proposal in Chapter 17 of the ES [APP-044]. In addition, effects on agriculture and soils have been considered in Chapter 8 of the ES [APP-053]
- 5.19.3 The proposed development would cross through three administrative areas; Selby, East Riding of Yorkshire and Doncaster. A description of the socio-economic characteristics of each area is provided in the ES. The ES makes particular reference to public rights of way (PRoW) which cross the site including the Trans Pennine Trail and directs me to Chapter 15 of the ES (Landscape and Visual Amenity) for a description of the PRoW.
- 5.19.4 Table 15.4 in Chapter 15 of the ES [APP-042] shows that the area is classified as having highly productive soils with 43% classified as Grade 1 and 2 and only 15% below Grade 3 or non-agricultural.
- 5.19.5 The main potential impacts considered in in Chapter 17 of the ES [APP-044] in respect to the construction of the proposed development are the creation of employment opportunities, effects on agriculture, and potential impacts on tourism and recreation including effects on PRoW. In addition, the Applicant acknowledges that cumulative effects may arise from the proposed development and the construction of the Thorpe Marsh Power Station.
- 5.19.6 The Applicant considers that the operation of the development may facilitate indirect employment opportunities, but no adverse effects are anticipated. The ES concludes that the decommissioning of the development is unlikely to yield direct employment or have other socioeconomic effects.
- 5.19.7 In order to mitigate effects on agriculture, the Applicant considers that appropriate soil handling and storage techniques would be required. Pre- and post-construction drainage would be installed. The Applicant is proposing a Construction Traffic Management Plan (CTMP) to manage construction traffic movements on the highways network.

Measures would be required to manage effects on PRoW, including temporary diversions.

Examination Issues

- 5.19.8 The Applicant confirmed in the ES that there was the potential for employment opportunities to be created for local people during the construction phase and I was keen to explore how the Applicant intended to deliver this commitment. In response to Question SE 1.1 of my first written questions [PD-006] the Applicant confirmed they had no objection to the inclusion of a Requirement in the DCO to secure this measure. As a consequence, the Applicant proposed a new Requirement in the draft DCO [REP3-015] as follows:
- 22. – (1) No stage of the authorised development may commence until for that stage a written scheme for the promotion of local employment opportunities has been submitted to and approved in writing by the relevant planning authority.*
- (2) The scheme must set out the means by which the undertaker will work with local agencies, including the relevant planning authority, to secure as far as reasonably practicable the use of local labour, contractors, goods and services during the construction stage of the authorised development.*
- (3) The approved scheme must be implemented in full during the construction stage of the authorised development.*
- 5.19.9 ERYC and NYCC/SDC confirm in their respective SoCG's [REP4-021 and REP5-001] that they support the inclusion of Requirement 22 in the DCO and consider that it provides an appropriate framework to secure local employment.
- 5.19.10 In respect to potential impacts on PRoW, ERYC confirm in their LIR [LIR-003] that effects will be satisfactorily mitigated through the measures set out in Requirement 11 of the draft DCO.
- 5.19.11 The SoCG between the Applicant and NYCC/SDC reiterates the importance of the Trans Pennine Trail and the need to safeguard this route as part of the development [REP5-001]. NYCC did query whether it would be possible to drill underneath the Trans Pennine Trail, however the Applicant explained in that this approach would not be cost effective [REP5-001]. In their joint LIR NYCC and SDC [REP5-001] provide some suggestions of measures which should be included in the Public Rights of Way Management Plan to ensure that potential effects are mitigated.
- 5.19.12 These measures include the provision of suitable alternative routes for PRoW closures and the appropriate reinstatement of any PRoW which are disturbed as a result of the works. NYCC/SDC consider that Requirement 11 of the draft DCO is adequate to manage the effects on PRoW. This agreement is reiterated in the SoCG between the Applicant and NYCC/SDC [REP4-023] which also confirms that Requirement

4(2)(h) offers an appropriate framework to ensure that the restoration of the Trans Pennine Trail is to an appropriate standard.

- 5.19.13 In response to concerns raised by NYCC in respect to the use by construction vehicles of two public footpaths (35.14/6 and 35.14.5) which cross Burn Airfield, the Applicant agreed [REP4-022] to amend Requirement 4 of the draft DCO to ensure that prior agreement on the management of construction vehicles at Burn Airfield is secured in the CEMP. This is now included in Requirement 4 included in the recommended draft DCO at Appendix D.
- 5.19.14 In my assessment of potential effects on agriculture, I queried whether there would be residual effects on farming practices on the route of the proposed pipeline during its operation, such as restrictions on ploughing (ExA Question AS 1.1) [PD-006]. The Applicant does acknowledge that there would be some restrictions in terms of installation of structures with foundations and tree planting along the pipeline route. The Applicant confirmed that it is their intention to restore the land to its original condition, and they intend to work with a local drainage engineer to ensure the land is properly drained following restoration.
- 5.19.15 At the ISH on the draft DCO hearing held on 17 June 2015, Mr Robert Metcalfe expressed some concern regarding the longer term effects of the pipeline on farming including security risks, disturbance to livestock and reinstatement methods (Applicant's Note of Oral Evidence at the DCO Hearing) [REP3-014]. Further to the DCO hearing, the applicant's Note of Oral Evidence at the DCO Hearing sets out additional measures that may be taken to mitigate residual effects on landowners.
- 5.19.16 I was keen to understand how the Applicant intended to deliver these measures in the DCO and therefore I requested this information in Question AS 2.1 of my second written questions. In response [REP1-014], the Applicant clarified where in the outline CEMP consultation with landowners/occupiers would be required throughout the construction phase of the proposed development to manage effects on agriculture. This document is secured in Requirement 4 of the recommended draft DCO. No further correspondence was received from Mr Robert Metcalfe during the course of the examination.
- 5.19.17 ***I consider that the Examination process has been positive in securing a Local Employment Requirement in the recommended draft DCO and that the Applicant has taken necessary secured measures to seek to minimise any potential adverse effects on the local economy and, in particular, on agriculture and tourism.***

5.20 TRAFFIC AND TRANSPORT

- 5.20.1 In respect to traffic and transport, I have had regard to section 5.13 of EN-1.

- 5.20.2 The application documents contained, at Chapter 16 of the Environmental Statement [APP-043], information on potential traffic and transport effects. Paragraph 16.4 of the ES stipulates that a formal Transport Assessment is not required to support the application because of the 'modest traffic levels at any individual access and the temporary nature of the works.'
- 5.20.3 The ES confirms that access to and from the proposed Burn airfield Site Office / Pipe Dump will be via Common Lane, a category "C" road that lies immediately north of the airfield site. Upon exiting the airfield site onto Common Lane, three main routes would be utilised:
- (1) Delivery route to Site Office / Pipe Dump;
 - (2) Eastern Transportation Route (Common Lane, A19 north, A63 east and A1014 south); and
 - (3) Western Transportation Route (Common Lane, A19).
- 5.20.4 The anticipated duration of the construction period is 56 weeks. Estimated construction traffic movements are provided in the ES. It is anticipated that the peak level of HGV traffic movements during this period will be 20 per day. The ES considers that the potential movements can be accommodated within the existing road network. The applicant concludes that a CTMP would be required to mitigate construction traffic effects. The proposed content of the CTMP is outlined in the ES. Requirement 5 of the applicant's draft DCO commits to the production and implementation of a CTMP.
- 5.20.5 Operational effects are not considered within the ES due to the low number of traffic movements anticipated. The applicant expects decommissioning effects to be similar to those experienced during the construction of the development.

Examination Issues

- 5.20.6 I examined issues surrounding traffic and transport through identifying this in my initial identification of principle issues [PD-004], through putting fourteen questions on this issue in my first round of questions [PD-005] and through considering issues raised in Relevant and Written Representations, LIRs and SoCGs.
- 5.20.7 Within their relevant representation The Highways Agency [RR-002] requested more information in order to better understand the impacts the proposed development would have on the strategic road network and to ensure that any adverse impacts would be mitigated. The Applicant subsequently amended Article 12 of the draft DCO [REP3-015] to include reference to the M62. Highways England confirmed in response to Question DCO 2.4 of my second written questions [PD1-006] that it agrees with the content of draft DCO Article 12 [REP4-005].
- 5.20.8 ERYC's LIR [LIR-003] confirms that Requirement 5 provides the necessary mitigation to ensure there are no severe highway or transport implications.

- 5.20.9 In the LIR submitted by DMBC [LIR-001] my attention was drawn to potential effects from proposed traffic routing on Bellcroft Lane. The LIR states that the Applicant has agreed not to use this route. This was subsequently clarified in the Applicant's Note of Oral Evidence: DCO Hearing [REP3-014] which stated that the scheme will cross this lane at Work 105, although this will be a drill under the lane, and construction traffic will be routed from Bellcroft lane back north to Wrancarr Lane at Work 94, where it will travel through Thorpe-in-Balne to pick up the drill via the Applehurst Lane access point.
- 5.20.10 The routing of construction traffic is secured in Requirement 5 which requires that a construction traffic management plan (CTMP) be submitted to, and approved by, the relevant local planning authority in consultation with the relevant highway authority. The Requirement states that the CTMP must be in accordance with the outline construction traffic management plan. A Works Plan including Traffic Management Plan was submitted by the Applicant in response to my first questions and Part 2 of this [REP1-026] does show HGV traffic routed away from Bell Croft Lane.
- 5.20.11 The SoCG between the Applicant and DMBC [REP4-019] sets out details of the proposed approach to road condition surveys and road closures. DMBC agree that Requirement 5 and Articles 12 and 13 in the draft DCO provide a suitable approach to mitigating traffic effects.
- 5.20.12 Chapter 16 of the Environmental Statement [APP-043] states that the development does not generate sufficient traffic to trigger the need for a Transport Statement or Transport Assessment. In response to my first questions, the local highway authority, NYCC [REP1-011], confirmed that, through the consultation process, it became evident that the traffic impact could be suitably addressed through the Outline CTMP.
- 5.20.13 The NYCC and SDC LIR [LIR-002] provides a description of the detailed design information the local highway authority expects to agree with the Applicant prior to the commencement of the development. NYCC and SDC conclude that issues surrounding traffic and access arrangements should be controlled through Requirements 5 and 9 of the DCO.
- 5.20.14 Within their written representation, Chapel Haddlesey Parish Council [REP1-002] objected to the proposed routing of construction traffic along the A19 through Chapel Haddlesey and Temple Hirst to the working area west of Carlton. The Parish Council were keen to see an appropriate traffic plan which would demonstrate that this route would not be utilised. Mrs C Holliday submitted a representation [REP1-008] which raised concern over the potential state of the local road network surrounding Holme as a result of construction traffic. The Applicant's Note of Oral Evidence: DCO Hearing [REP3-014] reiterates that the proposals set out in the CTMP and ES tied into Requirement 5 of the DCO offer certainty that the routing proposals will be adhered to and

appropriate measures would be in place to mitigate construction traffic effects to the satisfaction of the relevant local highway authority.

5.20.15 In my question TT 1.11 I [PD-006] queried how the Construction Traffic Management Plan routing would be enforced in practice. The Applicant referred to Requirement 5(f) which requires the marking and identification of the Applicant's vehicles and stated that the marking system will most likely take the form of large, highly coloured signs in cab windows, with an identification number easily visible.

5.20.16 ***I conclude that the Requirements for a Construction Traffic Management Plan secured through the recommended draft DCO which reflects the Applicant's response to local community concerns combined with clear enforcement measures will ensure that the effects of traffic arising out of the construction of the scheme will be minimised.***

5.21 WASTE MANAGEMENT

5.21.1 The relevant section - 5.14 - of EN-1 focusses on the management and disposal of waste arising from a project. In the case of the Thorpe Marsh Gas Pipeline, the issues potentially presented by the production of waste are minimised by the fact that the proposed project serves only to link an already permitted CCGT power station to the source of its gas supply at the national gas grid.

5.21.2 Thus, the main issues related to waste centre on measures for the management, storage, handling and recycling of waste generated during construction.

5.21.3 Anticipated wastes arising are described in Chapter 6 of the ES [APP-051]. This covers the disposal of drilling mud, bog mats, stone and hardcore, concrete used for temporary purposes. In the case of bog mats and stone and hardcore, the constructor would be encouraged to re-use these - or offer them for re-use. The assessment demonstrates a commitment to the waste hierarchy in that, according to Chapter 6 of the ES [APP-051] all relevant contractors would be required to investigate opportunities to minimise waste arisings at source, where such waste generation is unavoidable, to maximise the recycling and reuse potential of construction materials and, where recycling or re-use is not possible, the waste would be disposed of in accordance with relevant legislation.

5.21.4 The proposed CEMP, secured through Requirement 4 in the recommended draft DCO at Appendix D, requires the developer to agree in writing the measures for the management, storage, handling and recycling of construction waste.

5.21.5 The revised Outline CEMP [REP4-013], which accords with the draft DCO, addresses construction waste at Chapter 9. This sets out the relevant legislation to be followed; the nature of the waste that may arise; the proposed management of that waste, including setting out an overall approach in paragraphs 9.3.1 and 2 which reflects the

waste hierarchy; training and competence, and monitoring, auditing and reporting.

5.21.6 The issue of the management and disposal of construction waste has not been raised by relevant bodies in their submissions to the Examination and was not the subject of any of my questions.

5.21.7 *I conclude that the issue of the management, storage, handling and recycling of waste has been dealt with in a thorough way by the Applicant and that the securing of an effective approach is secured in the recommended draft DCO.*

5.21.8 The issue of the management of topsoil and subsoil is covered in paragraphs 5.4.62 onward.

5.22 WATER QUALITY AND RESOURCES

5.22.1 In respect to water resources I have had regard to section 5.15 of EN-1.

5.22.2 Effects on water quality and resources have been assessed in Chapter 10 of the ES [APP-037].

5.22.3 A description of the baseline conditions is provided in paragraphs 10.52-10.83 of the ES. The proposed development would cross, or would be in close proximity to the following watercourses:

- River Don;
- Thorpe Marsh Drain (Ea Beck);
- Smallholme and Tilts Drain;
- River Went;
- Aire and Calder Navigation; and
- River Aire.

5.22.4 The ES confirms that there are no watercourses in proximity to either the Site Offices and Pipe Dump area or Camblesforth AGI.

5.22.5 The whole of the development is situated over the Sherwood Sandstone Principal Aquifer. The southern tip and northern extents of the Proposed Route Corridor are also situated within a groundwater Source Protection Zone III. There are also a total of 16 open drains located along the pipeline route.

5.22.6 Potential effects on water quality and resources during the construction of the proposed development are outlined in the ES and include inter alia a risk of pollution from construction activities, physical damage to watercourses and alterations to groundwater resources. The ES does not identify any likely significant effects on water quality and resources as a result of the operational maintenance requirements or the decommissioning of the development. Potential effects on flood risk have been considered in section 5.9 of this report.

- 5.22.7 The Applicant has proposed a number of pollution prevention measures in Chapter 10 of the ES [APP-037] and intends to deliver these via the CEMP secured by Requirement 4 of the draft DCO. In addition to this the Applicant intends to produce method statements within the CEMP for each construction activity and agree these in advance with the EA, the relevant local authority, the local lead flood authority and the relevant internal drainage boards. This is secured through Requirement 4(1) and 4(2)(i) in the recommended draft DCO.
- 5.22.8 The discharge of hydrostatic test water is subject to Article 17 of the DCO.
- 5.22.9 The Applicant confirmed in the ES that consent would be sought from the EA under the Water Resources Act 1991 in respect to the abstraction of water from the Thorpe Marsh Drain and from the Canal and River Trust (CRT) Aire and Calder Canal for the purposes of the hydrostatic testing.
- 5.22.10 Following the implementation of the proposed measures, the Applicant concludes that the residual effects on water quality and resources would not be significant.
- 5.22.11 The proposed development would be located within the Humber River Basin District and therefore the content of the River Basin Management Plan (RBMP) applies in this instance.

Examination Issues

- 5.22.12 Within their relevant representation [RR-011] the EA drew attention to the conflict between Chapter 10 of the ES [APP-037], which states that an abstraction consent under the Water Resources 1991 would be sought from the EA in respect to water abstraction for the purposes of hydrostatic testing, whilst Article 18 of draft DCO [APP-009] sought to disapply the requirements of this Act. The EA did not consider that sufficient information had been provided in the ES to fully assess the potential environmental impacts of the disapplication.
- 5.22.13 The CRT also raised concerns in their relevant representation [RR-014] that the DCO did not provide adequate protection for the abstraction licencing regime. I sought further information on this issue in Questions DCO 1.11, WRF 1.5 and WRF 1.6 of my first written questions [PD-006], to which the Applicant responded [REP1-014] that they have agreed with the EA that Article 18 of the draft DCO would be removed and Applicant would apply for the necessary abstraction licences as and when they are needed from the EA and CRT. This agreement is reflected in the recommended draft DCO. This agreement provides comfort that abstraction would only occur to the satisfaction of the relevant bodies.
- 5.22.14 I was keen to establish the level of progress made by the Applicant to agree the other consents relating to water resources that would be required to implement the scheme. The Applicant confirmed in response to Question WRF 1.2 of my first written questions [PD-006]

that detailed discussions had not been held and would only be progressed once the detailed engineering design is available. The Applicant confirmed that the Internal Drainage Boards (IDBS) consider that there are no impediments and the EA has not raised any issues with the principle of the consents. The Applicant subsequently confirmed in their Note of Oral Evidence: DCO Hearing [REP3-014] that the EA and the CRT do not envisage any impediments to the grant of an abstraction licence.

- 5.22.15 In respect to pollution prevention, the EA confirmed in their relevant representation [RR-011] that the OCEMP addressed many of the issues required to protect the water environment and noted that Requirement 4 secures the need to adhere to the OCEMP.
- 5.22.16 The Applicant agreed in response to question WRF 1.10 of my first written questions to include the additional suggestions made by the EA into the OCEMP and reflect these within the main wording of Requirement 4. In addition the EA requested an amendment to this Requirement to secure that the need to consult with the EA prior to the agreement of the CEMP by the relevant planning authority. The Applicant subsequently made these changes to their draft DCO [REP6-002].
- 5.22.17 To protect the interests of the CRT and the relevant IDBs, I made a suggested change to Requirement 4 (CEMP) in the draft DCO to require prior consultation with the CRT and the relevant IDBs alongside the EA before the final CEMP can be approved [PD-010]. This suggested change was supported by CRT [REP4-006]. The Applicant subsequently made this change in their draft DCO submitted at Deadline 6 [REP6-002].
- 5.22.18 The CRT, responsible for the Aire and Calder Canal under which the pipeline would cross, provided a detailed relevant representation [RR-014] which set out how their interests would need to be protected in the DCO. In order to protect the structural integrity of the Canal, the CRT requested assurance that a minimum depth of 20m would be applied for the trenchless crossing, and requested certain provisions in respect to the piling methods if these are required. This matter is dealt with further in paragraphs 9.4.13 to 9.4.23, below.
- 5.22.19 In their response to Question WRF 1.8 of my first written questions [REP1-014] the Applicant confirmed that further detail would be provided through the flood defence consent process which would ensure that adequate controls are in place to protect the integrity of water resources. The Applicant and the EA agreed in their SoCG [REP4-017] that when taking into account requirements 4 and 21 of the draft DCO, and the need for the necessary flood consents to be obtained, the integrity of the main river channels and flood defences would not be affected.
- 5.22.20 In coming to my conclusion, I note that, in respect of the Water Framework Directive (WFD) the Applicant concludes that residual

construction and operational effects on surface water are not anticipated to have a significant impact on the ability to meet WFD objectives as they would not lead to a deterioration in any element of the water body classification or introduce impediments to the water body attaining Good Ecological Status or Good Ecological Potential or permanent exclusion/compromise to other water bodies in those WFD catchments. I did not receive any evidence to counter this assertion.

5.22.21 First, ***I conclude that the removal of former Article 18 from the draft DCO which would have had the effect of disapplying s24(1) of the Water Resources Act 1991 is to be welcomed and represents a more proportionate approach.***

5.22.22 Second, I have taken into account the fact that the recommended draft DCO now includes amendments to relevant Requirements which ensure the involvement of the EA, the CRT and the relevant IDBs in the approval process of the CEMP. Given this, ***I conclude that there are no outstanding important issues relevant to water quality and resources.***

6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

- 6.1.1 The Applicant submitted a Habitat Regulations Statement – No Significant Effects Report (NSER) [APP-031] which was deemed sufficient to accept as part of the application for examination.
- 6.1.2 Following consideration of the NSER and submissions from Natural England (NE) (the nature conservation body for England for the purposes of the Habitats Regulations), including their relevant representation [RR-007], their written representation and responses to my first written questions in relation to Habitats Regulations issues [REP1-010], I issued a letter on 3 July 2015 [PD-008] which stated that: "Having regard to all submissions received to date, I have decided that a Report on the Implications for European Sites (RIES) will not be necessary."
- 6.1.3 The evidence for, and reasoning behind, this decision is set out below.

6.2 PROJECT LOCATION

- 6.2.1 The project is a 19.1 km long pipeline running south from Camblesforth to Barnby Dun.
- 6.2.2 European sites within 10km of the proposed development were identified on Figure 1 of the NSER [APP-031]. The 10km buffer has been considered based on Bat Conservation Trust and Environment Agency guidelines, as detailed in paragraph 1.4 of the NSER [APP-031].
- 6.2.3 The European sites screened into the assessment and identified on Figure 1 in the NSER are:
- Hatfield Moor Special Area of Conservation (SAC);
 - Thorne Moor SAC;
 - Thorne and Hatfield Moors Special Protection Area (SPA);
 - Humber Estuary SAC;
 - Humber Estuary SPA;
 - Humber Estuary Ramsar site;
 - River Derwent SAC;
 - Lower Derwent Valley SPA;
 - Lower Derwent Valley SAC;
 - Lower Derwent Ramsar site; and
 - Skipwith Common SAC.

6.3 ASSESSMENT OF EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN-COMBINATION

- 6.3.1 The screening matrices provided in Appendix 1 of the NSER [APP-031] considered each of these sites against the following possible impacts:
- Direct habitat loss;

- Changes in air quality (dust and air emissions);
 - Changes in hydrology;
 - Changes to water quality; and
 - Disturbance.
- 6.3.2 The assessment contained in the NSER [APP-031] concludes that there would be no Likely Significant Effects on any European Site, either alone or in-combination.
- 6.3.3 Correspondence between the Applicant and NE is included at Appendix 1.2 of the NSER [APP-031]. An e-mail from NE states that, "Natural England would agree with the conclusion that, due to the distance of the project from the nearest European designated site and the fact that no pathways of effect have been identified, the project is not likely to have a significant effect on any European designated sites".
- 6.3.4 NE's RR [RR-007] reiterated that it is satisfied that the project is unlikely to have a significant impact on any nationally or internationally designated nature conservation sites, or nationally designated landscapes.
- 6.3.5 This finding was reinforced in NE's Written Representation [REP1-010] which stated at paragraph 5.1 that: "Natural England has no outstanding issues or concerns regarding this application and we have agreed a Statement of Common Ground with the applicant". Paragraph 5.1 of the SoCG [REP1-035] reiterates this position.
- 6.3.6 In my first written questions [PD-006], I sought clarification from NE on two issues (in questions HRA 1.1 and 1.2) related to the finding of the Applicant's NSER [APP-031]. These were, first, the extent to which NE considered that the finding of no likely significant effects relied on measures contained in the Outline Construction Environmental Management Plan [APP-064] and, second, to seek final confirmation that NE's confirmation of the finding of no likely significant effects relates to the project alone and/or to the project in-combination with other plans/projects.
- 6.3.7 NE's responses [REP1-010] confirmed that due to both the distance from the pipeline route to the nearest European Site and the absence of any pathways for potential effects, the content of the CEMP was not a necessary consideration and secondly that it is satisfied that no likely significant effects will occur on any European site *per se* and that this finding related to the project either alone or in-combination.
- 6.3.8 Following my consideration of the Applicant's HRA presented in the NSER [APP-031], of other source material covered in this Chapter and of NE's submissions in this regard, a letter was issued on 3 July 2015 [PD-008] which stated that, "Having regard to all submissions received to date, I have decided that a RIES will not be necessary. This does not mean that any relevant or important impacts of the scheme will not be considered, but rather that a separate document to inform that consideration is not necessary."

6.4 CONCLUSIONS

6.4.1 The Examination of the possibility of any likely significant effect on European sites considered the following European sites:

- Hatfield Moor SAC;
- Thorne Moor SAC;
- Thorne and Hatfield Moors SPA;
- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar site;
- River Derwent SAC;
- Lower Derwent Valley SPA;
- Lower Derwent Valley SAC;
- Lower Derwent Ramsar site; and
- Skipwith Common SAC.

6.4.2 Taking account of all the evidence set out in this Chapter and informed by the conclusions arrived at by NE in successive submissions to the Examination, I conclude that there is no reasonable scientific doubt that the proposed Thorpe Marsh Gas Pipeline project will not result in any likely significant effects on any European site, either alone or in combination with other plans and projects.

7 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1 THE PLANNING BALANCE

- 7.1.1 In this Chapter of the report I consider all the evidence, arguments and conclusions in the foregoing Chapters in order to assess the planning basis for my overall recommendation on this application.
- 7.1.2 In doing so, I draw on Chapter 3 of the report which sets out the legal and policy context for my Examination of the application and on Chapter 4 which summarises my findings and conclusions on this context. I then summarise my findings in relation to Habitats Regulations set out in Chapter 6 of this report.
- 7.1.3 I then take the headings used in Chapter 5 to summarise my conclusions on the potential impact of the proposed development on specific aspects of the local environment, ecology and economy.
- 7.1.4 In looking at the legal and policy context I have considered in each section of this report the accordance with the relevant national policies contained in the National Policy Statements (NPS) EN-1: Overarching National Policy Statement for Energy and EN-4: National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines. Where relevant, I have referenced the National Planning Policy Framework (NPPF).
- 7.1.5 I have had clear regard to relevant national primary and secondary legislation including the Equality Act 2010 and the Human Rights Act 1998 and, where relevant, European legislation and Directives.
- 7.1.6 My starting point for the consideration of local policy has been the three Local Impact Reports (LIRs) produced by Doncaster MBC [LIR-001], East Riding of Yorkshire Council [LIR-003] and jointly between Selby District Council and North Yorkshire County Council [LIR-002]. These drew my attention to specific policies in the local plans of these local authorities and I set out in section 3.7 of this report, the relevance of these policies according to the currency of each local plan. I have had regard to the issues identified in each LIR in reaching my recommendation.
- 7.1.7 First, I conclude that there is an established national need for this project both in terms of national energy policy and in terms of the fact that it is required to facilitate the supply of gas from the national gas network to a CCGT Power Station which has already been permitted under s36 of the Electricity Act 1989 (as amended).
- 7.1.8 Second, using the Applicant's Habitat Regulations Statement – No Significant Effects Report (NSER) [APP-031] as a starting point I have drawn on the submissions from Natural England to conclude that there is no reasonable scientific doubt that the proposed Thorpe Marsh Gas Pipeline project will not result in any likely significant effects on any

European site, either alone or in-combination with other plans and projects.

7.1.9 I also conclude that it does not conflict with the local policy framework contained in local plans and supplemented where relevant by the NPPF. I am supported in this conclusion by the four relevant local authorities as expressed through their LIRs.

7.1.10 I now summarise my conclusions under each of the 21 headings used in my consideration of the potential local impacts of the proposed project.

Cumulative Effects

7.1.11 Following consideration of the Applicant's assessment of cumulative effects in Chapter 18 of the ES, I considered cumulative effects under the headings of noise and vibration, landscape and visual impacts, and socio-economics only.

7.1.12 I concluded that there were no cumulative effects to take into account in consideration of this application.

Air Quality and Emissions

7.1.13 Chapter 13 of the ES [APP-040] concluded that no impacts to air quality are anticipated during the operational / decommissioning phases of the proposed development and therefore the assessment focused on potential effects during the construction of the development.

7.1.14 I conclude that, in the construction phase, whilst there will be dust emissions, measures set out in the CEMP secured through the recommended draft DCO will mean that the policy requirements of EN-1 in this respect have been satisfied.

7.1.15 In coming to the conclusion, I have drawn on, and been supported by, the evidence and conclusions presented by the local authorities in their LIRs.

Biodiversity, Biological Environment, Ecology and Geological Conservation

7.1.16 The Applicant's ES assesses impacts to the biological environment and ecology at Chapters 11 [APP-038] and Chapter 18 [APP-045]. This assessment identified a range of species and habitats as set out in section 5.4 of Chapter 5, above. The ES has identified a number of potential construction and, to a lesser extent, operational, effects on these. The Applicant has adopted a hierarchical approach to ecological mitigation - impact avoidance; impact reduction; impact mitigation; and enhancement measures with the mitigation and enhancement measures secured in the recommended draft DCO through the CEMP and through an Ecological Management Plan.

- 7.1.17 During the Examination, NE confirmed that all issues related to protected species, including the great crested newt had been satisfactorily addressed. Similar opinions were expressed by the local planning authorities through their LIRs. Yorkshire Wildlife Trust raised issues relating to water voles and to the potential significance of short term effects / potential for habitat fragmentation as result of the proposed development but these were both resolved to the Trust's satisfaction.
- 7.1.18 The Examination focussed on the opinion of both EA and YWT that further environmental enhancements should be provided taking into account paragraph 5.3.4 of EN-1. By the end of the Examination, YWT had agreed in its SoCG [REP4-018] that that the ecological enhancement measures outlined in the Environmental Statement (ES) are satisfactory.
- 7.1.19 My reasoning and conclusions on this issue are set out in paragraphs 5.4.35 to 5.4.59, above but, in summary, I conclude that for a number of reasons, including the fact that this proposed project serves another already permitted project which will itself result in the provision of environmental enhancements, the enhancements already provided for in the recommended draft DCO are sufficient.

Civil and Military Aviation and Defence Interests

- 7.1.20 I do not consider that there are any relevant issues related to civil and military aviation and defence interests overall. However, one issue arose in relation to the potential impacts on the safety of the continued use of Burn Airfield – the site for the temporary pipe dump – by Burn Gliding Club.
- 7.1.21 After detailed examination and negotiation, the Applicant agreed a series of measures, set out in paragraph 5.5.4, above, which are secured in the recommended draft DCO through Requirement 23.

Climate Change Adaptation and Mitigation

- 7.1.22 In considering the possible implications of the proposed project on climate change adaptation and mitigation, I bore in mind that the main impacts will have already been assessed through the permitting of the CCGT power station that this project would serve but that the basic design of this scheme serves to maximise its contribution towards the mitigation of climate change.
- 7.1.23 I consider one particular aspect of climate change adaptation – flooding – below.

Commercial Impacts

- 7.1.24 The major commercial impacts on the national, regional and local economies arising out this project are related in the main to the CCGT power station itself and the implications for that scheme that any possible refusal of the gas pipeline would have on its implementation.

7.1.25 More direct socio-economic impacts are considered below.

Common Law Nuisance and Statutory Nuisance

7.1.26 I have considered aspects of under my consideration of issues in relation to air quality, geology, artificial light and noise and vibration.

7.1.27 I conclude that Article 10 in the recommended draft DCO would provide a defence to proceedings for statutory nuisance.

Flood Risk

7.1.28 A large proportion of the Proposed Route Corridor is located within either Flood Zone 3 (high probability) or Flood Zone 2 (medium probability). Chapter 10 of the Environmental Statement [APP-037] assesses flood risk, with a stand-alone Flood Risk Assessment (FRA) provided at Technical Appendix 10.1 [APP-081]. As the proposed pipeline will be buried the FRA only assessed risks during the construction phase.

7.1.29 Following the EA's Written Representation [REP1-005] it became clear during the Examination that a more detailed FRA was needed for the AGI. This was provided by the Applicant as an Addendum to the FRA [REP3-006]. As a consequence, the EA agreed through a SoCG that the project will not increase the risk of flooding in the catchment area.

7.1.30 This conclusion was not contradicted by the local authorities in their LIRs.

7.1.31 Overall, therefore, I conclude that, given the mitigation measures and the strengthening of the relevant representations and the preparation of the addendum FRA for the AGI, I conclude that issues relating to flooding have been dealt with satisfactorily in the recommended draft DCO.

Hazardous Substances

7.1.32 This application does not contain any provision for the storage of hazardous substances in the terms set out in paragraphs 4.12.1 to 4.12.2 of EN-I.

7.1.33 The control of waste and the storage of any substances arising in the construction phase have been dealt with through provisions in the CEMP secured in the recommended draft DCO. Issues related to hazardous substances were not raised in the Examination.

7.1.34 I conclude, therefore, that these issues have been dealt with adequately.

Health

7.1.35 The main factors which might give rise to health impacts as listed in EN-1 – such as traffic, air or water pollution, dust, odour, hazardous

waste and substances, noise, exposure to radiation, and increases in pests – are dealt with in other sections of this report. In terms of impacts from the operation of the proposed project, the fact that it is underground for the great majority of its length and that the AGI forms an enclosed system, means that I conclude that there are no health issues of concern.

Historic Environment

- 7.1.36 The Applicant conducted an assessment of the historic environment within a 1km study area from the Stage 1 Assessment Corridor. Four designated heritage assets were identified within the study area. As part of its mitigation measures the Applicant re-routed the proposed pipeline to avoid direct impact on such assets.
- 7.1.37 The Applicant has acknowledged that further assessment will be needed and the recommended draft DCO secures the preparation of a Written Scheme of Investigation (WSI) – a draft copy of which was submitted to the Examination. Following an amendment made during the Examination, local authority archaeological advisors, including the Humber Archaeology Partnership will be consulted in the preparation of the WSI.
- 7.1.38 Following consideration of this issue during the Examination, the relevant local authorities and advisers agreed through SoCGs that archaeology present along the route can be dealt with post determination with the controls in place.
- 7.1.39 Given this, I conclude that issues related to archaeology and the historic environment have been dealt with adequately in this application.

Land Use

- 7.1.40 The proposed pipeline runs through the South Yorkshire Green Belt for some 1.5 kilometres north of Topsham and Thorpe Marsh Nature Reserve which is within 1km of the proposal is a Doncaster Council designated open space policy area.
- 7.1.41 However, given the nature of the proposed development, the relevant local authorities agree that this is an acceptable land use and an appropriate development in the green belt.
- 7.1.42 I conclude, therefore, that this proposed scheme does not raise land use issues in the terms set out in paragraphs 5.10.1 to 5.10.4 of EN-1.

Landscape and Visual Impacts

- 7.1.43 The majority of the proposed development is to be underground and so permanent visual impacts and effects on the landscape would be largely restricted to the proposed AGI and to the construction phase.

- 7.1.44 In terms of construction and consequent effects, Article 9 of the recommended draft DCO at Appendix D modifies Regulation 6(1)(j) of the 1997 Hedgerows Regulations to add work for carrying out development authorised under the 2008PA to the list of permitted work under that Regulation. However, the Applicant stated that all hedgerows affected by the works are to be fully re-instated, with species-poor hedgerow sections to be enhanced with a greater number of native species.
- 7.1.45 The other aspect of the construction phase is the temporary compounds and the relevant local; authorities agree that Requirement 3 of the DCO which requires the detailed layout, scale and appearance of temporary compounds and the AGI to be approved before commencement provides adequate controls.
- 7.1.46 Similarly, Requirement 8 provides for a written landscape scheme for the AGI, to be approved by the relevant local planning authorities.
- 7.1.47 I conclude that the nature of the development combined with the safeguards put in place through the recommended draft DCO will mean that the potential impact of the proposed development on the landscape and on visual amenity will be reduced to a minimal level.

Noise and Vibration

- 7.1.48 Because of the nature of the project, operational noise is not an important issue with the Applicant stating that no operational noise is anticipated from the AGI.
- 7.1.49 Levels of construction noise, their mitigation and monitoring did form an issue at the Examination. The LIR from NYCC and SDC [LIR-002] expressed a concern that the noise limits specified in the submitted draft DCO were not achievable. As a consequence, the Applicant has altered the limits specified in the draft DCO to the satisfaction of the relevant local authorities.
- 7.1.50 I conclude that, through the Examination process, satisfactory permissible noise levels related to construction have been set and that adequate processes are secured in the recommended draft DCO to ensure their achievement.

Pollution Control and Other Environmental Regulatory Regimes

- 7.1.51 I considered aspects of pollution control and other environmental regulatory regimes under the headings of air quality, water quality, land quality and noise and vibration. I also note that I have not received any representations which indicate that the Applicant is unlikely to receive the necessary consents to facilitate the proposed development.
- 7.1.52 Taking the above into account, I conclude that there are no important issues relating to pollution control and other environmental regulatory regimes which would prevent the SoS from determining the DCO.

Safety

- 7.1.53 In the absence of submissions from the HSE to the Examination, I considered the regulatory processes that exist to seek to ensure the safety of the proposed installation. I conclude that the combination of those processes with the requirement to include aspects of safety in the CEMP and Protective Provisions mean that the safety of the design and operation of the pipeline is secured.

Security Considerations

- 7.1.54 This proposed scheme has not been identified as 'critical' infrastructure in terms of paragraphs 4.15.1 to 4.15.5 of EN-1 and I conclude that it does not present any national security implications beyond those presented by any NSIP not so identified.

Socio-Economic Impacts

- 7.1.55 The ES considers that the operation of the development may facilitate indirect employment opportunities, but no adverse effects are anticipated.
- 7.1.56 In relation to potential effects on agriculture, the Applicant acknowledges that there would be some restrictions in terms of installation of structures with foundations and tree planting along the pipeline route but confirms that it is their intention to restore the land to its original condition, and they intend to work with a local drainage engineer to ensure the land is properly drained following restoration.
- 7.1.57 The potential impacts on tourism lie in any possible disturbance to PRoWs. Requirement 11 of the recommended draft DCO requires that a written plan for closures is produced and approved with indicated measures to include the provision of suitable alternative routes for PRoW closures and the appropriate reinstatement of any PRoW which are disturbed as a result of the works. NYCC considers that is adequate to manage the effects on PRoW.
- 7.1.58 One positive outcome of the Examination process is the inclusion by the Applicant of a local employment Requirement (R22).

Traffic and Transport

- 7.1.59 The nature of the proposed development means that the generation of operational traffic will be minimal. The focus of the Examination was, therefore, the routing of construction traffic and the enforcement of such routing. There was more detailed examination of a number of places where adverse effects needed to be mitigated including Bellcroft Lane, Burn Airfield, Chapel Haddlesey and Temple Hirst.
- 7.1.60 Following some detailed evidence on routing, the relevant local planning and highway authorities agreed that Articles 12 and 13 related to street works and to the stopping up of streets and

Requirements 5 and 9 in the recommended draft DCO provide a suitable approach to mitigating traffic effects.

Waste Management

- 7.1.61 The main issues related to waste centre on measures for the management, storage, handling and recycling of waste generated during construction. The Applicant's approach demonstrates a commitment to the waste hierarchy and is secured through Requirement 4 in the recommended draft DCO at Appendix D.

Water Quality and Resources

- 7.1.62 Measures for the management of water resources are secured in Requirement 4 relating to the contents of the CEMP. This Requirement was amended during the course of the Examination to ensure that these measures are subject to consultation with the EA, the CRT and with IDBs before their approvals.
- 7.1.63 The version of the draft DCO submitted with the application contained provisions to disapply requirements of Water Resources 1991. However, following submissions from the EA and the IDBs the Applicant deleted this Requirement and the Applicant confirmed in the ES that consent would be sought from the EA under the Water Resources Act 1991 in respect to the abstraction of water.
- 7.1.64 Taking into account the fact that the recommended draft DCO now includes amendments to relevant Requirements which ensure the involvement of the EA and the relevant IDBs in the approval process of the CEMP, I conclude that there are no outstanding important issues relevant to water quality and resources.

7.2 MATTERS WEIGHING SIGNIFICANTLY IN FAVOUR

- 7.2.1 I consider that the clear need for the proposed project is the first significant factor in its favour. Second, as the project is largely underground, with the exception of an above ground installation and, less significantly, a steel cabinet, a steel kiosk and marker posts, its impact on the environment, on local ecology and habitats and on the landscape will be minimised.
- 7.2.2 It is relevant here that I have concluded that the project will not result in any likely significant effects on any European site.
- 7.2.3 Third, the route has been chosen to avoid, as far as possible, built up areas and, to a lesser extent, individual dwellings. This reduces potential visual and noise impacts during the construction period.
- 7.2.4 Additionally, whilst potentially significant adverse issues were identified during the Examination process, the Applicant has sought to address these and to take actions to obviate or reduce them, including through negotiation with relevant parties and, as in the case of Burn

Gliding Club, through coming to innovative solutions to potential problems.

- 7.2.5 Whilst the construction of the project will have short term effects on local agriculture, these are being addressed both through the Applicant seeking to minimise the length of time that construction is located on each field and through the management of soil and the reinstatement of land.

7.3 MATTERS WEIGHING SIGNIFICANTLY AGAINST

- 7.3.1 Whilst a very wide range of issues were identified and examined, as can be seen from the preceding Chapters of this report, I consider that only three of these presented potentially significant adverse implications for granting the project. These were the Applicant's original desire to disapply the provisions of Section 24(1) and Section 48(A)(1) of the Water Resources Act 1991; the question as to whether further environmental enhancements should be provided in line with the advice in paragraph 5.3.4 of EN-1 and the potential flood risk posed by the AGI.
- 7.3.2 On the first of these, following submissions from EA and from relevant IDBs, the Applicant decided to omit the Article that would have allowed the disapplication of provisions of the Water Resources Act 1991 from the draft DCO.
- 7.3.3 With regard to environmental enhancements, I examined this in detail including receiving submissions up to nearly the closing date of the Examination. My reasoning and conclusions on this are set out in paragraphs 5.4.35 to 5.4.59, above but, in summary, I conclude that for a number of reasons, including the fact that this proposed project serves another already permitted project which will itself result in the provision of environmental enhancements, the enhancements already provided for in the recommended draft DCO are sufficient.
- 7.3.4 With reference to the potential flood risk posed by the AGI, as a consequence of the EA's Written Representation [REP1-005] it became clear during the Examination that a more detailed FRA was needed for the AGI. This was provided by the Applicant as an Addendum to the FRA [REP3-006]. After due consideration of the information that this contained after some consideration of any changes that this might imply for drainage within the site of the AGI, the EA agreed through a SoCG that the project will not increase the risk of flooding in the catchment area.

7.4 THE BALANCE OF ISSUES

- 7.4.1 The preceding two sections of this Chapter show both that the matters weighing significantly in favour clearly outweigh the matters weighing significantly against and that, through the Examination process, potentially adverse factors were addressed and either removed or reduced in their importance. Thus the balance in favour of the potential project was increased during the Examination.

7.5 OVERALL CONCLUSION

- 7.5.1 Having had regard to all the above factors, I conclude that the proposed Thorpe Marsh Gas Pipeline project should be permitted and I recommend that the Secretary of State should make the Order in the form attached.

8 COMPULSORY ACQUISITION AND RELATED MATTERS

8.1 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

- 8.1.1 As part of the application documents, the Applicant submitted a Book of Reference divided into Part 1 [APP-011], Part 2 [APP-012], Part 3 [APP-013] and Parts 4 and 5 [APP-014], Land Plans [APP-004], a Crown Land Plan [APP-007], a Statement of Reasons [APP-015], and a Statement of Funding [APP-016].
- 8.1.2 At the Preliminary Meeting, the ExA made a procedural decision, recorded in the Rule 8 letter [PD-005] to accept revised versions of a number of these documents. These are:
- (e) a revised Statement of Reasons (tracked [AS-001] and clean [AS-002] versions)
 - (f) a revised Funding Statement (tracked [AS-003] and clean [AS-004] versions)
 - (g) a revised Book of Reference (all parts) (tracked [AS-007] and clean [AS-006] versions)
- 8.1.3 The revised Funding Statement and the revised Statement of Reasons are designed to reflect the change in the parent company for the project.
- 8.1.4 The revised Book of Reference removed the Schedule listing statutory undertakers, as suggested in the s.51 letter from the Planning Inspectorate dated 12 December 2014 [PD-002] and updates details of affected persons – notably addresses. It did not change the description of, or add to the number of, plots and does not add any additional affected persons.
- 8.1.5 On 4 September 2015, the Applicant provided a final version of the Book of Reference (in clean [AS-025] and tracked change [AS-026] versions) in advance of the close of the Examination.
- 8.1.6 The Examination process and submissions from the Applicant did not involve the removal of any plots from, nor the addition of any plots to, the request for CA powers made in the original application.
- 8.1.7 The request for the compulsory acquisition of land and/or rights over land covered plots along the total length of the proposed route for the gas pipeline. This land is mainly in agricultural use with a mixture of cropping and grazing. The land is largely flat with some hedgerow and tree cover and the proposed route crosses a number of roads, waterways, including the Aire and Calder Navigation, and operational rail lines.

8.2 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

8.2.1 The works for which the compulsory acquisition of land or rights is requested are set out in Part 1 of Schedule 1 of the Applicant's final draft DCO [REP6-002]. These are summarised as being:

- Permanent secure compound (AGI), facilities for the permanent secure compound and permanent vehicular access road (Works Nos. 5, 6, and 7)
- high pressure gas pipeline (Works Nos. 9, 10, 11, 13, 14, 15, 19, 20, 23, 24, 26, 27, 28, 31, 33, 34, 35, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51, 53, 55, 57, 58, 59, 60, 62, 63, 64, 65, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 85, 87, 89, 90, 91, 92, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 109, 110, 111, 113, 114, 115, 118, 119, 121 and 122{Pipeline marking – at intervals and crossings})
- cables laid underground (Works No. 83)
- free-standing steel cabinet and free-standing steel kiosk (Works No. 84).

8.2.2 The purposes for which the compulsory acquisition of rights is requested are set out in Schedule 5 of the Applicant's final draft DCO [REP6-002]. In summary these are:

- For access and maintenance to the AGI and cathodic equipment; the acquisition of permanent rights for access and to undertake work to facilitate access;
- For the installation of the pipeline; the acquisition of permanent rights to install the pipeline and associated development, to facilitate access for the installation and for the on-going maintenance of the pipeline and associated development;
- Over land where the pipeline is installed, a restrictive covenant over the land to protect the pipeline and access to it, and the erection of structures over the pipeline.
- Over land in where the electrical cables and free-standing infrastructure are installed, a restrictive covenant to protect the infrastructure and access to it.

CROWN LAND

8.2.3 Part 4 of the Book of Reference submitted with the application documents [APP-014] showed two plots (plots 48 and 49) held by the Queen's Most Excellent Majesty in Right of her Crown, seven plots (1, 2, 3, 4, 86, 87 and 88) with the Secretary of State for Transport and Highways Agency National Property Management and Disposals as owner of the Crown interest and twelve plots (110, 111, 118, 119, 120, 121, 122, 123, 124, 125, 150 and 151) with the Government Pipelines & Storage System of the Oil & Pipeline Agency as owner of the Crown interest.

8.2.4 However, concurrent with the submission of the application, the status of the Highways Agency changed as a result of the coming into force

of the relevant sections of the Infrastructure Act 2015 and the Government Pipelines & Storage System of the Oil & Pipeline Agency was sold by the Government to Compania Logistica de Hidrocarburos.

- 8.2.5 The position of Compania Logistica de Hidrocarburos is discussed in paragraphs 8.6.12 to 8.6.14, below.
- 8.2.6 The Applicant's update on the position in respect of Crown land [REP3-003] in a written submission to the Compulsory Acquisition hearing held on 17 June 2015 stated that an agreement in principle has been reached between Fisher German Priestner (acting for the Applicant) and the Crown Estate Commissioners in relation to the pipeline crossing the Crown's land and that detailed commercial terms for an option agreement are currently being negotiated by Fisher German Priestner and the Crown Estate Commissioners and these terms are close to being agreed.
- 8.2.7 In the absence of any proof of such an option agreement or any statement from the Crown Estate, my second questions [PD-009] required a Section 135 statement from the Crown Estate by Deadline 4. The Applicant's response [REP4-009] stated that it and [the] Crown [Estate] intend to follow the approach as recently agreed for the Swansea Bay Tidal Lagoon DCO, where the Crown agrees to the wording in Article 39 of the DCO and consents to provisions under Section 135 within the DCO. The Applicant went on to state that this approach has been suggested by the Crown Estate's Agent and is acceptable to the Applicant.
- 8.2.8 The relevant parts of Article 39 of the Applicant's final draft DCO [REP6-002] state that:
- 39.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee—*
- (a) to enter upon, use and carry out the authorised development on or in any manner interfere with any land or rights of whatsoever description—*
- (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;*
- 8.2.9 However, whilst Appendix 3 of the Applicant's Response to Second Questions [REP4-009] provided a copy of an e-mail in which the Crown Estate's agent suggested this approach, the ExA did not receive any confirmation from the Crown Estate that this approach was acceptable to the Crown Estate nor did the ExA receive any consent in writing as referred to in Article 39(1)(a)(i).
- 8.2.10 Importantly, Article 39 as drafted does not prevent the CA of Crown land or interests. All it does is to require the Crown to consent before

the undertaker can “enter upon, use and carry out the authorised development on or in any manner interfere with any land or rights of whatsoever description”.

8.2.11 This effectively would permit the CA of Crown land which is not permissible under s135(1) in cases where land is held by or on behalf of the Crown even with Crown consent.

8.2.12 More generally, Article 20 of the Applicant’s final draft DCO authorises the CA of land over “so much of the Order land (including, for the avoidance of doubt, the subsoil) as is required for the authorised development or to facilitate, or is incidental to, it”.

8.2.13 In respect of plots 48 and 49 held by the Queen’s Most Excellent Majesty in Right of her Crown, the purpose for compulsory acquisition as set out in Schedule 5 is in respect of the creation of new rights to, in summary, enter and remain upon the land for the purposes of the operation, maintenance and decommissioning of the authorised development and to construct the pipeline and ancillary equipment.

8.2.14 Given that, as discussed above, s135 of the 2008PA does not permit the CA of Crown land where that land is held by or on behalf of the Crown (as plots 48 and 49 are) , I recommend that the following new sub-paragraph be added to Article 20:

(3) Nothing in this article authorises the acquisition of an interest which is for the time being held by or on behalf of the Crown.

8.2.15 and that the following new sub-paragraph be added to Article 23:

(9) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictive covenants affecting, an interest which is for the time being held by or on behalf of the Crown.

8.2.16 In making this recommendation, I have taken full account of the fact that the Applicant has already stated in Table 2 of its Response to Second Questions [REP4-009] that it does not anticipate there being any fundamental issues between it and the Crown. In making these recommended amendments, I am seeking to secure the Applicant’s stated intention through the recommended draft DCO.

8.2.17 Should the Applicant provide a statement from the Crown Estate to the Secretary of State following the close of the Examination that the Crown agrees to the wording in Article 39 of the draft Order and consents to the inclusion of provisions under Section 135 of the draft Order, and subject to the inclusion of the wording set out in the recommendation above, then the ExA finds that there are no other outstanding issues in respect of these plots.

8.2.18 Finally, the copy of an e-mail from the Crown Estate's agent contained in Appendix 3 of the Applicant's Response to Second Questions [REP4-009] states that there is a wildfowling agreement to Thorne & District Wildfowling on this part of the River. The Crown Estate's Agent

expressed an opinion that it doubts that the Applicant will require to compulsorily acquire their licence. This would be dependent upon any conflict with the new rights proposed to be created.

- 8.2.19 The Highways Agency became Highways England and it remained uncertain during the early parts of the Examination whether the land held by the former Highways Agency remained Crown Land.
- 8.2.20 By virtue of section 263 of the Highways Act 1980, the highways for which Highways England becomes highway authority will vest in Highways England. In addition, a "transfer scheme" made under section 15 of the 2015 Act will transfer to Highways England all land which is currently vested in the Secretary of State for Transport for the purposes of his functions as highway authority in relation to those highways. The Applicant provided a copy of the Transfer Agreement between the Secretary of State and Highways England [REP3-012].
- 8.2.21 As a consequence of the change in status of the Highways Agency, now Highways England, it is no longer a Crown Agency.

SPECIAL CATEGORY LAND

- 8.2.22 The request for compulsory acquisition does not involve land in any special categories such as National Trust land (s130 of the 2008 Planning Act as amended) or commons or open spaces etc. (s131 and 132).

8.3 THE REQUIREMENTS OF THE PLANNING ACT 2008

- 8.3.1 Compulsory acquisition powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met. Government guidance is provided in *Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land* (September 2013)', (the Department for Communities and Local Government (DCLG) Guidance).
- 8.3.2 Section 122(2) provides that the land to be compulsorily acquired must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. The DCLG Guidance indicates that the proposed interference with the rights of those with an interest in the land must be for a legitimate purpose, be necessary, and be no more than is reasonably required. The Applicant must have a clear idea of how the land is to be used.
- 8.3.3 Section 122(3) requires that there must be a compelling case in the public interest. This means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. This does not however mean that the compulsory acquisition proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for

the project to be carried out, and there must be consistency and coherency in the decision-making process.

- 8.3.4 Section 123 requires that one of three conditions is met by the proposal², one of which is that the DCO includes a request for compulsory acquisition of the land to be authorised.
- 8.3.5 Section 138 requires that the extinguishment of a statutory undertaker's right or the removal of its apparatus under an Order must be necessary for the purpose of carrying out the development to which the Order relates.
- 8.3.6 Section 120(5) allows a DCO to apply, modify or exclude a statutory provision which relates to any provision within the DCO, or include any provision that is necessary or expedient to give effect to another provision of the DCO.
- 8.3.7 Section 126 requires that compensation provisions in relation to compulsory acquisition are not subject to modifications, apart from those necessary to apply them, and are not excluded from a relevant DCO.
- 8.3.8 Section 127 applies where it is proposed to compulsorily acquire statutory undertaker's land.
- 8.3.9 Section 135 sets out restrictions in relation to the compulsory acquisition of interests in, and provisions applying to, Crown land.
- 8.3.10 Section 138 applies where land containing statutory undertaker's apparatus is proposed to be compulsorily acquired.
- 8.3.11 A number of general considerations also have to be addressed, either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- (i) all reasonable alternatives to compulsory acquisition must have been explored;
 - (ii) the Applicant must have a clear idea of how it intends to use the land and to demonstrate a reasonable prospect of funds being available; and
 - (iii) the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate, necessary and proportionate and sufficiently justify the inevitable interference with the human rights of those with an interest in the land affected.

² (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.
(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.
(4) The condition is that the prescribed procedure has been followed in relation to the land.

8.4 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION

8.4.1 The ExA identified Compulsory Acquisition, including:

- the need for the land proposed to be subject to compulsory acquisition
- the use of Restrictive Covenants
- Crown Land and
- sections 127/138 including Protective Provisions

as a principal issue for the Examination.

8.4.2 The ExA issued a procedural decision in the Rule 6 letter published on 27 March 2015 [PD-004] to request a statement from the Applicant at the Preliminary Meeting setting out the progress that has been made since 19 November 2014 (the date on the DCO application) on acquiring the land and interests it requires by private treaty and on obtaining section 135 consents.

8.4.3 Following the presentation of this statement [AS-017] at the Preliminary Meeting held on 22 April 2015, the ExA asked eleven questions on compulsory acquisition in the first round of questions [PD-006], issued on 29 April 2015 and eight questions in the second round of questions issued on 3 July 2015 [PD-009].

8.4.4 A Compulsory Acquisition hearing was held on 17 June 2015 with a detailed agenda having been published on 9 June 2015 [EV-006].

8.4.5 In addition to that presented at the Preliminary meeting, the Applicant provided updates on the position in respect of compulsory acquisition as part of its response to first questions [REP1-014], for the CA hearing [REP3-013], and as part of its response to second questions [REP4-009].

The Applicant's case

8.4.6 The Applicant's overall case was set out in the Statement of Reasons [APP-015]. The case can be subdivided into the need for the project in the public interest and the approach taken to compulsory acquisition.

8.4.7 The question of alternatives to minimise the need for compulsory acquisition in terms of justifying the extent of the order limits and the route taken were not addressed in the Statement of Reasons but were considered during the Examination and are discussed below.

8.4.8 In terms of need, the Applicant states that the CCGT power station which the proposed gas pipeline is designed to serve has already been granted planning permission. The Statement of Reasons goes on to state in paragraph 3.5 that:

The construction of the CCGT Power Station is contingent on the Applicant securing the provision of a gas fuel supply. The Proposed

Development would secure this supply by connecting the CCGT Power Station with the National Transmission System approximately 1.5 kilometres west of Camblesforth in North Yorkshire. Without the Proposed Development, the CCGT Power Station would be unable to come forward. The grant of the Order would give the Applicant sufficient certainty to start the construction of the CCGT Power Station. The need for the Proposed Development is, therefore, acute.

- 8.4.9 In terms of the approach taken to compulsory acquisition, the Statement of Reasons makes it clear in paragraph 2.2 that:

The Applicant has sought to acquire the necessary land interests it requires by agreement and has already secured the majority of those interests required for the delivery of the Proposed Development. The Applicant has contracted to acquire the majority of the land and interests it requires by private treaty (approximately 94% in terms of pipeline corridor distance and in relation to the number of owners and occupiers affected). Where an agreement has been reached with a party, the Applicant intends that such party's interest will not be the subject of compulsory acquisition unless at the relevant time the party is unable to fulfil its contractual obligations to grant an interest to the Applicant.

- 8.4.10 In the same paragraph, the Applicant argues that, despite this approach, it still requires the powers of compulsory acquisition as it intends that such party's interest will not be the subject of compulsory acquisition unless at the relevant time the party is unable to fulfil its contractual obligations to grant an interest to the Applicant and because a range of compulsory acquisition and powers of temporary use are also necessary to secure control and/or use of the remaining land and rights.

- 8.4.11 The Statement of Reasons deals, in paragraph 7.28 onward, with the use of temporary rights stating that such an approach would minimise the exercise of compulsory acquisition of land or rights and allow land that is not required for the Proposed Development following the completion of construction to revert to the relevant landowner/occupier.

Availability and Adequacy of Funds

- 8.4.12 The application was accompanied by a Funding Statement [APP-016] to indicate how the draft DCO is proposed to be funded. The 2013 guidance *Planning Act 2008: procedures for the compulsory acquisition of land* recommends at paragraph 17 that the statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required.
- 8.4.13 The funding statement reports professional advice that puts a maximum precautionary value on the total contingent liability associated with the acquisition of land or interests in land of £5million.

It identified that the Applicant company was a wholly owned special purpose vehicle of GE Energy LLC, a company incorporated in Delaware, USA, and controlled by General Electric Company.

- 8.4.14 The Draft DCO submitted with the application [APP-009] includes, at Article 36, a provision requiring that a guarantee or other acceptable security be put in place to meet compulsory acquisition compensation liabilities before those powers may be used. That provision anticipates that the guarantee would be approved by the Secretary of State.
- 8.4.15 On 11 February 2015, a revised Funding Statement [AS-004] advised differently in respect of ownership; that the Applicant company was, subsequent to the application being made, a wholly owned subsidiary of Carlton Power, with funding to be provided by Wainstones Investments, another company of the same group. The accounts of Wainstones Investments were supplied.
- 8.4.16 In my first written questions [PD-006] I sought further details of the structure of the company group and the interrelationships between its constituent companies, which were provided at deadline 1 [REP1-014]; the financial statements of Carlton Power were provided following my second round of questions at deadline 4 [REP4-015].
- 8.4.17 In its response to my first questions, the Applicant provided a letter from Carlton Power [Appendix 3, REP1-014] confirming its willingness to enter into a guarantee agreement, escrow arrangement, bond or other suitable alternative security.
- 8.4.18 In the Compulsory Acquisition Hearing held on 17 June 2015, I questioned a representative of Thorpe Marsh Power Ltd concerning the decision making processes within Carlton Power, its financial standing and its access to funding. In its Note of Oral Representations at the Compulsory Acquisition hearing [REP3-013] the Applicant stated that the Applicant is not dependent on third party financing to provide the security and considers that the Secretary of State can be comfortable that the relevant resources are already in place and will be available in order to provide the necessary guarantee or alternative security without the need for any alternative financing.
- 8.4.19 Also in my first questions, [PD-006], I asked the local authorities whether or not they would prefer to be the body approving such a guarantee or an alternative form of security relating to that part of the project lying within the areas for which they were responsible.
- 8.4.20 Doncaster Metropolitan Borough Council expressly declined to comment on the matter [LIR-001] and East Riding of Yorkshire does not wish to be the approving authority for a guarantee [REP1-039]. Selby District Council defer to North Yorkshire County Council [REP1-012], who have no objection to the Secretary of State being responsible for approving the guarantee [REP1-011].
- 8.4.21 Having reviewed the maximum precautionary value on the total contingent liability associated with the acquisition of land or interests

in land, the parent company's assets and decision making processes and the procedures for securing a guarantee, ***I conclude that aspects related to the availability and adequacy of funds have been dealt with satisfactorily in this application.***

The Objector's case

- 8.4.22 The objections to compulsory acquisition from statutory undertakers have been dealt with above. Apart from the objections from statutory undertakers, there were no representations or objections from any other affected persons. One affected person, Mr Metcalfe, gave evidence at the ISH into the draft DCO held on 17 June 2015. This evidence centred on possible effects of the proposal on farming practices and did not focus on issues surrounding compulsory acquisition.

The case for specific parcels

- 8.4.23 Apart from statutory undertakes and Crown interests, there are 137 affected persons listed as having Category 1 and/or Category 2 interests in the final submitted version of the Book of Reference published on 4 September 2015 [AS-025]. These relate to 265 plots listed in Part 1 of the final BOR.
- 8.4.24 In considering the case for specific parcels, the ExA recognises that, firstly, according to the Applicant's final Updates in Relation to the Acquisition of Rights, Compulsory Acquisition and Affected Persons dated 24 July 2015 [REP4-009], there were only eighteen plots potentially subject to CA on which agreement was still to be reached. Two of these (48 and 49) were in relation to The Queen's Most Excellent Majesty in Right of Her Crown - discussed in the Chapter; three (plots 30, 64, 263) in relation to Network Rail Infrastructure Ltd., two (plots 50 and 246) were in relation to the Environment Agency; four (plots 84, 85, 86, 87 and 88) were in relation to the Highways England (formerly the Secretary of State for Transport); one (plot 132) was in relation to the Canal and River Trust; one (plot 133) was in relation to the East Riding of Yorkshire Council.
- 8.4.25 The position in relation to the statutory undertakers listed in the previous paragraph is discussed below.
- 8.4.26 East Riding of Yorkshire Council is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier or having a Category 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR. East Riding of Yorkshire council did not make any representations on the proposed compulsory acquisition powers. I note the update provided by the applicant at deadline 4 [REP4-009] which explained that negotiations were ongoing in respect of the freehold interest but were likely to result in agreement; although no such agreement was confirmed to be in place before the end of the examination. I also note the confirmation in their statement of

common ground with the applicant [REP4-021] that the council has no objection to the making of the DCO, subject to requirements.

- 8.4.27 The remaining five plots on which agreement was still to be reached related to other affected persons - William Martin Falkingham as executor of Thomas Wilfred Falkingham (plot 160), T. W. Falkingham Limited (plot 161) and Geoffrey Harry Baxter (plots 168, 169 and 170). These are considered in paragraphs 8.4.32 to 8.4.35 and 8.4.36 to 8.4.39 respectively, below.
- 8.4.28 Secondly, I note that there have been no relevant, written representations from any affected person listed above and, with the exception of Mr Metcalfe, who is considered below, there have been no other submissions from these persons.
- 8.4.29 With the exception of Statutory Undertakers, there are no outstanding objections to the requested powers of compulsory acquisition of land and/or rights over land.
- 8.4.30 I remain under a duty to examine the case for compulsory acquisition particularly given the fact that in the Applicant's final draft DCO [REP6-002] still allows for the exercise of CA under the circumstances discussed in paragraphs 8.4.10 of this report and that the draft DCO allows for the imposition of a restrictive covenant on specific plots of land.
- 8.4.31 Given the above, and bearing in mind that the case for the compulsory acquisition of rights over plots for the Crown and for individual statutory undertakers are considered below, I consider that the examination of the case for the remaining specific plots is best undertaken first by considering the plots of those individual landowners who had yet to reach agreement according to the Applicant's final up-date on the Acquisition of Rights, Compulsory Acquisition and Affected Persons which is contained in its responses the ExA's second questions [REP4-009] or who had made a representation.

Plots 160 and 161

- 8.4.32 There are two plots (plots 160 and 161) listed in the Applicant's final update [REP4-009] in which William Martin Falkingham as executor of Thomas Wilfred Falkingham and T. W. Falkingham Limited were listed in the final draft Book of Reference [AS-025] as having a Category 1 interest, being the freehold owners, but on which an agreement was outstanding at the time of the update and concerning which, the Applicant did not provide any further information in advance of the close of the Examination.
- 8.4.33 First, the ExA notes that no representations were received from William Martin Falkingham or T. W. Falkingham Limited. The final update states that:

An agreement in principle has been reached between FGP and Mr Falkingham and T. W. Falkingham in relation to the inclusion of these plots within the order limits. An option agreement has been exchanged in relation to the remainder of the interests of Mr Falkingham and T. W. Falkingham Limited. Plots 160 and 161 were added to the order limits after the first option agreement was exchanged meaning that an additional agreement has to be settled. The wording of the option agreement is currently being settled between the Applicant's solicitors and those of Mr Falkingham and T. W. Falkingham. This wording is expected to be finalised shortly and, at the time of writing, there are no fundamental issues between the Applicant and Mr Falkingham and T. W. Falkingham.

8.4.34 Plots 160 and 161 are listed in Schedule 7 - Land of which Temporary Possession may be Taken - in the Applicant's final draft DCO [REP6-002] with the purpose being, "the laying of temporary haul roads and improvements to tracks, modifications to roads, access for the carrying out the authorised development." They are also listed in Table 7.5 of the Statement of Reasons [AS-002] with the Rationale for Temporary Possession given as being "to provide temporary access to the working width and to construction compounds, existing accesses may need to be widened or strengthened to allow construction vehicles to use them."

8.4.35 Given that these two plots are only listed in Schedule 7, the ExA has only considered these plots in terms of a request for temporary possession. Schedule 7 and the Statement of Reasons set out a clear purpose and rationale for including these plots as plots where temporary possession may be taken. In this respect, these particular plots fulfil the tests set out in legislation in establishing that the land is required to facilitate the development. Therefore, ***I recommend that Plots 160 and 161 are included in Schedule 7 of the final draft DCO.***

Plots 168, 169 and 170

8.4.36 There are three plots (plots 168, 169 and 170) listed in the Applicant's final update [REP4-009] in which Geoffrey Harry Baxter had a Category 1 interest, being the freehold owner, but on which an agreement was outstanding at the time of the update and concerning which, the Applicant did not provide any further information in advance of the close of the Examination.

8.4.37 First, I note that no representations were received from Geoffrey Harry Baxter. The final update states that:

An option agreement has been agreed and has been executed by the parties. The consent of Mr Baxter's mortgagee is required before the document can be completed. Mr Baxter and his solicitors are chasing the mortgagee for this consent and have provided the mortgagee with the relevant information. The Applicant does not expect any impediments in obtaining this consent although some delays by the

mortgagee in dealing with Mr Baxter's request that a consent has not yet been obtained.

8.4.38 Plots 168, 169 and 170 are shown on Sheet 7 of the Land Plan as being within the order limits for the proposed pipeline. They are listed in Schedule 5 - Land in which New Rights Etc. may be Acquired - in the Applicant's final draft DCO [REP6-002]. They are also listed in Table 7.4 of the Statement of Reasons [AS-002] 'Summary of Rights by Plot' and in Table 7.5 with the Rationale for Temporary Possession given as being "installation of the pipeline and ancillary equipment and infrastructure including cathodic protection "

8.4.39 Given the reasons given by the Applicant for the delay in achieving agreement, given that these plots are correctly shown and listed in the requests for CA, that no representations were received from Geoffrey Harry Baxter and given that they lie within the area shown on the Land Plan as being in the corridor of the proposed pipeline, **I recommend that the request for Compulsory Acquisition of rights over Plots 168, 169 and 170 be granted.**

Other plots

8.4.40 Having considered Crown Land, statutory undertakers, and specific plots where agreement was not reached in advance of the end of the Examination, the ExA considers that the examination of the case for the remaining specific plots is best undertaken by dividing those plots into three groupings. These are:

- Plot 6 where the request is to compulsorily acquire the freehold interest.
- Plot 5 where the request is to compulsorily acquire rights relating to access.
- Plots which are required for the operation, maintenance and decommissioning of the authorised development and for which the request is both to acquire rights and to impose a restrictive covenant.
- Plots which are required for the operation, maintenance and decommissioning of the authorised development for which the request is to acquire rights.
- Plots which relate to the cathodic protection, mains power and telecommunications equipment.

8.4.41 Plot 6 where the request is to compulsorily acquire the freehold interest, comprises approximately 5,133 square metres of agricultural land.

8.4.42 The Statement of Reasons [AS-002] explains that the freehold interest in plot 6 is sought, at paragraph 7.12 onwards. It also appears in in Table 7.5 with the Rationale for Temporary Possession given as being "installation of the pipeline and ancillary equipment and infrastructure including cathodic protection ".

- 8.4.43 The purpose for which the acquisition is sought is for the construction and operation of the AGI site (as defined in Article 2 (interpretation) of the Order) and access road.
- 8.4.44 Plot 5, where the request is to compulsorily acquire rights of access, is approximately 79 square metres of verge to the south of Sandwith Lane between the junction with Hardenshaw Lane to the west and Race Lane to the east.
- 8.4.45 The Statement of Reasons [AS-002] describes the right sought in Table 7.4 'Summary of Rights by Plot' and in Table 7.5 with the Rationale for Temporary Possession given as being "installation of the pipeline and ancillary equipment and infrastructure including cathodic protection".
- 8.4.46 The purposes for which the rights are sought are the operation, maintenance and decommissioning of the AGI site.
- 8.4.47 Plots 8, 9, 11, 12, 13, 16, 17, 20, 21, 22, 31, 41, 44, 45, 50, 51, 63, 65, 68, 69, 70, 71, 79, 81, 84, 88, 89, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 115, 128, 129, 132, 134, 135, 136, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 183, 186, 187, 196, 199, 202, 211, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 231, 239, 240, 243, 245, 246, 247, 248, 251, 259, 264, 265, where the request is both to acquire rights and to impose a restrictive covenant, appear in Table 7.4 and Table 7.5 of the Statement of Reasons [AS-002]
- 8.4.48 The purposes for which the rights are sought are the operation, maintenance and decommissioning of the authorised development. The purpose for which the covenant is sought to be imposed is the protection of the pipeline once installed.
- 8.4.49 Plots 10, 18, 19, 30, 37, 38, 48, 49, 61, 62, 64, 73, 77, 85, 86, 87, 133, 179, 180, 190, 193, 205, 208, 227, 229, 235, 237, 263, where the request is to acquire rights, appear in Table 7.4 and Table 7.5 of the Statement of Reasons [AS-002].
- 8.4.50 The purposes for which the rights are sought are the operation, maintenance and decommissioning of the authorised development.
- 8.4.51 Plots 175 and 176 for which the request is both to acquire rights and to impose a restrictive covenant, , appear in Table 7.4 and Table 7.5 of the Statement of Reasons
- 8.4.52 The purposes for which the rights are sought relate to the cathodic protection, mains power and telecommunications equipment. The purpose for which the covenant is sought to be imposed is the protection of infrastructure, cabling and kiosks.

The case under s127 or s138

- 8.4.53 The Chapter of this report on the draft DCO deals with s127 and s 138 in relation to protective provisions. This is covered, below.
- 8.4.54 It is not intended to repeat that information here but, in summary, where statutory undertakers land or rights over land used for the purpose of their undertaking is sought to be acquired, the Applicant's position is that having regard to those provisions the interests sought can be purchased and not replaced without serious detriment to those undertakings; and that any interference with infrastructure or rights is no more than is necessary. [AS-002]

8.5 THE EXA CONSIDERATION OF THE CA ISSUES

The ExA's approach

- 8.5.1 The draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until a view has been formed on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 8.5.2 I have shown in the Conclusion to the preceding section that I have reached the view that development consent should be granted. The question that I therefore address here is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed
- 8.5.3 In examining these issues, I structured the examination of these issues around the tests set out in legislation, having regard to the guidance set out in the DCLG guidance related to procedures for the compulsory acquisition of land published in September 2013.
- 8.5.4 This approach can be seen, for example, in the structuring of the agenda for the compulsory acquisition hearing [EV-006] and for my questions.
- 8.5.5 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met. This section of the recommendation report considers each of these tests in turn. In addition it considers three considerations which have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers.

That the land is required

- 8.5.6 Section 122 (2) of the PA2008 requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of

land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.³

- 8.5.7 The Statement of Reasons sets out the overall need for the proposed development and for requesting the powers of CA. However, the ExA did not consider that the BoR, taken in isolation, sufficiently addressed the need for the area of land taken and whether the approach was reasonable and proportionate.
- 8.5.8 For this reason, the ExA examined this test through questions CA 1.1, CA 1.2 and CA 1.3. The purpose of these questions was to establish whether the total extent of the Order Limits shown on the Land Plans was required rather than seeking to question the overall need for the proposed project itself. In particular, the ExA sought clarification on the need for a corridor of 30 metres. The Applicant's response to question CA 1.2 stated that it seeks a 30 metre working width on the basis that this is the minimum safe working width in which to store top-soil and trench material, provide areas for construction activities, provide adequate space for the safe operation of heavy plant and to dig trenches and install the pipeline. It went on to state that this working width is no more than is necessary and is directly comparable with similar schemes. The ExA received no evidence to the contrary in respect of this assertion.
- 8.5.9 A particular issue arose in respect of Plot 6 which over which the acquisition of all rights is requested in order to build the Above Ground Installation (AGI) and Minimum Off-take Connection (MOC). This plot is shown in the Book of Reference [APP-011] as being some 5,133 square metres (m²) whereas paragraph 15.164 of Chapter 15 of Volume 2 of the Environmental Statement [APP-042] states that AGI and MOC structures would cover an area of approximately 3,858 m². The Applicant explained in response to question CA 1.6 that the extra 1,275m² of land at the AGI site is required to accommodate the landscaping proposed by paragraph 15.178 of the Environmental Statement [APP-042] which is required to mitigate the visual impact of the AGI site and to accommodate the access road linking the AGI site and Sandwith Lane.
- 8.5.10 More generally, the Applicant stated that it intends, where possible, to rely on the powers of temporary use included in the draft DCO as an alternative to the permanent acquisition of interests. The reason given for this by the Applicant was in order to minimise the need for the exercise of the compulsory acquisition of rights and to allow any land that is not required for the proposed development following the completion of construction to revert to the relevant landowner.
- 8.5.11 This was strengthened by the Applicant's statement in their CA 1.2 response [REP1-014] that it proposes to exercise its permanent

³ Planning Act 2008: guidance related to procedures for the compulsory acquisition of land DCLG September 2013

powers of compulsory acquisition only once the pipeline has been laid and its location is known. This approach was discussed in the CA Hearing held on 17 June 2015.

- 8.5.12 Although the Applicant explains in their response to my written question CA 2.7 that this approach is not expressly secured, [REP4-009] Articles 20 and 23 of the recommended draft DCO limit the powers of acquisition to land required for the authorised development, or that which is required to facilitate it or is incidental to it; and the acquisition of rights to those required for that purpose.
- 8.5.13 The power of acquisition in Article 20 is subject to the restriction in Article 23(2) that, for the specified land only, rights can be acquired (rather than the land itself). However, for the plots not listed in Schedule 5, the general power of acquisition remains.
- 8.5.14 Both Article 20 and Article 23 in turn are subject to Article 29, so for the land specified in Schedule 7, the CA power is restricted so that only temporary possession can be taken (see Article 29(9)).
- 8.5.15 The provision of the powers of temporary use in the DCO mean that only land or rights that are required for, facilitate or are incidental to the proposed development for more than a temporary period, (that is at the completion of construction,) can be acquired compulsorily.
- 8.5.16 Additionally, the revised Explanatory Memorandum [REP4-011] states that Article 23 is drafted so as to allow the undertaker flexibility to acquire new rights in the Order land, if appropriate, rather than having to acquire outright under Article 20 (compulsory acquisition of land). This flexibility allows the undertaker, where possible, to reduce the areas for acquisition and rely on rights instead if this is appropriate. The Applicant states that this flexibility is appropriate to allow for continued negotiations with owners of the Order land.
- 8.5.17 ***I conclude that the commitment to, and the securing of, the restriction of the use of CA powers to the period after the pipe has been laid and its location known and to the acquisition of rights only in cases where agreement is reached, does serve to ensure that the land to be taken is no more than is reasonably required and is proportionate.***

That there is a compelling case in the public interest

- 8.5.18 This part of the Compulsory Acquisition Chapter addresses Section 122(3) of the 2008 Planning Act which requires that there must be a compelling case in the public interest, which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.
- 8.5.19 The proposed Thorpe Marsh power station, which already benefits from consent under Electricity Act 1989, and requires a gas supply,

would accord with national policy in terms of security of supply and the necessary transition to a low carbon economy (EN-1, Chapter 3). For this reason and those discussed more fully earlier in this report, there is therefore a clear need for this project to be delivered.

- 8.5.20 In considering whether the public benefit derived from the compulsory acquisition outweighs the private loss potentially suffered, the ExA has taken into account the fact that, as examined above, there have been no objections to the powers of compulsory acquisition from any affected persons other than statutory undertakers and that the great majority of the acquisition of land or rights is to be achieved by agreement. However, the draft DCO still both potentially permits compulsory acquisition on all the plots requested and permits the imposition of restrictive covenants on the land affected. These two factors will be considered in turn.
- 8.5.21 Paragraph 7.7 of the Statement of Reasons (APP-015) states that where agreement has been reached with a party, that party's interest will not be the subject of compulsory acquisition unless that party becomes unable to fulfil its obligations to grant an interest to the Applicant. The ExA examined what particular circumstances were envisaged in this proviso. In its response to question CA 1.3, the Applicant gave six reasons why this power needed to be retained.
- 8.5.22 These included where unknown interests in land would have the potential to hinder the construction of the Proposed Development were the Applicant unable to override, suspend or extinguish those interests; where a party is unable to obtain mortgagee consent; where a party disposes of its land to a third party before the Applicant acquires the interests and a direct deed of covenant may not be procured; where a party becomes the subject of insolvency proceedings; where a party breaches the agreement; and where a party becomes unable to enter into the agreement through incapacity or other reason.
- 8.5.23 The need for each individual interest or right sought, by reference to each plot where it is sought, is set out in the Statement of Reasons [AS-002]. I have already concluded both that there is a need for the project as a whole, and that the land and rights taken is no more than is reasonably proportionate.
- 8.5.24 In the absence of powers of compulsory acquisition, the circumstances above would therefore represent a risk to the delivery of the project for which I have concluded there is a need. Thus, I conclude that it is appropriate that the powers of compulsory acquisition of land and rights be retained even where it is anticipated at this time that the acquisition of that land or rights will be achieved by agreement.
- 8.5.25 Article 23, in addition for providing for the creation of rights, provides for the imposition of covenants affecting the land. This is a lesser imposition than the compulsory acquisition of the land itself, which would otherwise be necessary to secure the compatible future use of

the land and thus the delivery of the project. Any person subject to a loss as a result of the imposition of a covenant would be entitled to compensation as with other compulsory acquisition provisions. I am therefore satisfied that including a power to impose covenants in the DCO is appropriate.

- 8.5.26 For the reasons given above, I am satisfied that the project could not be delivered without compulsory acquisition powers to manage the risk of unknown rights and interests, or in respect of rights and interests where agreements collapse or have not been possible.
- 8.5.27 There is thus compelling evidence that the public benefit that would be derived from the compulsory acquisition for the authorised development would clearly outweigh the private loss that would be suffered by those whose land is to be the subject of compulsory acquisition.

Temporary possession of land

- 8.5.28 Column 1 of schedule 7 of the draft DCO identifies land where temporary possession is specifically sought; and column 2 of that schedule identifies the purpose for which it is sought. On completion, in accordance with article 29 of the draft DCO, the land would be restored and returned to the landowner.
- 8.5.29 In addition, article 29 would give temporary possession powers over the whole of the Order land within the limits of deviation. This would allow the undertaker, after detailed design, to minimise the extent of land to be compulsorily acquired, but retain the use of land within the limits of deviation for construction and for one year after completion. Article 30 would give a similar power within the area of land to be acquired or used, but for maintenance purposes and for five years from the opening of that part of the authorised development.
- 8.5.30 I am satisfied that the Applicant has kept to a minimum the land to be used temporarily, consistent with safe and efficient construction working practices. I am also satisfied that the use of the power in the draft DCO is reasonable and justified in order to implement the proposed development. Furthermore, I am satisfied that the provisions for compensation set out in articles 29 and 30 are adequate to compensate owners for the proposed interference. These would be generally equivalent to those for compulsory acquisition and funded as part of the scheme. In view of all of the above points, I consider that the public benefit would outweigh any private loss that would result from the temporary possession powers included in the draft DCO.

Alternatives to compulsory acquisition

- 8.5.31 I have considered the exploration of all reasonable alternatives in terms of; the original choice of the route, the use of temporary powers and in terms of seeking to reach agreement on acquisition of land and/or rights.

- 8.5.32 The DCLG Guidance requires that the promoter should be able to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. I have considered this in terms of the selection of the site and the scale and specific characteristics of the scheme
- 8.5.33 The Applicant provided information within the ES on the principal alternatives studied [APP-048], including transportation options and a 'do nothing' scenario. In my first round of questions, questions PAR 1.1 and 1.2 sought further information about the route selection methodology that had been employed by the Applicant. The Applicant submitted at deadline 1 a copy of a Feasibility Study dated 2009, which explained the methodology by which the route options were selected and assessed [REP1-033]. As explained in the Applicant's response to question PAR 1.2, the ultimate assessment arrived at a different conclusion on the preferred route option in light of further information [REP1-014].
- 8.5.34 I am satisfied that the land subject to compulsory acquisition is required for the project, including the affected statutory undertakers land and services. I am also satisfied that each plot of land has been identified with a clear purpose in the Statement of Reasons [AS-002] and that no plot of land has been unnecessarily added to the land sought to be acquired.
- 8.5.35 Articles 29 and 30 of the recommended DCO provide powers of temporary possession, which for the reasons set out above will assist in minimising the need for compulsory acquisition
- 8.5.36 Progress towards agreement with landowners and the circumstances in which powers of acquisition may nonetheless be necessary are outlined above. The Applicant's approach of making the application for the DCO and in parallel conducting negotiations to acquire land or rights by agreement accords with the DCLG Guidance. Paragraph 25 of the guidance advises that, if the compulsory acquisition of many separate plots of land is involved, it may not always be practicable to acquire by agreement each plot of land, and it is reasonable to include a provision authorising compulsory acquisition to cover all the land required at the outset. The scheme under consideration is a scheme which has little flexibility in its line and location once the route is committed, and which requires a large number of relatively small elements of landholdings compared to its total area. It is my view therefore that the guidance principle outlined above is also appropriate in this case.

Availability of funding

- 8.5.37 Although it has not been demonstrated that the Applicant company could meet arising liabilities from its current assets, there are other companies within the company group that could do so; and during the examination I heard nothing that would lead me to believe that the company group could not provide a guarantee or other security for the

required funds, or would not be in a position to do so if the order was made.

- 8.5.38 The Applicant's argument set out in the Funding Statement [AS-004] that coordinating across multiple authorities in approving the guarantee would be unnecessarily burdensome for the authorities appears to be a good one, and having regard to the above submissions it seems justifiable that this approval should be for the Secretary of State.
- 8.5.39 The recommended Order at Appendix D therefore contains a similarly worded provision at article 35. That provision requires that the guarantee or other security be in place for 15 years, which (given the provision at article 22 of the recommended Order and other limitations within it) seems to provide for the reassurance sought in paragraph 18 of the guidance that the funding is likely to be available to enable the compulsory acquisition through the statutory period following the order being made.
- 8.5.40 I note the professional advice reported in the Funding Statement [AS-004] that the scheme would be unlikely to give rise to blight claims prior to the exercise of powers of compulsory acquisition. Provision to be made for such claims, and any unanticipated compensatory liabilities, would be matters for the quantum of the guarantee or security.

Human rights

- 8.5.41 The Applicant submits that there would be significant public benefit arising from the grant of the Order; and that this benefit is only likely to be realised if the Order includes powers of compulsory acquisition.
- 8.5.42 The Applicant considers that the public benefits of the Proposed Development outweigh the effects upon persons who own property within the Order Land.
- 8.5.43 During the examination, I exercised the fullest discretion available to me to consider all written submissions received, and held a Compulsory Acquisition hearing on 17 July 2015 which was publicised. I have set out the submissions received on the proposed compulsory acquisition above, and I have had full regard to all the submissions made.

8.6 STATUTORY UNDERTAKERS

- 8.6.1 The final version of the Book of Reference lists the following statutory undertakers as being subject to a request for the compulsory acquisition of rights:
- British Telecommunications plc
 - the Canal and River Trust
 - Compania Logistica de Hidrocarburos Pipeline System (CLH-PS Limited) (formerly the Government Pipeline and Storage System)

- The Environment Agency
- Everything Everywhere Limited
- Hutchison 3G UK Limited
- National Grid Electricity Transmission plc
- National Grid Gas plc
- Network Rail Infrastructure Limited
- Northern Powergrid (Yorkshire) plc Northern Gas Networks Limited
- Yorkshire Water Services Limited

8.6.2 The position of these statutory undertakers in respect of protective provisions is dealt with in section 9.4 of the subsequent Chapter in this report. This Chapter deals with the acquisition of rights and each of the statutory undertakers listed above are dealt with in turn.

British Telecommunications plc

8.6.3 British Telecommunications plc is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier or having a Category 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR.

8.6.4 British Telecommunications plc did not make any representations to the Examination. As recorded in xxxxx, the ExA has concluded that the assets of British Telecommunications plc are protected.

8.6.5 Taking into account the lack of any representation from British Telecommunications plc and, therefore, that there is no outstanding objection and that its assets are protected, ***I recommend that the powers of the compulsory acquisition of rights in respect of British Telecommunications plc be granted.***

The Canal and River Trust

8.6.6 The Canal and River Trust is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 freehold owner in respect of plot 132.

8.6.7 The Canal and River Trust made a Written Representation [REP1-001] in which it stated that it objects to the inclusion of its land and its apparatus in the Order. It stated that it would instead seek to reach agreement with the Applicant with a view to granting the sub-soil rights needed whilst providing all necessary protections, to avoid the need for any compulsory purchase of the its land and interests.

8.6.8 The Applicant's Thorpe Marsh SOCG Progress tracker for Deadline 4 [REP4-016] stated, in respect of the Canal and River Trust that:

'Agreement close to being reached on terms for a property agreement, including asset protection.'

8.6.9 However, neither record of this agreement nor a statement of Common Ground had been submitted by the close of the Examination.

8.6.10 At the close of the Examination, the Canal and River Trust had not withdrawn its objection to the inclusion of its land in the order.

8.6.11 The Canal and River Trust is considered, below.

Compania Logistica de Hidrocarburos Pipeline System

8.6.12 Compania Logistica de Hidrocarburos (CLH-PS Limited) is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier in respect of the plots shown in Parts 1 and 2 of the BoR.

8.6.13 CLH-PS Limited did not make any representations to the Examination. As recorded in Section 9.4 of this report, the ExA has concluded that the assets of CLH-PS Limited are protected.

8.6.14 Taking into account the lack of any representation from CLH-PS Limited and, therefore, that there is no outstanding objection and that its assets are protected, ***I recommend that the powers of the compulsory acquisition of rights in respect of CLH-PS Limited be granted.***

The Environment Agency

8.6.15 The Environment Agency is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier or having a Category 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR.

8.6.16 The Environment Agency made several submissions to the examination in their role as a technical consultee on environmental matters. However, in their role as the freehold owner of land and owner of rights which the Applicant seeks to acquire under the DCO, they made an objection to the proposed compulsory acquisition in their written representation at Deadline 1. [REP1-005]

8.6.17 At Deadline 3, they made a further submission to the examination withdrawing their objection to the proposed compulsory acquisition. [REP3-018].

8.6.18 As recorded in Section 9.4 of this report, the ExA has concluded that the assets of the Environment Agency are protected.

8.6.19 Taking into account that there is no outstanding objection and that its assets are protected, ***I recommend that the powers of the compulsory acquisition of rights in respect of the Environment Agency be granted.***

Everything Everywhere Limited and Hutchison 3G UK Limited

8.6.20 Everything Everywhere Limited and Hutchison 3G UK Limited are shown in the Applicant's final draft Book of Reference [AS-025] as having a Category 2 interest in respect of plot 223

- 8.6.21 Neither Everything Everywhere Limited nor Hutchison 3G UK Limited made any representations to the Examination. As recorded in Section 9.4 of this report, the ExA has concluded that the assets of Everything Everywhere Limited and Hutchison 3G UK Limited are protected.
- 8.6.22 Taking into account the lack of any representation from Everything Everywhere Limited or Hutchison 3G UK Limited and, therefore, that there is no outstanding objection and that their assets are protected, ***I recommend that the powers of the compulsory acquisition of rights in respect of Everything Everywhere Limited and Hutchison 3G UK Limited be granted.***

National Grid Electricity Transmission plc and National Grid Gas plc

- 8.6.23 National Grid Electricity Transmission plc is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier or having a Category 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR.
- 8.6.24 National Grid Gas plc is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier or having a Category 2 interest in respect of plots 1, 2, 3, 4, 6, 7, 8 and 11
- 8.6.25 National Grid Electricity Transmission plc and National Grid Gas plc made joint submissions to the examination (as 'National Grid'), including a relevant representation [RR-10], a written submission to the preliminary meeting [AS-023] and a written representation [REP1-009]; and jointly with the Applicant made a written submission to the hearing on 17 June 2015 [EV-010] and a statement for Deadline 6 [REP6-004]. These submissions reserved National Grid's position on the application, and provided updates on the nature of their infrastructure and their negotiations with the Applicant in respect of protective provisions.
- 8.6.26 National Grid made a submission to the examination on 4 September 2015, withdrawing any objection to the Development Consent Order [AS-024]. The Applicant confirmed in their update on protective provisions of that date [AS-027] that protective provisions had been agreed, along with a side agreement that was not provided to the examination.
- 8.6.27 As recorded in Section 9.4 of this report, the ExA has concluded that the assets of National Grid Electricity Transmission plc and National Grid Gas plc are protected.
- 8.6.28 Taking into account that there is no outstanding objection and that there assets are protected, ***I recommend that the powers of the compulsory acquisition of rights in respect of National Grid Electricity Transmission plc and National Grid Gas plc be granted.***

Network Rail Infrastructure Limited

- 8.6.29 Network Rail Infrastructure Limited is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier or having a Category 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR.
- 8.6.30 Network Rail Infrastructure Limited made one submission to the examination at Deadline 4 [REP4-001], objecting in principle to the compulsory acquisition of their land or rights over it.
- 8.6.31 That submission does not identify any particular anticipated threat to Network Rail Infrastructure Limited's undertaking, and in respect of the protective provisions contained in the Draft Development Consent Order, notes:
- 'It is noted that the promoter has included provisions in the schedule to the draft Order for the benefit of Network Rail. Whilst these on the whole provide the protection network Rail would seek, there is one minor amendment to paragraph 19 which Network Rail would request be made...'*
- 8.6.32 The drafting in the recommended draft DCO at Appendix D reflects that amended wording. The Applicant reports in their final update on protective provisions [AS-027] that the drafting of protective provisions for the benefit of Network Rail Infrastructure Limited was agreed save for a provision preventing the excise of powers of compulsory acquisition in respect of railway land which had not been included.
- 8.6.33 The Applicant reports in AS-027 that they have no objection to the inclusion of this provision subject to securing the necessary easement by agreement; but the provision was not included because negotiations in respect of an easement were still ongoing.
- 8.6.34 At the close of the examination, the Network Rail Infrastructure Limited had not withdrawn its objection to the inclusion of its land in the order.
- 8.6.35 Network Rail Infrastructure Limited is considered further, below.

Northern Powergrid (Yorkshire) plc

- 8.6.36 Northern Powergrid (Yorkshire) plc is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier or having a Category 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR.
- 8.6.37 Northern Powergrid (Yorkshire) did not make any representations to the Examination. As recorded in Section 9.4 of this report, the ExA has concluded that the assets of Northern Powergrid (Yorkshire) are protected.

- 8.6.38 Taking into account the lack of any representation from Northern Powergrid (Yorkshire) and, therefore, that there is no outstanding objection and that its assets are protected, ***I recommend that the powers of the compulsory acquisition of rights in respect of Northern Powergrid (Yorkshire) be granted.***

Northern Gas Networks Limited

- 8.6.39 Northern Gas Networks Limited is shown in the Applicant's final draft Book of Reference [REP5 -002] as being a Category 1 occupier or having a Category 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR.
- 8.6.40 Northern Gas Networks Limited did not make any representations to the Examination. As recorded in Section 9.4 of this report, the ExA has concluded that the assets of Northern Gas Networks Limited are protected.
- 8.6.41 Taking into account the lack of any representation from Northern Gas Networks Limited and, therefore, that there is no outstanding objection and that its assets are protected, ***I recommend that the powers of the compulsory acquisition of rights in respect of Northern Gas Networks Limited be granted.***

Yorkshire Water Services Limited

- 8.6.42 Yorkshire Water Services Limited is shown in the Applicant's final draft Book of Reference [REP5 -002] as being a Category 1 or 2 occupier or having a Category 1 or 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR.
- 8.6.43 Yorkshire Water Services limited made a joint submission alongside the Applicant at Deadline 4 [REP4-020] which confirmed that there were no issues between them and the Applicant. As recorded in Section 9.4 of this report, the ExA has concluded that the assets of Yorkshire Water Services are protected.
- 8.6.44 Therefore, since there is no outstanding objection and that its assets are protected, ***I recommend that the powers of the compulsory acquisition of rights in respect of Yorkshire Water Services be granted.***

8.7 THE EXA'S OVERALL CONCLUSIONS ON COMPULSORY ACQUISITION

- 8.7.1 My approach to the question of whether and what compulsory acquisition powers I should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the Act, notably s.122 and s.123, the Guidance⁴, and the Human Rights Act

⁴ Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

Human Rights Act⁵ 1998 considerations

- 8.7.2 Having regard to the overarching aims of the Human Rights Act 1998, DCLG Guidance and the required balancing exercise, the scheme would represent an improvement to the national gas transmission infrastructure which accords with national policy. It is necessary to deliver additional electrical generating capacity, a legitimate public interest.
- 8.7.3 I am of the view that the case has been sufficiently made that the proposed pipeline would be a proportionate solution, taking into account the balance between environmental considerations and the works required. The purposes for the compulsory acquisition powers sought, and those for temporary possession under articles 29 and 30, are therefore legitimate, necessary and proportionate and sufficiently justify, and clearly outweigh, any interference with the human rights of those with an interest in the land affected.
- 8.7.4 I am satisfied that the proposal would not violate human rights in relation to the HRA1998 and the European Convention on Human Rights and would comply with DCLG Guidance.

S.122

- 8.7.5 Each plot in the Book of Reference to be compulsorily acquired has been identified with a clear purpose. All the land for which compulsory acquisition is sought is required for the development to which the application relates or is required to facilitate or is incidental to that development.
- 8.7.6 I am satisfied that a compelling case in the public interest has been made out for each of the plots of the land to be acquired compulsorily. There is a clear need for the project to proceed. There are no practicable alternatives to meet the objectives sought, and the public benefit outweighs the loss to private interests or the restrictions imposed on those interests.
- 8.7.7 I am satisfied that funding is available for the project. The project's delivery would be jeopardised in the absence of the compulsory acquisition powers contained in the draft DCO. I therefore conclude that the tests in sections 122(2) and 122(3) of the PA2008 are met.

⁵ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

s.123

- 8.7.8 Section 123 requires that one of three conditions is met by the proposal. The ExA is satisfied that the condition in s.123 (2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.

s.120(5)(a) and s.126

- 8.7.9 Section 120(5)(a) allows 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.
- 8.7.10 Article 25 of the draft DCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981, with modifications. In this, the draft DCO seeks to apply s120(5)(a) of the PA2008 and is therefore in the form of a statutory instrument.
- 8.7.11 Section 126 deals with compensation for compulsory acquisition.
- 8.7.12 These applications and modifications do not exclude compensation provisions or modify them any further than is necessary to apply them; and relate to matters for which provision may be made in the Order and so do not infringe s126.

s.127 and s.138

- 8.7.13 At the close of the examination, there were two representations in respect of Statutory Undertakers land over which rights are sought to be acquired, that were not withdrawn:

The Canal and River Trust

- 8.7.14 Plot 132 is held by the Canal and River Trust for the purpose of its undertaking. Compulsory acquisition powers in respect of rights over plot 132 are sought for the installation, use and maintenance of the pipeline.
- 8.7.15 The position of the Canal & River Trust in respect of the protection of its assets is covered in Chapter 9. The final draft DCO submitted by the Applicant did not contain specific protective provisions for the protection of the assets of the Canal and River Trust. However, for the reasons given in the subsequent Chapter, I consider that, subject to the inclusion of sub-clause to Article 6(2), set out in paragraph 9.4.22, the assets of the Canal and River Trust are protected through provisions in the recommended draft DCO, despite there being no specific Provision for the protection of the Trust in Schedule 9.
- 8.7.16 Therefore, ***I recommend that the Secretary of State can conclude that the rights can be purchased without serious detriment to the carrying out of The Canal and River Trust's undertaking.***

8.7.17 ***I recommend that the powers of the compulsory acquisition of rights in respect of The Canal and River Trust be granted.***

Network Rail Infrastructure Limited

8.7.18 Network Rail Infrastructure Limited occupies or holds interests in respect of plots 26, 27, 30, 64, 252, 253, 254, 255, 256, 257, 258 and 263, for the purpose of their undertaking.

8.7.19 I note the outstanding objection and that certain standardised agreements and procedures that Network Rail Infrastructure Limited would prefer be in place, as set out in their submission at Deadline 4 [REP4-001], may not be. As recorded in Section 9.4 of this report, the ExA has concluded that the assets of Network Rail Infrastructure Limited are protected.

8.7.20 ***I therefore recommend that the Secretary of State can conclude that Network Rail Infrastructure Limited's assets are protected, and that the rights can be purchased without serious detriment to the carrying out of Network Rail Infrastructure Limited's undertaking.***

8.7.21 ***I recommend that the powers of the compulsory acquisition of rights in respect of Network Rail Infrastructure Limited be granted.***

CONCLUSIONS ON COMPULSORY ACQUISITION

8.7.22 For the reasons given above, ***I recommend that unconstrained powers of Compulsory Acquisition are not granted in respect of plots 48 and 49 and that amendments to Articles 20 and 23 are included in the final DCO.***

8.7.23 ***With the exception of the position stated in paragraph 8.6.22, above, I recommend that the powers of Compulsory Acquisition sought are granted.***

9 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1 INTRODUCTION

- 9.1.1 A draft Development Consent Order was received with the application documents on 20 November 2014. It is referenced as document APP-009 in the Examination Library.
- 9.1.2 The final version draft DCO as recommended by the ExA is found at Appendix D to this Report.
- 9.1.3 All the recommended changes to the draft DCO are set out and justified in subsequent parts of this section of the Report. However, the main changes include: the removal of the Applicant's definition of 'commence' from Article 2; the removal of the Article dis-applying parts of the Water Resources Act 1991; the addition of references (for example in Articles 2 and 40) to the flood risk assessment addendum undertaken by the Applicant during the course of the Examination; changes to the description of the Above Ground Installation in the Schedule of Works (Schedule 1, Part 1, Work No.5); the addition of a requirement for consultation on, and of required contents of, the Construction Environmental Management Plan (CEMP) in Requirement 4; a refinement of the restrictions on out-of-hours working in Requirement 6; additions to the requirement for consultation on the details of surface and foul water treatment works at Requirement 12; the addition of a Requirement (R.21) dealing with flooding mitigation; the addition of a Requirement (R.22) dealing with local employment; the addition of a Requirement (R.23) dealing with Burn Airfield; and the inclusion in Schedule 9 of Protective Provisions for the Protection of Network Rail Infrastructure Limited (Part 1), National Grid Electricity Transmission plc and National Grid Gas plc (Part 2), Electricity, Gas, Water and Sewerage Statutory Undertakers (Part 3), and Electronic Communications Code Networks (Part 4).
- 9.1.4 The recommended draft DCO contained at Appendix D, below, contains 42 Articles, undivided into Parts, and nine Schedules as follows:
- Schedule 1 — Authorised Development
 - Schedule 2 — Streets Subject to Street Works
 - Schedule 3 — Public Rights of Way to be Temporarily Stopped Up
 - Schedule 4 — Access to Works
 - Schedule 5 — Land in which New Rights, Etc. May be Acquired
 - Schedule 6 — Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights
 - Schedule 7 — Land of Which Temporary Possession May be Taken
 - Schedule 8 — Removal of Important Hedgerows
 - Schedule 9 — Protective Provisions
- 9.1.5 This section of the Recommendation Report considers the provisions of the draft DCO and, in particular, each of the changes to the draft DCO

between the originally submitted draft DCO [APP-009] and the ExA's recommended draft DCO as attached at Appendix D to this report.

- 9.1.6 The draft DCO was the subject of twenty two questions in the ExA's first questions issued on 29 April 2015 [PD-006]. It was then the subject of an Issue Specific Hearing held on 17 June 2015. There were seven questions on the draft DCO in the ExA's second written questions issued on 3 July 2015 [PD-009]. The ExA issued a request for further information on 5 August 2015 [PD-011] but this did not contain any direct questions on the draft DCO.
- 9.1.7 The Applicant submitted successive amended drafts of the DCO for Deadline 1 on 20 May 2015 [REP1-030], for Deadline 3 on 26 June 2015 [REP3-015] and a final version for Deadline 6 on 28 August 2015 [REP6-002].
- 9.1.8 The ExA issued its draft DCO on 3 July 2015 [PD-010].

9.2 ARTICLES

- 9.2.1 If consented, the DCO would grants development consent for, and authorises Thorpe Marsh Power Limited to construct, operate and maintain an up to 609.6 millimetre external diameter cross-country gas pipeline for the conveyance of gas and covering a distance of approximately 19.1 kilometres starting from the National Transmission System approximately 1.5 kilometres west Camblesforth in the County of North Yorkshire, District of Selby and ending at the proposed Thorpe Marsh Power Station to be constructed at Barnby Dun in the Metropolitan Borough of Doncaster, together with all necessary and associated development.
- 9.2.2 The DCO would additionally authorise Thorpe Marsh Power Limited compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights, for the purposes of the development that it authorises. The DCO also provides a defence in proceedings in respect of statutory nuisance and to discharge water.
- 9.2.3 Paragraph 1.4 of the Explanatory Memorandum [APP-010] states that the draft Order is based in part on the general model clauses and model requirements contained in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "Model Provisions").
- 9.2.4 The following paragraphs list Articles which have been subject of questioning and have been altered during the course of the Examination and provide the justification for those changes. They do not cover Articles in which wording has been tidied up but which do not make any alteration to the meaning or effects of that provision in the draft DCO.

Article 2, definition of "Authorised development"

- 9.2.5 I queried [question DCO 1.1, PD-006] the use of the phrase "any other development authorised by this Order" in this definition.
- 9.2.6 The Applicant [REP1-014] cited the Model Provisions and explained that the inclusion of the words "any other development" means that works permitted by the DCO that are not expressly included in Part 1 of Schedule 1 but which, nevertheless, may constitute development for the purposes of Section 32 of the 2008 Act are both permitted by the DCO and controlled by the requirements set out in Part 2 of Schedule 1.
- 9.2.7 ***I am satisfied with the explanation and this phrase is retained in the final draft DCO.***

Article 2, definition of "Commence"

- 9.2.8 I considered that the definition of 'commence' was too broad and excluded a number of activities from that definition which were subject to restriction in other parts of the draft DCO or for which commencement was consequent on another activity being undertaken. These activities included the erection of any temporary means of enclosure which is restricted in R4, cutting of hedges, trees and other vegetation which is restricted in R10, remedial works for contamination which is restricted in R13, archaeological investigations which is restricted in R14 and remedial ecological investigations which is restricted in R15.
- 9.2.9 Following this point being put in my first questions [DCO 1.2, PD-006], the Applicant agreed [REP1-014] that there was an incompatibility between the proposed carve out of certain activities from the definition of "commence" and the controls imposed in Requirements but requested that 'the diversion and laying of services' be retained as an exclusion as this was essential for the Applicant to comply with the protective arrangements being agreed with other statutory undertakers.
- 9.2.10 Consequent on this, the Applicant proposed an amendment to this definition which was contained in a revised draft DCO submitted at Deadline 1 [REP1-014]. In the second round of questions [question DCO 2.2, PD-009], I pointed out that, following the amendments made by the Applicant to this definition, the definition now matches the 2008 Planning Act definition, which would apply if there were no definition set out in the draft DCO.
- 9.2.11 For this reason, my draft DCO, in the form of a Schedule of the ExA's proposed recommended changes [PD-010], included a proposal to remove this definition from the draft DCO as it was no longer required.
- 9.2.12 In its response to my Second Questions [REP4-009], the Applicant confirmed that it agrees with the proposed amendment.

9.2.13 *The definition of 'commence' was consequently removed from the Applicant's final draft DCO [REP6-002]. I recommend this amendment to the final draft DCO.*

Article 2, definition of "Maintain"

9.2.14 The definition of "maintain" in the initial draft DCO [REP6-002] includes 'to demolish' and 'to remove'. I recognise that the definition is conditioned by the phrase '... only to the extent assessed in the environmental statement'.

9.2.15 Therefore, I asked the Applicant in my first round of questions [DCO 1.3, PD-006] to show how the environmental impacts of the demolition and removal provided for by this definition been assessed. The Applicant demonstrated where this had been assessed in a range of chapters in the ES.

9.2.16 *I am satisfied with the explanation and recommend that this definition is retained in the final draft DCO.*

Article 2 and Article 8

9.2.17 I expressed a concern in my first questions [DCO 1.4, PD-006] that Article 2, definition of "Undertaker" contains an inconsistency with Article 8 (consent to transfer benefit of order)

9.2.18 The Applicant responded [REP1-014] that the duplication between the definition of "undertaker and Article 8(2)" was erroneous.

9.2.19 Therefore, Article 8(2) has been removed and Article 8(3) has been amended so that the words "the undertaker" on the third line are removed and replaced with Thorpe Marsh Power Limited.

9.2.20 A consequent amendment setting out a definition of Thorpe Marsh Power Limited in the DCO was discussed at the Issue Specific Hearing into the draft DCO and set out in the Applicant's summary of oral evidence [REP3-014].

9.2.21 *I recommend this amendment to the final draft DCO.*

9.2.22 Article 6: Limits of Deviation

9.2.23 The limits of deviation in the draft DCO [REP3-015] did not specify any limits of deviation for above ground development. My draft DCO, in the form of a Schedule of proposed recommended changes, therefore included a proposal to add a further clause to Article 6 to ensure that Works No. 5, 6, or 7 can deviate vertically only to the maximum extent of parameters assessed in the Environmental Statement.

9.2.24 In its response to my Second Questions [REP4-009], the Applicant confirmed that it agrees with the proposed amendment subject to a minor tidying up of the wording.

9.2.25 Consequently, this amendment has been added to the Applicant's final draft DCO as Article 6(3).

9.2.26 ***I recommend this amendment to the final draft DCO.***

Article 10: Defence to proceedings in respect of statutory nuisance

9.2.27 The examination of this Article centred on the question of operational noise and this is covered in section 5.15, above.

Article 12 and Schedule 2: Street works

9.2.28 I queried the inclusion of a reference to a motorway - the M62 in Article 12 and in Schedule 2. Highways England's response to my second questions [REP4-005] stated that it is in agreement to Article 12 in the revised draft DCO [REP3-015] referencing the M62.

9.2.29 ***I recommend the inclusion of this reference in the final draft DCO.***

Article 13: Temporary stopping up of streets and Article 14: Public Rights of Way

9.2.30 In its Relevant Representation [RR-012] Doncaster MBC states that there is no reference in the draft DCO for achieving the Temporary stopping up of streets under s.14 of the Road Traffic Regulation Act as agreed by Applicant and as mentioned in other supporting documentation i.e. 'Other Consents Required'.

9.2.31 In my question DCO 1.8 [PD-006], I queried this omission. The Applicant responded [REP1-014] in part with references to the Model Provisions but also stated its opinion that the wording of Article 13 does not prevent the relevant street authority from following or having regard to the principles set out in Sections 14 and 15 of the 1984 Act in coming to its decision. It also noted that that neither North Yorkshire County Council nor East Riding of Yorkshire Council has raised this point.

9.2.32 My question DCO 2.5 [PD-009] requested confirmation from Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council, North Yorkshire County Council and Selby District Council that Articles 13 and 14 provide them with robust controls over the temporary stopping up of streets and public rights of way.

9.2.33 This was confirmed by Doncaster Metropolitan Borough Council [REP4-007], East Riding of Yorkshire Council [REP4-003], North Yorkshire County Council [REP4-004] and Selby District Council [REP4-002].

9.2.34 ***I recommend the final draft DCO should not cross refer to s.14 of the Road Traffic Regulation Act 1984.***

Article 15: Access to Works

- 9.2.35 The Explanatory Memorandum states that the locations for accesses set out in Schedule 4 are comprehensive. Given this, I asked [question DCO 1.9, PD-006] the Applicant to explain the necessity for Article 31(d) which allows the undertaker to: "construct over existing apparatus belonging to statutory undertakers any necessary track or roadway."
- 9.2.36 The Applicant responded [REP1-014] that, whilst it has used diligent enquiries to identify all relevant rights and apparatus over and in the Order land and that consents have been or are being obtained in relation to these rights, it is possible that new rights or apparatus of statutory undertakers will be discovered during the course of the construction of the Proposed Development and Article 32(d) (new Article 31(d)) accommodates this.
- 9.2.37 ***I am content with this response and recommend the continuing inclusion of Article 31(d) in the final DCO.***

Article 18: Abstraction of water

- 9.2.38 In its response [REP1-014] to my question DCO 1.11, the Applicant stated that it and the Environment Agency have agreed that Article 18 (abstraction of water) will be removed from the draft DCO and that the Applicant will apply for temporary abstraction licences or abstraction licences as and when these are needed rather than relying on the disapplication of Section 24(1) and Section 48(A)(1) of the Water Resources Act 1991.
- 9.2.39 The removal of the Article followed a request in my question WRF 1.5 to justify the inclusion of this Article by reference to Section 150 of the Planning Act 2008 which states that an order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision.
- 9.2.40 The Applicant's response to that question stated that it considers that the Draft DCO as submitted was overly cautious on this issue, and with some assurance from the EA and CRT, it now considers that temporary licenses would be an appropriate method of dealing with abstraction requirements of the project.
- 9.2.41 ***I consider that this is a more proportionate approach and recommend the omission of this Article from the final DCO.***

Article 23: Compulsory Acquisition of Rights

- 9.2.42 The Applicant's final draft DCO [REP6-002] included an additional paragraph (8) to read:

This paragraph applies to a transfer to National Grid Gas of the powers to acquire rights or impose restrictive covenants under paragraph (1) which relate to, or which may be necessary or expedient for or ancillary to, the construction, operation, maintenance and diversion of Work No.5.

- 9.2.43 This proposed new paragraph relates to proposed additional wording at the end of Article 23(5). The effect is that the consent of the SoS will no longer be required to transfer the powers specified in Article 23(8) (rights/ restrictive covenants relating to Work No 5) to National Grid Gas.
- 9.2.44 The consent of the SoS would still be required for transfer of any other of the powers to any other statutory undertaker. This means that the consent of the SoS in that specific case is potentially being given now rather than the Applicant being required to seek it later – this is a transfer of powers which is already anticipated.
- 9.2.45 This amendment removes the requirement for the consent of the SoS to be sought for the anticipated transfer of the powers to acquire rights/ impose covenants to National Grid Gas in relation to Work No. 5.
- 9.2.46 On this basis, I recommend the inclusion of this addition to Article 23 in the final DCO.

Article 25: Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 9.2.47 Article 25(3) was Amended by the Applicant to read:
- In section 1 (acquisition of Act), for subsection (2) there is substituted –*
- "(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order."*
- 9.2.48 The Compulsory Purchase (Vesting Declarations) Act 1981 applies, as worded, to "any Minister or local or other public authority authorised to acquire land by means of a compulsory purchase order" (s1(2)). The aim of this amendment is to make it clear that the Applicant (not being a Minister or local/public authority) will also be included in that list, as "any other body or person". As such, it clarifies the wording of the original model provision.
- 9.2.49 As this amendment clarifies the intent of the original model provision that the Compulsory Purchase (Vesting Declarations) Act 1981 will apply to the DCO, by making it clear that the provisions of the Act will also apply to the Applicant, who is neither a Minister nor a local or other public authority, **I recommend its inclusion in the final draft DCO.**

Article 29: Temporary use of land for carrying out the authorised project

- 9.2.50 Paragraph 2f of the Relevant Representation from Doncaster MBC [RR-012] stated that there is no requirement to the restore the land following the 'temporary' construction phase for accessing the works (see Draft DCO Article 30 (5) (c)). The Council's default position is that all temporary works to facilitate the development need to be restored back to the lands previous condition. If the 'temporary' works are proposed to be left in situ – then planning permission may be required.
- 9.2.51 The Explanatory Memorandum [APP-010] states that: "the undertaker is not required to remove from the relevant land works that have been constructed for the purposes of the authorised development".
- 9.2.52 In responses to my question DCO 1.12 [REP1-014] which referred to Doncaster MBC's Relevant Representation, the Applicant responded that it acknowledges Doncaster MBC's comments in relation to draft Article 30 (new Article 29) and agrees that there is a need for certainty as to what works are to be restored and what works are to be left in situ following the construction phase.
- 9.2.53 As a consequence the Applicant suggested [REP1-014] an amendment to this Article to clarify that the undertaker will not be required to:
- (a) replace a building removed under Article 30 (new Article 29);
 - (b) restore land on which mitigation works or operations were carried out which were required by the relevant planning authority as a condition to discharging requirements in Part 2 of Schedule 1 of the draft DCO (and if the owners and occupiers consent to such works remaining); or
 - (c) remove any ground strengthening works which have been placed in land to facilitate the construction of the authorised development.
- 9.2.54 The Applicant further pointed out that this amendment is intended to work in tandem with Requirement 4(h) which is intended to give the relevant planning authorities the appropriate controls sought by Doncaster MBC over what is to be restored and what is to be left in situ following the construction phase.
- 9.2.55 ***I am content with this response and recommend the amendments to Article 29***

Article 30: Temporary use of land for maintaining the authorised project

- 9.2.56 My first questions [question DCO 1.12, PD-006] asked about the reasonableness of the specified period of 10 years from the date of operation of the whole scheme during which access to be taken for maintenance purposes is allowed.

9.2.57 The Applicant responded [REP1-014] that it considers that, in light of the nature of the authorised development, the operating procedures to be put in place to ensure its efficient and safe operation and the comprehensive nature of the property agreements it has secured over the Order land, the precautionary 10 year period of access sought in the first draft of the DCO is unlikely to be necessary. The Applicant proposes to amend the wording of the maintenance period for the purposes of Article 31 (new Article 30) to refer to 5 years.

9.2.58 Consequently, the Article 30(12) of the Applicant's final draft DCO now reads:

In this article "the maintenance period" means, in relation to any part of the authorised development, the period of 5 years beginning with the date on which the authorised development is first brought into operational use for the purpose for which it was designed.

9.2.59 ***I am content with this response and recommend the inclusion of the revision to Article 30(12) in the final DCO.***

Article 31(d): Statutory undertakers

9.2.60 Aspects relating to this Article are contained in paragraphs 9.2.35 onward, above.

Article 35: Guarantees for CA compensation

9.2.61 My consideration of nature of the guarantee for CA compensation is contained in Chapter 8, above.

9.2.62 There are no consequential changes to the draft DCO related to this issue.

Article 39: Crown rights

9.2.63 Issues related to Crown Rights are discussed in Chapter 8, above.

9.2.64 The wording of this Article in the draft recommended DCO at Appendix D remains that as contained in the originally submitted draft DCO [APP-009].

9.2.65 The changes that I recommend in relation to Crown Rights relate to Articles 20 and 23 and are described and set out in the previous Chapter and at the end of this Chapter.

Article 40: Certification of plans etc

9.2.66 Article 40 lists the following plans and documents as requiring the certification of the SoS:

- (a) the AGI plan;
- (b) the book of reference;
- (c) the Crown land plan;

- (d) the environmental statement;
- (e) the flood risk assessment addendum;
- (f) the historic environment plan;
- (g) the important hedgerows plan;
- (h) the land plan;
- (i) the nature conservation plan;
- (j) the outline construction environmental management plan;
- (k) the outline construction traffic management plan;
- (l) the outline public rights of way plan;
- (m) the pipe dump plan;
- (n) the runway plan; and
- (l) the works plan

9.2.67 Three plans were added to this final draft list during the course of the Examination. The production of the flood risk assessment addendum is covered in Chapter 5, above. The pipe dump and runway plans relate to the issues surrounding Burn Airport discussed in Chapter 5, above. In addition, the catch-all phrase 'any other plans or documents referred to in this Order' was removed from this Article.

9.2.68 ***I recommend the inclusion of the plans and the amendment listed in the previous paragraph in the final DCO.***

Article 42: Protection of interests

9.2.69 Section 9.4 of this Chapter deals with Protective Provisions.

9.3 DESCRIPTION OF WORKS

9.3.1 Schedule 1 Part I of the draft DCO sets out eight categories of works. The first five categories are permanent works.

9.3.2 Three permanent works relate to the above ground installation (AGI) and are described as:

A permanent secure compound housing equipment for the monitoring and control of gas (comprising an approximate area of 522 square metres) as shown indicatively on the AGI plan – Works Nos. 5, 6 and

Facilities for the benefit of Work No. 5 and Work No. 6 – Works No. 7

9.3.3 The second permanent category relates to the pipeline itself which is described as:

A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground – Works Nos. 9, 10, 11, 13, 14, 15, 19, 20, 23, 24, 26, 27, 28, 31, 33, 34, 35, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51, 53, 55, 57, 58, 59, 60, 62, 63, 64, 65, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 85, 87, 89, 90, 91, 92, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 109, 110, 111, 113, 114, 115, 118, 119 and 121.

- 9.3.4 Work No. 83 is described as Cables laid underground from the gas pipeline and Work No. 84 is a free-standing steel cabinet and a free-standing steel kiosk with a permanent pedestrian access way from the edge of the road to the cabinet and kiosk.
- 9.3.5 Work No. 122 provides for pipeline marking posts and Work No. 123 provides for cathodic protection posts.
- 9.3.6 The final category of permanent works is a new permanent vehicular access road – Works No. 4
- 9.3.7 There are three types of temporary works:
- Temporary compounds – Works Nos. 1, 3, 8, 16, 18, 22, 23, 25, 29, 32, 36, 42, 52, 56, 61, 66, 82, 88, 93, 106, 108, 112, 116, 120,
 - A temporary vehicular access – Works No. 2,
 - Temporary construction accesses and works to facilitate these – Works Nos. 12, 17, 30, 37, 46, 54, 67, 68, 69, 86, 95, 117,
- 9.3.8 Issues in respect of the descriptions of works raised during the course of the Examination related, with the exception of minor drafting, to changes to Works No 5, Work No 6, Work No 7, Work No. 8 and Work No. 123.
- 9.3.9 In respect to Work No 5, the Applicant proposed changes to the maximum height specified for components of the AGI in its Schedule of proposed changes to the draft Development Consent Order dated 17 June 2015 [REP3-004]. These had the effect of setting a maximum height of 3.2m for all components but also added an above ground pole with satellite dish with a maximum height of 4m.
- 9.3.10 My question DCO 2.12 asked about the rationale for this change given that the only reason cited in the Applicant's schedule of changes [REP3-017] was that National Grid requested revised wording. The Applicant responded [REP4-009] that Work No. 5 as originally drafted was based on an indicative design the basis for which was National Grid's broad design standards. The proposed increases to the maximum heights of the above elements of Work No. 5 are intended to account for the variables and flexibility required to accommodate National Grid's requirements in respect of that Work.
- 9.3.11 The Applicant added that the Environmental Statement assessed the visual impact of the AGI site by way of a visual block "envelope" with a maximum of 3.2 metres (with some poles above this level). The proposed amendments to the maximum heights in Work No. 5 fall within the scope of the visual parameters assessed in the Environmental Statement and will not exceed those parameters.
- 9.3.12 Section 5.14 of this report cover the reasons for the changes to Work No. 5 which relate mainly to clarifying the restrictions on the maximum height of the equipment at the AGI. These had the effect of setting a maximum height of 3.2m for all components but also added

an above ground pole with satellite dish with a maximum height of 4m.

- 9.3.13 Work No. 6 was amended to make it clear that the works described were to be sited within the AGI site.
- 9.3.14 My draft DCO, dated 3 July 2015, recommended the reference to 'wooden poles' in the description for Work No. 7 be changed to 'a wooden pole'. This was accepted by the Applicant. This followed my question DCO 2.13 [PD-009] which pointed out the Applicant's response to my question LVA 1.2 [REP1-014] that the worst case scenario was one pole.
- 9.3.15 The amendments to the description of Work No. 8 simply clarify that this temporary compound relates to Works No. 5 and 6.
- 9.3.16 Work No. 123 –relating to cathodic protection test posts - was amended to clarify that these posts would be at locations in close proximity to road crossings.
- 9.3.17 There were no other issues raised in the Examination relating to the descriptions of the Works.
- 9.3.18 ***I recommend these amendments to the descriptions of Work No 5, Work No 6, Work No 7, Work No. 8 and Work No. 123 in Schedule 1 part 1 of the draft DCO.***

9.4 PROTECTIVE PROVISIONS

- 9.4.1 Schedule 9 of the final version draft DCO as recommended by the ExA contains Protective Provisions for the Protection of Network Rail Infrastructure Limited (Part 1), National Grid Electricity Transmission plc and National Grid Gas plc (Part 2), Electricity, Gas, Water and Sewerage Statutory Undertakers (Part 3), and Electronic Communications Code Networks (Part 4).
- 9.4.2 This part of the Report goes through the evolution of each of these Protective Provisions and then deals with issues for Statutory Undertakers which are not so protected.
- 9.4.3 A draft provision for the Protection of Network Rail Infrastructure Limited was contained in the version of the draft DCO submitted with the application [APP-009]. Network Rail Infrastructure Limited made a submission to the Examination dated 8 July 2015 [REP4-001]. This submission recognised that the promoter has included provisions in the schedule to the draft Order for the benefit of Network Rail but sought an amendment to paragraph 19 [in the original draft] so that in this article reference should be to the article in the draft Order dealing with transfer of the benefit of the Order (article 8), not that dealing with certification of plans. This change was made by the Applicant in their final draft [REP6-002]. The 8 July 2015 submission from Network Rail stated that, other than that change, Network Rail can confirm that it does not object to the form of the proposed draft

Order. Given that the change has been made, the ExA concludes that there is no outstanding objection from Network Rail Infrastructure Limited to the inclusion of the Protective Provision as Part 1 of Schedule 5.

9.4.4 A draft provision for the Protection of National Grid Electricity Transmission plc and National Grid Gas plc was contained in the version of the draft DCO submitted with the application [APP-009]. National Grid Gas Plc (NGG) and National Grid Electricity Transmission Plc (NGET) (together "National Grid") submitted a Written Representation dated 20 May 2015 [REP1-009]. This explained in general terms the possible interrelationships between the proposed gas pipeline and National Grid's apparatus including the fact that the proposed pipeline passes under a number of 400kV transmission overhead lines at various points along its route and the fact that National Grid has an existing high pressure gas pipeline Feeder Main 29 Asselby to Pannal in to which the promoters gas pipeline is to be connected. That Written Representation also reported on progress with discussions between the Applicant and National Grid.

9.4.5 A joint statement on behalf of National Grid Gas Plc ("NGG"), National Grid Electricity Transmission Limited ("NGET") (together "National Grid") and the Applicant ("Thorpe Marsh Power Limited") dated 16 June 2015 [EV-010] which reported on continuing negotiations was submitted to the Examination. Finally, a submission dated 4 September 2015 [REP6-004] stated that National Grid withdraws its objection to the development consent order. Following that confirmation, ***I conclude that there is no outstanding objection from National Grid to the inclusion of the Protective Provision as Part 2 of Schedule 5.***

9.4.6 Following a request by the ExA in the Rule 6 letter [PD-004], the Applicant provided an update on the position with reference to s.127 and 138 at the preliminary meeting on 21 April 2015 [AS-017]. Subsequent updates were provided and a final update dated 4 September 2015 [AS-027] was submitted timed for the close of the Examination. The first update listed the following potentially affected statutory undertakers in addition to Network Rail and National Grid which have been covered above:

- (a) Yorkshire Water Services Limited
- (b) Northern Powergrid (Yorkshire) plc
- (c) Northern Gas Networks Limited
- (d) Government Pipeline and Storage System - now Compania Logistica de Hidrocarburos (CLH-PS Limited)
- (e) the Canal and River Trust

9.4.7 Following a question in the ExA's first round of questions [question CA 1.5, PD-006] the Applicant provided a further update and added the following bodies to the list:

- (a) British Telecommunications plc

- (b) The Environment Agency
- (c) Everything Everywhere Limited
- (d) Hutchison 3G UK Limited

- 9.4.8 The bodies listed in the two paragraphs, above, are dealt with in turn below.
- 9.4.9 Yorkshire Water Services Limited did not make any submissions to the Examination. In its final update dated 4 September 2015 [AS-027], the Applicant states that an asset protection agreement was completed on 3 September 2015. The Applicant did not provide a copy of that asset protection agreement nor any confirmation of this agreement from Yorkshire Water Services Limited. However, given that there is no outstanding objection from Yorkshire Water Services Limited and that Part 3 of Schedule 9 of the recommended draft DCO forms generic protection for, inter alia, water and sewerage undertakers, the ExA concludes that the assets of Yorkshire Water Services Limited are protected.
- 9.4.10 Northern Powergrid (Yorkshire) plc did not make any submissions to the Examination. In its final update [AS-027], the Applicant states that the form of the asset protection agreement has been settled and engrossments are with Northern Powergrid for execution. The Applicant did not provide a copy of that asset protection agreement nor any confirmation of this position from Yorkshire Water Services Limited. However, the ExA notes that there is no outstanding objection from Northern Powergrid (Yorkshire) plc and that Part 3 of Schedule 9 of the recommended draft DCO forms generic protection for, inter alia, electricity undertakers. Whilst the Secretary of State may wish to request final confirmation of the completion of the asset protection agreement, the ExA concludes that the assets of Yorkshire Water Services Limited are safeguarded by Part 3 of Schedule 9.
- 9.4.11 Northern Gas Networks Limited did not make any submissions to the Examination. In its final update dated 4 September 2015 [AS-027], the Applicant states that an asset protection agreement was completed on 3 September 2015. The Applicant did not provide a copy of that asset protection agreement nor of any confirmation of this agreement from Northern Gas Networks Limited. However, given that there is no outstanding objection from Northern Gas Networks Limited and that Part 3 of Schedule 9 of the recommended draft DCO forms generic protection for, inter alia, gas undertakers, the ExA concludes that the assets of Yorkshire Water Services Limited are protected.
- 9.4.12 The previous Government announced the sale of the Government Pipeline and Storage System to Compania Logistica de Hidrocarburos (CLH-PS Limited) on 20 March 2015. CLH-PS Limited did not make any submissions to the Examination. In its final update dated 4 September 2015 [AS-027], the Applicant states that the Applicant's solicitors have not received a response from CLH-PS's solicitors in relation to the acceptability of the asset protection agreement. The Applicant did not provide a copy of that draft asset protection agreement nor of any

confirmation of this position from CLH-PS Limited. However, the ExA notes that there is no outstanding objection from CLH-PS Limited and that Part 3 of Schedule 9 of the recommended draft DCO forms generic protection for electricity, gas, water and sewerage undertakers. Whilst the Secretary of State may wish to request final confirmation of the completion of the asset protection agreement, the ExA concludes that the assets of CLH-PS Limited are safeguarded by Part 3 of Schedule 9.

The Canal and River Trust

- 9.4.13 The Canal and River Trust made Relevant [RR-014] and Written [REP1-001] Representations, responded to my first [REP1-001] and second [REP4-006] round of questions. In its final update dated 4 September 2015 [AS-027], the Applicant states that terms for an option agreement in relation to the Trust's land holdings are currently being negotiated and that the Applicant proposes to settle the protective arrangements required by the Trust within this agreement. The Applicant did not provide a copy of that draft option agreement nor of any confirmation of this position from the Canal and River Trust. Nor has the Applicant submitted a SoCG with the Trust despite the Trust confirming in its Written Representation [REP1-001] that it had received a draft SoCG and the Applicant stating in an e-mail dated 24 July 2015 that a final SoCG would be submitted as soon as possible.
- 9.4.14 The Canal and River Trust raised three major issues in its representations and responses. These were, first, in respect of compulsory acquisition. This is dealt with in the previous Chapter of this report. Second, its concerns related to abstraction and discharge of water. This is dealt with earlier in this Chapter, with reference to former Article 18 in the draft DCO. The third relates to the integrity Aire & Calder Navigation, under which the proposed pipeline passes. In the absence of any evidenced agreement between the Applicant and the Trust, this is dealt with in more detail here.
- 9.4.15 Paragraph 10.97 of section 10 of the ES [APP-037] states that:
- The banks of the Aire and Calder Navigation Canal are supported by interlocked sheet piles. The depth of the sheet piles is not known. To account for the worst case, this crossing would ensure the pipeline is more than 20m below the canal bed using a trenchless technique. This crossing would also ensure no impacts on the tow path, a deep drain in the near vicinity and a road on the south-side.*
- 9.4.16 The Trust's Relevant Representation [RR-014] and its Written Representation stated that the Trust had no objection to the proposed crossing techniques but that it needed assurance that when the drilling technique is applied there will be sufficient depth below the piles forming the navigation including a safety factor to the structural integrity of the canal.

- 9.4.17 The Trust also stated in its Relevant and Written Representations that it understood from the submitted ES that that the final details of the pipeline crossing will be determined at the detail design stage i.e. post the grant of a DCO. Should the SoS be minded to grant a DCO for the project then we advise that a requirement be attached requiring the undertaker to investigate and determine the precise depth of piling prior to commencement. The Trust would wish to review and agree these details to ensure protective provisions are in place to safeguard the canal.
- 9.4.18 The ExA considers that this position has now been secured in the recommended draft DCO by the addition to Requirement 4 of a requirement to consult the Trust on a written construction environmental management plan for each stage and by an addition in the same Requirement that the written construction environmental management plan for each stage shall contain written details of the crossing methods to be employed at each crossing, including the means by which the environmental and structural effects of that method will be controlled.
- 9.4.19 However, the Applicant's specific assurance in paragraph 10.97 of section 10 of the ES [APP-037], quoted in paragraph 9.4.16 is not secured in the draft DCO but, instead, appears to be hampered by Article 6, the Limits of deviation, which states that:
- the undertaker may ... deviate the pipeline works vertically ... to any extent downwards as may be found to be necessary as practical to a maximum depth of 20 metres below the surface of the ground.*
- 9.4.20 In order further to safeguard the Canal and River Trust's position, ***Ircommend that a further sub-clause be added to Article 6(2) stating that: 'except that, for the avoidance of doubt, the downwards limits of deviation specified in sub-paragraph (2)(b) above will not apply to Work No. 57'.***
- 9.4.21 The Trust also recommended in its Relevant and Written Representations that requirements be included to require that any plant used in the construction of the pipeline shall not apply surcharge loading to the existing piling which forms the canal and there should be no applied loading within 5m either side of the canal wall.
- 9.4.22 In this respect, the ExA considers that the additions to Requirement 4 described in paragraph 9.4.18, above, are sufficient to allow the Canal and River Trust to secure the inclusion of these specifications in the written construction environmental management plan for the relevant stage of work.
- 9.4.23 Given the foregoing, ***I consider that, subject to the inclusion of sub-clause to Article 6(2), set out in paragraph 9.4.20, the assets of the Canal and River Trust are protected through provisions in the recommended draft DCO, despite there being no specific Provision for the protection of the Trust in Schedule 9.***

- 9.4.24 British Telecommunications plc, Everything Everywhere Limited and Hutchison 3G UK Limited are considered together. Neither British Telecommunications plc, Everything Everywhere Limited nor Hutchison 3G UK Limited made any submissions to the Examination. Given that there is no outstanding objection from British Telecommunications plc, Everything Everywhere Limited or Hutchison 3G UK Limited and that the Applicant has included generic provision for the protection of operators of electronic communications in Part 4 of Schedule 9 of the recommended draft DCO, the ExA concludes that the assets of British Telecommunications plc, Everything Everywhere Limited and Hutchison 3G UK Limited are protected.
- 9.4.25 The Environment Agency is listed in the final revised Book of Reference [AS-025] solely in Part 3 (Easements or other private rights proposed to be extinguished, suspended or interfered with). The Agency made Relevant [RR-011] and Written [REP1-005] Representations, responded to the ExA's first [REP1-003] and second [REP4-006] round of questions.
- 9.4.26 In an e-mail dated 9 June 2015 [EV-008], the Agency stated it had now reached a position where it was able to confirm that it no longer consider it necessary to attend the Compulsory Acquisition Hearing on the 17th June 2015. A further e-mail published on 26 June 2015 [REP3-018] confirmed the statement made that in its Written Representation that it is a statutory undertaker for the purposes of s127 of the Planning Act 2008 and went on to confirm that the Agency is now in a position to withdraw our objection in relation to this matter.
- 9.4.27 The Statement of Common Ground between the Environment Agency and the Applicant dated 20 July 2015 [REP4-017] did not deal specifically with the protection of assets but, as stated earlier in this Chapter, Paragraph 4.24 of the SoCG stated that the Agency and the Applicant had reached agreement on the content of a land agreement which grants appropriate rights to install the proposed pipeline, which is in the process of being finalised. Paragraph 4.24 then confirms that the Agency has now formally withdrawn their objection on this point.
- 9.4.28 In its final update dated 4 September 2015 [AS-027], the Applicant states that terms for an option agreement in relation to the Agency's land holdings are currently close to being agreed. The Applicant anticipates settling the protective arrangements required by the Agency alongside this. The Applicant did not provide a copy of that option agreement nor of any confirmation of this position from the Environment Agency. However, the I note that the Environment Agency has formally withdrawn its objection in respect of the acquisition of rights and made specific reference to its position as a s.127 body in doing so. Whilst the Secretary of State may wish to request final confirmation of the completion of the option agreement, ***I conclude that the assets of the Environment Agency are, therefore, safeguarded.***

9.5 OTHER SCHEDULES

- 9.5.1 Paragraph 9.1.4, above, sets out a list of schedules.
- 9.5.2 Schedule 1 Part 1 of the draft DCO has been discussed in paragraphs 9.3.1 to 9.3.18, above. The remaining schedules are dealt with, as required, below.

9.6 SCHEDULE 1 PART 2 REQUIREMENTS

- 9.6.1 Schedule 1 Part 2 of the recommended draft DCO at Appendix D to this report contains 23 Requirements. The more important ones are those that secure detailed design approval (R.3), the construction environmental management plan (the CEMP) (R.4), and the ecological management plan (R.15).
- 9.6.2 The great majority of Requirements require the sign-off by the relevant planning authority (R.2, R.3, R.4, R.7, R.8, R.9, R.10, R.11, R.12, R.13, R.15, R.16, R.17, R.21, R.22 and R.23) with a number requiring the relevant planning authority to consult with the Environment Agency (R.4, R.12, R.13 and R.21) relevant drainage boards (R.4, R.12 and R.21) the Canal and River Trust (R.4), Yorkshire Wildlife Trust (R.15), English Heritage (R.13), the HSE (R.18), Burn Gliding Club (R.23) and the relevant highway authority (R.5, R.9, R.10 and R.11).
- 9.6.3 The ExA has considered the Requirements in relation to the tests set out in Circular 1/55, as amended, and considers that all the Requirements fulfil those tests.
- 9.6.4 The following paragraphs list Requirements which have been subject of questioning and have been altered during the course of the Examination and provide the justification for those changes. They do not cover Requirements in which wording has been tidied up with no effect on their purport or potential effectiveness.

Requirements – Interpretation

- 9.6.5 The references to the AGI Plan were removed by the Applicant following my question DCO 1.17 [PD-006] as this definition repeated that in Article 2 but in a slightly different wording.
- 9.6.6 ***I recommend the removal of this definition from the final DCO.***

Requirement 3: Detailed design approval

- 9.6.7 The changes to requirement 3 in the recommended draft DCO amend the list of works for which detailed design approval is required from the relevant local planning authority before those works listed can commence.
- 9.6.8 Works Nos. 1, 3, and 84 have been removed and the detailed alignment of the pipeline works; and the working width and temporary

compounds have been added. In its response to my question DCO 1.21 [PD-006] that Applicant stated [REP1-014] that for clarity, the Applicant proposes to amend Requirement 3 to include a requirement for the approval of the detailed pipeline route alignment and the construction corridor (including temporary working areas).

9.6.9 ***I consider that this is a useful addition to this Requirement 3 and recommend its inclusion in the final DCO.***

Requirement 4

9.6.10 First, an amendment to this requirement was proposed in my draft DCO, published in the form of a Schedule of the ExA's proposed recommended changes [PD-010]. This recognises the interests of Internal Drainage Boards and the Canal and River Trust in this respect and follows a commitment by the Applicant in para. 2.18 of its Comments on Written Representations [REP2-001] to amend this requirement in respect of the latter body.

9.6.11 Second, the following were added to the list of matters which the CEMP is required to set out written details of:

- a flood plan for the construction of the authorised development;
- measures to manage flood risk when drilling between defended and undefended areas;
- the crossing methods to be employed at each crossing, including the means by which the environmental and structural effects of that method will be controlled;
- measures for the management of construction vehicle movements around public footpaths within Burn airfield;
- measures to ensure the security of land within and accesses to the Order limits during the construction of the authorised development;

9.6.12 The first two of these additions to the specified measures and methods followed from consultation between the Applicant and the EA and were justified in the Applicant's response [REP1-014] to my question WRF 1.4 [PD-006]

9.6.13 The third of these is consequential on my question PD 1.3 [PD-006] to which the Applicant responded [REP1-014] that it notes that the detailed method of crossing is an item which is not currently secured through the DCO, and considers that it ought to be.

9.6.14 The fourth of these additions followed a request by North Yorkshire County Council for its inclusion. The Applicant stated [REP3-014] that the final addition followed on from a discussion held at the Issue Specific Hearing into the draft DCO held on 17 June 2015 at which an affected person, Mr Metcalfe, discussed security during the construction period.

9.6.15 ***I consider that these are valuable additions to Requirement 4 and recommend their inclusion in the final DCO.***

Requirement 6: Construction hours

- 9.6.16 The Applicant included additions to Requirement 6 in the draft DCO [REP3-015]. First, to make this Requirement more logical, the 'must' was changed to 'may'.
- 9.6.17 Second, the list of works which may require out-of-hours working was reduced by the omission of works which are associated with the start-up and shut-down of work and works which involve non-destructive testing.
- 9.6.18 Third, the list of works which may require out-of-hours working was added to by the inclusion of works associated the horizontal directional drilling of crossings in the locations assessed in the environmental statement.
- 9.6.19 My question DCO 2.8 requested confirmation from Durham Metropolitan Borough Council, East Riding of Yorkshire Council, North Yorkshire County Council and Selby District Council that the changes to this requirement are acceptable to them.
- 9.6.20 This was confirmed by, East Riding of Yorkshire Council [REP4-003], and Selby District Council [REP4-002].
- 9.6.21 Doncaster Metropolitan Borough Council suggested [REP4-007] an additional minor amendment – that it would be beneficial if the LPA were notified in advance of any out of hours working, which should be able to be planned for in advance. The draft Requirement contains the necessity of seeking prior written approval of the relevant planning authority.
- 9.6.22 Taking into account the foregoing, ***I consider that the proposed amendments to Requirement 6 are potentially useful and should be included in the final DCO.***

Requirement 7: Lighting management measures at the AGI site

- 9.6.23 As described in section 5.14, above, Requirement 7 was amended to add a reference to measures to regulate the times at which the permanent external lighting may operate to those matters which require the approval in writing of the relevant planning authority.
- 9.6.24 ***I recommend the inclusion of this amendment to Requirement 7 in the approved version of the DCO.***

Requirement 10: Hedgerows and trees

- 9.6.25 The Applicant amended Requirement 10(1) to require that a written plan for the management of the removal and (where appropriate) reinstatement of all hedgerows and/or trees (as applicable) should be subject to consultation with the relevant highway authority before its approval by the relevant local planning authority.

9.6.26 The amended Requirement also now states that the written plan must be consistent with and have regard to the ecological management plan to be approved pursuant to Requirement 15.

9.6.27 *I consider that the proposed amendments to Requirement 10 strengthen this Requirement and should be included in the final DCO.*

Requirement 12: Surface and foul water drainage

9.6.28 For comprehensiveness, following the preparation of a flood risk assessment addendum as described in Chapter 5, above, a reference to that addendum was added to the reference to the flood risk assessment included in the environmental statement as documents which written details of foul water drainage systems needed to be in accordance with.

9.6.29 This change was made as a consequence of a change suggested by me in my draft Development Consent Order (DCO) dated 3 July 2015 [PD-010]

9.6.30 *I consider that the proposed amendments to Requirement 12 should be included in the final DCO*

Requirement 15: Ecological management plan

9.6.31 Three changes were made by the Applicant to Requirement 15 during the course of the Examination. First, following a request in my first questions [PD-006] the Applicant committed in its Schedule of proposed changes to the draft Development Consent Order dated 17 June 2015 [REP3-005] to alter the wording slightly to clarify that the Yorkshire Wildlife Trust is not a statutory body.

9.6.32 However, I note that the Applicant's final draft DCO [REP6-002] does not contain the agreed alteration.

9.6.33 Therefore, ***I recommends that the phrase '... after consultation with Yorkshire Wildlife Trust and other relevant statutory body ...' in Requirement 15(1) be amended to read '... after consultation with Yorkshire Wildlife Trust and any relevant statutory body ...'.***

9.6.34 Second, specific mention was made to the need for consistency between the ecological management plan and the written management plan for hedgerows and trees to be approved under Requirement 10. This followed on from my question Ec 1.20 [PD-006] which pointed out the potential for overlap between Requirements 10 and 15 to which the Applicant responded [REP1-014] that it is proposed to update both Requirements 10 and 15 to specify that the documentation submitted for each must be consistent with the documentation provided for the other.

- 9.6.35 Finally, a new sub-requirement - (4) – was added to ensure that if any ecological works carried out in accordance with the approved ecological management plan are seriously damaged, destroyed, defective or are removed within five years then the undertaker must replace them.
- 9.6.36 This followed on from my question Ec 1.20 [PD-006] which asked where the monitoring and replacement measures in respect of all re-instated and planted habitats mentioned in the ES [APP-038] were secured in the draft DCO. The Applicant responded [REP1-014] that it recognises that draft Requirement 15 does not provide for making good any failures following implementation of the EMP and, therefore, proposed the amendment to this Requirement.

9.6.37 ***I consider that these amendments strengthen the effectiveness of Requirement 15 and recommend their inclusion in the final DCO.***

Requirement 17: Operational noise

- 9.6.38 Issues relating to noise are covered in section 5.15 in Chapter 5, above.
- 9.6.39 The Applicant has amended the wording of draft DCO Requirement 17 (operational noise) to respond to the concerns expressed by North Yorkshire County Council and Selby District Council that the noise limits specified in the submitted draft DCO were not achievable.
- 9.6.40 My question DCO 2.9 [PD-009] asked North Yorkshire County Council and Selby District Council whether the revised limits set in this Requirement are acceptable.
- 9.6.41 This was confirmed by Selby District Council [REP4-002].
- 9.6.42 The Requirement was also amended to require that a scheme of post-completion noise monitoring at the AGI site must be submitted to and agreed in writing with the relevant planning authority and must be implemented as approved.
- 9.6.43 I consider that the amendments made to Requirement 17 through the Examination process to be valuable and that they should be included in the final DCO.
- 9.6.44 In addition to the changes to Requirements set out above, the examination of the draft DCO led to the insertion of three new Requirements. These are described below.

Requirement 21: Flooding mitigation

- 9.6.45 A new Requirement was added which would have the effect of requiring that a scheme for the mitigation of flood risk during the construction and operation of the authorised development.

9.6.46 This was inserted at the request of the Environment Agency and the reasoning behind this is set out in section 5.9, in Chapter 5, above

9.6.47 ***I recommend the inclusion of new Requirement 21 in the approved version of the DCO.***

New Requirement 22: Local Employment

9.6.48 The circumstances leading to the insertion of new Requirement 22 are set out in section 5.19, above, in this Report.

9.6.49 My question DCO 2.10 asked Durham Metropolitan Borough Council, East Riding of Yorkshire Council, North Yorkshire County Council and Selby District Council whether this new requirement is acceptable to them.

9.6.50 This was confirmed by Doncaster Metropolitan Borough Council [REP4-007] which stated that it was 'most welcomed', East Riding of Yorkshire Council [REP4-003], North Yorkshire County Council [REP4-004] which stated that NYCC and Selby District Council agree that Requirement 22 is an appropriate mechanism to promote and support local employment opportunities.

9.6.51 ***I recommend the inclusion of new Requirement 22 in the approved version of the DCO.***

New Requirement 23: Burn Airfield

9.6.52 The circumstances leading to the insertion of new Requirement 23 are set out in section 5.5, above, in this Report.

9.6.53 The Statement of Common Ground [Para 5.30, REP4-022] shows Burn Gliding Club's agreement that this Requirement sets a suitable framework to be secure the measures set out in this SOCG

9.6.54 ***I recommend the inclusion of new Requirement 23 in the approved version of the DCO.***

9.7 DEEMED MARINE LICENCE

9.7.1 This proposed development does not require a deemed Marine Licence.

9.8 OTHER LEGAL AGREEMENTS/RELATED DOCUMENTS

9.8.1 This proposed development is not subject to any requirement for an agreement under s106 of the Town and Country Planning Act 1990 nor is it subject to any requirement for an agreement under s278 of the Highways Act 1980.

9.9 EXA'S PROPOSED CHANGES TO THE DRAFT DCO

9.9.1 This recommendations report proposes three changes to the draft DCO additional to those described in the preceding paragraphs of this Chapter.

9.9.2 I do not consider that these amendment change the meaning or effect of the draft DCO but are designed to secure matters which had already been discussed in the examination but which were not reflected in the wording of the Applicant's final draft DCO.

9.9.3 The first change recommended applies to Article 7 – Limits of Deviation.

9.9.4 This is justified and explained in paragraphs 9.4.16 onward, above. This proposes adding the phrase 'except that, for the avoidance of doubt, the downwards limits of deviation specified in sub-paragraph (2)(b) above will not apply to Work No. 57'.

9.9.5 ***I therefore recommend that Article 6 be amended to read:***

Limits of deviation

6. In carrying out and/or maintaining the authorised development the undertaker may—

(1) deviate the pipeline works laterally from the lines or situations of the authorised development shown on the works plans within the extent of the limits of deviation shown on those plans;

(2) deviate the pipeline works vertically—

(a) upwards to a limit of not less than 1.2 metres below the surface of the ground (except where ground conditions make compliance with this upwards limit impracticable in which case the upwards limit will be 0.7 metres below the surface of the ground); and

(b) to any extent downwards as may be found to be necessary as practical to a maximum depth of 20 metres below the surface of the ground

except that, for the avoidance of doubt, the upwards limits of deviation specified in sub-paragraph (2)(a) above will not apply to Works No. 83, 84, 122 or 123;

except that, for the avoidance of doubt, the downwards limits of deviation specified in sub-paragraph (2)(b) above will not apply to Work No. 57

(3) deviate Works No. 5, 6 or 7 vertically only to the maximum extent assessed in the environmental statement.

9.9.6 The second change consists of recommended amendments to Articles 20 and 23 and is set out in paragraph 8.2.14, above. ***I recommend that the following new sub-paragraph be added two Article 20:***

(3) Nothing in this article authorises the acquisition of an interest which is for the time being held by or on behalf of the Crown.

9.9.7 ***and that the following new sub-paragraph be added to Article 23:***

(9) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictive covenants affecting, an interest which is for the time being held by or on behalf of the Crown.

9.9.8 The third change relates to Requirement 15 and is set out in paragraphs 9.6.31, above which state that ***I recommends that the phrase '... after consultation with Yorkshire Wildlife Trust and other relevant statutory body ...' in Requirement 15(1) be amended to read '... after consultation with Yorkshire Wildlife Trust and any relevant statutory body ...'.***

10 SUMMARY OF FINDINGS AND CONCLUSIONS

10.1 SUMMARY OF FINDINGS AND CONCLUSIONS

- 10.1.1 The Examining Authority (ExA) considers that the application is in line with, and supports, the Government's policy objectives for energy as set out in National Policy Statements EN-1: Overarching National Policy Statement for Energy and EN-4: National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines.
- 10.1.2 I consider that this project contributes to meeting the need for energy capacity and, in doing so, will bring benefits to the area in terms of economic activity.
- 10.1.3 I consider that the application fulfils the relevant legal requirements including the UK Government's relevant international obligations.
- 10.1.4 I consider that, taking into account the mitigation measures set out in the recommended draft DCO, the implementation of the project would not put the UK in breach of the Habitats Directive and would maintain the coherence of Natura 2000.
- 10.1.5 I conclude that whilst there are some impacts of the scheme in terms of traffic, the effect on the local natural environment and visual impact, the recommended draft DCO contains sufficient measures to mitigate those impacts.
- 10.1.6 I conclude, therefore, that the benefits of this proposal would outweigh its impacts.
- 10.1.7 I conclude that the project as applied for conforms to, and supports, local planning policy.
- 10.1.8 In reaching my recommendation, full regard has been given to the three Local Impact Reports submitted and all other matters raised and representations made have been taken into account.
- 10.1.9 I am satisfied that the adverse impact of the proposed development would not outweigh its benefits.
- 10.1.10 In considering these matters I found no relevant matters of such importance that they would individually or collectively lead to a different recommendation to that set out below.
- 10.1.11 I have considered the requests for powers to compulsorily acquire land and rights which formed part of the application. I conclude that the requests for powers are proportionate and meet the tests set out in statute and in guidance.

10.2 RECOMMENDATION

- 10.2.1 For all of the above reasons and in the light of my findings and conclusions on important and relevant matters set out in the report, the ExA under the Planning Act 2008 (as amended), recommends that the Secretary of State should make the Order in the form attached.

APPENDICES

APPENDIX A: THE EXAMINATION

The list below contains the main events which occurred, and procedural decisions taken, during the examination.

Wednesday 22 April 2015	Preliminary Meeting
Wednesday 29 April 2015	<p>Issue by ExA of:</p> <p>Rule 8 Letter including:</p> <p>Examination timetable (including notifications of the dates, times and venues for an Accompanied Site Inspection (ASI) and for Issue Specific (IS), Compulsory Acquisition (CA) and Open Floor (OF) Hearings if required)</p> <p>ExA's First Written Questions</p>
Wednesday 20 May 2015	<p>Deadline 1</p> <p>Deadline for receipt by the ExA of:</p> <p>Comments on relevant representations (RRs)</p> <p>Summaries of all RR's exceeding 1500 words</p> <p>Written representations (WRs) by all interested parties</p> <p>Summaries of all WRs exceeding 1500 words</p> <p>Local Impact Report from any local authorities</p> <p>Draft Statements of Common Ground (SoCGs) requested by ExA (see Annex G) or update on progress on SoCGs</p> <p>Responses to ExA's first written questions</p> <p>Notification of wish to speak at a Compulsory Acquisition hearing</p> <p>Notification of wish to make oral representations at the issue specific hearing on the draft DCO</p> <p>Notification of wish to speak at an open floor hearing</p>

	<p>Notification by statutory parties that they wish to become interested parties</p> <p>Any comments on submissions made at, or following, the Preliminary Meeting – see Annex C</p> <p>Representations relating to the locations from which the ExA can or should view the works areas or surrounding areas where there is no other opportunity to gain public access (the ExA has already undertaken an unaccompanied site visit to the extent possible using publically accessible land)</p>
Tuesday 26 May 2015	<p>Issue by ExA of:</p> <p>Notification of Hearings and a request for information</p>
Wednesday 10 June 2015	<p>Deadline 2</p> <p>Deadline for receipt by the ExA of:</p> <p>Comments on WRs and responses to comments on RRs</p> <p>Comments on Local Impact Reports (LIRs)</p> <p>Comments on responses to ExA’s first written questions</p>
Wednesday 17 June 2015	<p>Issue Specific Hearings – Development consent Order and Compulsory Acquisition</p>
Friday 26 June 2015	<p>Deadline 3</p> <p>Deadline for receipt by the ExA of:</p> <p>Post hearings documents, including any written summary of an oral case put at any hearing and any documents/amendments requested by the ExA</p> <p>Any revised draft DCO from applicant</p> <p>Responses to any requests under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)</p>

Friday 3 July 2015	<p>Issue by ExA of:</p> <p>ExA's draft DCO</p> <p>ExA's Second Written Questions</p> <p>Notice of a variation to the timetable</p>
Friday 24 July 2015	<p>Deadline 4</p> <p>Deadline for receipt by the ExA of:</p> <p>Comments on the ExA's draft DCO</p> <p>Comments on Post Hearing Documents</p> <p>Responses to ExA's second written questions (if issued)</p> <p>Final agreed SoCGs</p> <p>Responses to any requests under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)</p>
Wednesday 5 August 2015	<p>Issue by ExA of:</p> <p>Notice of a variation to the timetable and request for further information</p>
Friday 21 August 2015	<p>Deadline 5</p> <p>Deadline for receipt by the ExA of:</p> <p>Comments on responses to ExA's second written questions (if issued)</p> <p>Responses to any requests under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)</p>
Friday 28 August 2015	<p>Deadline 6</p> <p>Deadline for receipt by the ExA of:</p> <p>Comments on responses to request under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 issued on 6 August 2015.</p>

7 September 2015	Close of Examination
8 September 2015	Issue by ExA of: Notification of Completion of the ExA's Examination

APPENDIX B: EXAMINATION LIBRARY

Thorpe Marsh Gas Pipeline – EN070003

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

Please note the following:

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

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<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the ExA</u> (includes Examining Authority's questions (ExA), s55, and post acceptance s51)	PD-xxx
<u>Local Impact Reports</u>	LIR - xxx
<u>Additional Submissions</u> (this includes anything referred to at the PM and accepted in the Rule 8 letter, correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination)	AS-xxx
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EN070003 – Thorpe Marsh Gas

Pipeline

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AoC-005	<u>Barnsley Council</u>
AoC-006	<u>Redcar and Cleveland Borough Council</u>
AoC-007	<u>Wakefield Council</u>
AoC-008	<u>Ryedale District Council</u>
AoC-009	<u>Selby District Council</u>

AoC-010	<u>Durham County Council</u>
AoC-011	<u>Rotherham Metropolitan Borough Council</u>
AoC-012	<u>Cumbria County Council</u>
AoC-013	<u>Leeds City Council</u>
AoC-014	<u>Middlesbrough Council</u>
AoC-015	<u>North Yorkshire County Council</u>
AoC-016	<u>Bradford Metropolitan District Council</u>
AoC-017	<u>Doncaster Metropolitan Borough Council</u>
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AoC-019	<u>North Lincolnshire Council</u>
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RR-002	<u>Highways Agency</u>
RR-003	<u>Selby District Council</u>
RR-004	<u>Yorkshire Wildlife Trust</u>
RR-005	<u>Burn Gliding Club</u>
RR-006	<u>Richard Glover on behalf of Yorkshire Water Services Limited</u>
RR-007	<u>Natural England</u>
RR-008	<u>ABLE UK Limited</u>
RR-009	<u>North Yorkshire County Council</u>
RR-010	<u>National Grid</u>
RR-011	<u>Environment Agency</u>
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RR-014	<u>Canal & River Trust</u>
Procedural Decisions and Notifications from the Examining Authority	
PD-001	<u>Notification of Decision to Accept Application</u>
PD-002	<u>Section 51 Advice to the Applicant dated 12 December 2014</u>
PD-003	<u>Section 55 Acceptance Checklist</u>
PD-004	<u>Rule 4 & 6 Letter</u>
PD-005	<u>Rule 8 Letter</u>
PD-006	<u>Examining Authority's first written questions</u>
PD-007	<u>Rule 13 & Rule 17 - Notification of Hearings and Request for Information</u>
PD-008	<u>Rule 8(3) Letter - Notification of variation to the timetable</u>
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PD-011	<u>Rule 8(3) & Rule 17 - Notification of variation to the examination timetable and request for further information</u>
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Additional Submissions	
Documents accepted into examination – see Annex C of the Rule 8 Letter	
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AS-001	<u>TMPL - 4.2 Revised Statement of Reasons (tracked) received on 11 February 2015</u>
AS-002	<u>TMPL - 4.2 Revised Statement of Reasons (clean) received on 11 February 2015</u>
AS-003	<u>TMPL - 4.3 Revised Funding Statement (tracked) 11 February 2015</u>
AS-004	<u>TMPL - 4.3 Revised Funding Statement (clean) received on 11 February 2015</u>
AS-005	<u>TMPL - Covering letter to submission on 11 February 2015</u>
AS-006	<u>TMPL - 4.1.1 – 4.1.4 Revised Book of Reference (clean) received on 23 April 2015</u>
AS-007	<u>TMPL - 4.1.1 – 4.1.4 Revised Book of Reference (Track Change) received on 23 April 2015</u>
AS-008	<u>TMPL - Non-Technical Summary and Updated Figure 1: Proposed Route Corridor, received on 21 April 2015</u>

AS-009	<u>TMPL - Appendix 2.3: Showing Site Allocations, received on 21 April 2015</u>
AS-010	<u>TMPL - Appendix 14.2: Details of Noise Survey, received on 21 April 2015</u>
AS-011	<u>TMPL - Appendix 16.2: Traffic Survey Locations, received on 21 April 2015</u>
AS-012	<u>TMPL - Figure 15.1: Key Landscape (sic) Features, received on 21 April 2015</u>
AS-013	<u>TMPL - Figure 15.2: Local Planning, Heritage and Nature Conservation Designations, received on 21 April 2015</u>
AS-014	<u>TMPL - Figure 15.3: Landscape Character Areas, received on 21 April 2015</u>
AS-015	<u>TMPL - Figure 15.4: Assessment Viewpoints, received on 21 April 2015</u>
AS-016	<u>TMPL - Applicant's response to section 51 advice issued on 12 December 2014 and sample letter sent out to additional consultees</u>
AS-017	<u>TMPL - Applicant's updates in relation to Preliminary Meeting Agenda Item 5 (containing progress with the acquisition of rights by agreement; Crown Land; s127 and 138 and Protective Provisions) - handed in at the Preliminary Meeting.</u>
AS-018	<u>TMPL - Applicant's position on progress on Statement of Common Grounds (SoCG) - handed in at the Preliminary Meeting</u>
<i>Other submissions</i>	
AS-019	<u>Humberside Archaeology Partnership - submission received during relevant representation stage</u>
AS-020	<u>The Shire Group of Internal Drainage Boards - submission to the Preliminary Meeting, received on 9 April 2015</u>
AS-021	<u>North Yorkshire County Council - submission to the Preliminary Meeting, received on 15 April 2015</u>
AS-022	<u>North Yorkshire County Council - submission to the Preliminary Meeting, received on 21 April 2015</u>
AS-023	<u>National Grid - Submission to the Preliminary Meeting, received on 21 April 2015</u>
<i>Submissions received before the end the Examination</i>	
AS-024	<u>National Grid - Submission withdrawing objection to the Development Consent Order as received on 4 September 2015</u>
AS-025	<u>TMPL - Revised Book of Reference (Clean) as received on 04 September 2015</u>
AS-026	<u>TMPL - Revised Book of Reference - Part 3 of 5 (Track changes) as received on 04 September 2015</u>
AS-027	<u>TMPL - Updates in relation to Protective Arrangements as received on 04 September 2015</u>
Local Impact Reports (LIR)	
LIR-001	<u>Doncaster Metropolitan Borough Council (includes R1Qs) - Submitted to Deadline 1</u>
LIR-002	<u>Joint LIR between Selby District Council and North Yorkshire County Council - Submitted to Deadline 1</u>
LIR-003	<u>East Riding of Yorkshire Council - Late submission to Deadline 1 and accepted by the ExA into the examination</u>

Events and Hearings	
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EV-001	<u>Preliminary Meeting Note</u>
EV-002	<u>Preliminary Meeting Audio Recording</u>
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Issue Specific Hearing (ISH) and Compulsory Acquisition Hearing – 17 June 2015	
EV-003	<u>Agenda for Issue Specific Hearing on draft Development Consent Order (DCO) – 17 June 2015</u>
EV-004	<u>Doncaster Metropolitan Borough Council - Request to attend an ISH hearing and update on the draft Statement of Common Ground</u>
EV-005	<u>North Yorkshire County Council - Request to attend an ISH hearing</u>
EV-006	<u>Agenda for Compulsory Acquisition Hearing – June 2015</u>
EV-007	<u>Environment Agency - Request to attend the CA Hearing</u>
EV-008	<u>Environment Agency - Notification of non-attendance at the CA Hearing</u>
EV-009	<u>Mr and Mrs Metcalfe - Request to attend hearings</u>
EV-010	<u>TMPL and National Grid - A joint statement between NG and the Applicant, submission to the hearing held on 17 June 2015</u>
EV-011	<u>Highways England - Submission to ISH on draft DCO (17 June 2015) including R1Qs (late submission to Deadline 1) and request to attend the hearings</u>
EV-012	<u>Audio recording from ISH on draft DCO - 17 June 2015 - Part 1</u>
EV-013	<u>Audio recording from ISH on draft DCO - 17 June 2015 - Part 2</u>
EV-014	<u>Audio recording from CA Hearing - 17 June 2015 - Part 1</u>
EV-015	<u>Audio recording from CA Hearing - 17 June 2015 - Part 2</u>
EV-016	<u>Actions arising from the ISH on draft DCO held on 17 June 2015</u>
EV-017	<u>Actions arising from the CA Hearing held on 17 June 2015</u>
Representations	

Deadline 1 – 20 May 2015

Deadline for receipt by the ExA of:

- *Comments on relevant representations (RRs)*
- *Summaries of all RRs exceeding 1500 words*
- *Written representations (WR) by all interested parties*
- *Summaries of all WRs exceeding 1500 words (SWRs)*
- *Local Impact Report from any local authorities (LIR)*
- *Draft Statements of Common Ground (SoCG) requested by ExA (see Annex G) or update on progress on SoCG Responses to ExA's first written questions (R1Qs)*
- *Notification of wish to speak at a Compulsory Acquisition hearing*
- *Notification of wish to make oral representations at the issue specific hearing on the draft DCO*
- *Notification of wish to speak at an open floor hearing*
- *Notification by statutory parties that they wish to become interested parties*
- *Any comments on submissions made at, or following, the Preliminary Meeting – see Annex C*
- *Representations relating to the locations from which the ExA can or should view the works areas or surrounding areas where there is no other opportunity to gain public access (the ExA has already undertaken an unaccompanied site visit to the extent possible using publically accessible land)*

REP1-001	<u>Canal and River Trust (WR and R1Qs)</u>
REP1-002	<u>Chapel Haddlesey Parish Council (WR)</u>
REP1-003	<u>Environment Agency (R1Qs)</u>
REP1-004	<u>Environment Agency - Update on SoCG and request to make a representation at the hearings</u>
REP1-005	<u>Environment Agency (SWRs and WR)</u>
REP1-006	<u>GTC: Email on behalf of Independent Power Networks Ltd., Quadrant Pipelines Ltd., The Electricity Network Company Ltd., GTC Pipelines Ltd., and Independent Pipelines Ltd. email received to Deadline 1</u>
REP1-007	<u>Lower Aire & Don Consortia Drainage Boards (WR)</u>
REP1-008	<u>Ms C Holliday (WR)</u>
REP1-009	<u>National Grid (WR)</u>
REP1-010	<u>Natural England (WR and R1Qs)</u>
REP1-011	<u>North Yorkshire County Council (R1Qs and update on Statement of Common Ground)</u>
REP1-012	<u>Selby District Council (R1Qs)</u>
REP1-013	<u>Yorkshire Wildlife Trust (R1Qs)</u>
REP1-014	<u>TMPL - Covering letter, R1Qs and Appendices</u>
REP1-015	<u>TMPL - Draft Archaeological Written Scheme of Investigation in response to question ACH1.3</u>
REP1-016	<u>TMPL - Applicant's progress note on Statements of Common Ground</u>

REP1-017	<u>TMPL - Environmental Statement: Appendix 12.1 - Figure 1 in response to question ES1.1 (f) – Revised Archaeology Plans</u>
REP1-018	<u>TMPL - Environmental Statement: Appendix 12.2 - Figure 2 in response to question ES1.1 (g) – Revised Archaeology Plans</u>
REP1-019	<u>TMPL - Figure 15.5: Pipe Dump Landscape Plan in response to question ES1.1</u>
REP1-020	<u>TMPL - Draft Ecological Management Plan in response to question Ec1.20</u>
REP1-021	<u>TMPL - Preliminary Route Options Plan (Rev 0) in response to the question ES1.3</u>
REP1-022	<u>TMPL - Environmental Statement: Appendix 14.2 in response to question ES1.1</u>
REP1-023	<u>TMPL - 2.1 Revised Land Plan showing a realigned footprint in Doncaster on Sheet 10 in response to question NV1.2 and ES 1.4</u>
REP1-024	<u>TMPL - 2.2 Revised Works Plans amended to show a realigned footprint in Doncaster on Sheet 10, in response to question NV1.2 and ES 1.4</u>
REP1-025	<u>TMPL - 2.2 Revised Works Plans including Traffic Plan (Part 1), plan showing the project components in response to question ES1.1(a) and (b)</u>
REP1-026	<u>TMPL - 2.2 Revised Works Plans including Traffic Management Plan (Part 2), plan showing the project components in response to question ES1.1(a) and (b)</u>
REP1-027	<u>TMPL - 2.2 Revised Works Plans including Traffic Management Plan – Part 1, response to question ES1.3</u>
REP1-028	<u>TMPL - 2.2 Revised Works Plans including Traffic Management Plan – Part 2, response to question ES1.3</u>
REP1-029	<u>TMPL - 2.3 Revised Public Rights of Way Plan, amended to show a realigned footprint in Doncaster on Sheet 10, in response to question NV1.2 and ES 1.4</u>
REP1-030	<u>TMPL - 3.1 Draft Development Consent Order (Clean) – Version 2</u>
REP1-031	<u>TMPL - 3.1 Revised draft Development Consent Order (Comparison) – Version 2</u>
REP1-032	<u>TMPL - 3.1 Revised draft Development Consent Order (Track Change) – Version 2</u>
REP1-033	<u>TMPL - Pipeline Feasibility Study Report (Rev 0), in response to question PAR1.3</u>
REP1-034	<u>TMPL - Route Options Plan (Rev 0)</u>
REP1-035	<u>TMPL - Applicant’s Signed Statement of Common Ground with Natural England</u>
REP1-036	<u>TMPL - Applicant’s Signed Statement of Common Ground with Able UK Ltd</u>
REP1-037	<u>TMPL - Applicant’s Site Location Plan showing all project components in response to Question ES1.1 – Part 1 – late submission</u>
REP1-038	<u>TMPL - Applicant’s Site Location Plan showing all project components in response to Question ES1.1 – Part 2 – late submission</u>
REP1-039	<u>East Riding of Yorkshire Council (R10s) – Late Submission</u>
REP1-040	<u>East Riding of Yorkshire Council - Email from the ERYC regarding submission received to Deadline 1</u>

Deadline 2 – 10 June 2015

Deadline for receipt by the ExA of:

- *Comments on WRs (CWRs) and responses to comments on RRs (RCRRRs)*
- *Comments on Local Impact Reports (LIRs) (CLIRs)*

REP2-001 [TMPL - CWRs, CLIRs and CR1Qs](#)

Deadline 3 – 26 June 2015

Deadline for receipt of:

- *Post hearings documents, including any written summary of an oral case put at any hearing and any documents/amendments requested by the ExA*
- *Any revised draft DCO from applicant*
- *Responses to any requests under Rule 17 (R17) of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)*

[View the documents received relating to this deadline](#)

REP3-001	TMPL - Email correspondence with Environment Agency (EA) which confirms no impediment to granting temporary water abstraction license(s) following deletion of Article 18
REP3-002	TMPL - Email correspondence with The Canal and River Trust (CRT) which confirms that they would look to enter an agreement to allow a temporary water abstraction license(s) following deletion of Article 18
REP3-003	TMPL - Update note in relation to the Acquisition of Rights, Compulsory Acquisition and Affected Persons, handed in at the hearing held on 17 June 2015
REP3-004	TMPL - Update note on progress with Statement of Common Ground, handed in at the hearing held on 17 June
REP3-005	TMPL - Schedule of proposed changes to the draft DCO, handed in at the hearing held on 17 June 2015
REP3-006	TMPL - Proposed Camblesforth Off-take Above Ground Installation Flood Risk Assessment Addendum
REP3-007	TMPL - Proposed Site Office and Pipe Dump (Burn Gliding Club Plan)
REP3-008	TMPL - Revised Book of Reference (Clean) as received on 18 June 2015
REP3-009	TMPL - Revised Book of Reference (Track Change) as received on 18 June 2015
REP3-010	TMPL - Revised Book of Reference (Clean) as received on 26 June 2015
REP3-011	TMPL - Revised Book of Reference (Track Change) as received on 26 June 2015
REP3-012	TMPL - Transfer agreement between the Secretary of State and Highways England
REP3-013	TMPL - Note of Oral Representations at Compulsory Acquisition Hearing held on 17 June 2015

REP3-014	TMPL - Note of Oral Representations at Issue Specific Hearing on draft Development Consent Order held on 17 June 2015
REP3-015	TMPL - 3.1 Revised Draft Development Consent Order (Clean) – Version 3
REP3-016	TMPL - 3.1 Revised Draft Development Consent Order (Track Change) – Version 3
REP3-017	TMPL - 3.1 Revised Draft Development Consent Order (Schedule of Changes) – Version 3
REP3-018	Environment Agency - Confirmation of withdrawal of the EA's objections in relation to Compulsory Acquisition and section 127
REP3-019	Environment Agency - EA's comments on the Applicant's Flood Risk Assessment Addendum (Proposed Camblesforth Off-take Above Ground Installation) dated June 2015
REP3-020	TMPL - ES Appendix 11.2 Badger Plan (Confidential)
<p>Deadline 4 – 24 July 2015 Deadline for receipt of:</p> <ul style="list-style-type: none"> • <i>Comments on the ExA's draft DCO (CDCO)</i> • <i>Comments on Post Hearing Documents (CPHDS)</i> • <i>Responses to ExA's second written questions (if issued) (R2Qs)</i> • <i>Final agreed SoCGs</i> • <i>Responses to any requests under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)</i> <p>View the documents received relating to this deadline</p>	
REP4-001	Network Rail Infrastructure Ltd – Submission including objection to compulsory acquisition
REP4-002	Selby District Council (R2Qs)
REP4-003	East Riding of Yorkshire Council (R2Qs)
REP4-004	North Yorkshire County Council (R2Qs, CDCO, RAPH and update on Statement of Common Ground)
REP4-005	Highways England (R2Qs)
REP4-006	Canal and River Trust (R2Qs)
REP4-007	Doncaster Metropolitan Borough Council (R2Qs)
REP4-008	TMPL - Cover email to the Deadline 4 including update on Statement of Common Ground with Highways England and Canal & River Trust
REP4-009	TMPL – R2Qs including an updated note on land and protective provisions
REP4-010	TMPL - Summary of Environmental Mitigation Measures referred to in the Environmental Statement
REP4-011	TMPL - 3.2 Revised Explanatory Memorandum (Clean)

REP4-012	<u>TMPL - 3.2 Revised Explanatory Memorandum (Comparison)</u>
REP4-013	<u>TMPL - Revised Outline Construction Environmental Management Plan (OCEMP)</u>
REP4-014	<u>TMPL - Wainstones Investments Limited Financial Statements</u>
REP4-015	<u>TMPL - Carlton Power Limited Financial Statements</u>
REP4-016	<u>TMPL - Update note on Statements of Common Ground</u>
REP4-017	<u>TMPL - Statement of Common Ground with Environment Agency</u>
REP4-018	<u>TMPL - Statement of Common Ground with Yorkshire Wildlife Trust</u>
REP4-019	<u>TMPL - Statement of Common Ground with Doncaster Metropolitan Borough Council</u>
REP4-020	<u>TMPL - Correspondence with Yorkshire Waters Legal Team, which confirms agreement to asset protection matters</u>
REP4-021	<u>TMPL - Statement of Common Ground with East Riding of Yorkshire Council</u>
REP4-022	<u>TMPL - Statement of Common Ground with Burn Gliding Club</u>
REP4-023	<u>TMPL - Statement of Common Ground with North Yorkshire County Council and Selby District Council</u>
REP4-024	<u>TMPL - Statement of Common Ground with Humberside Archaeology Partnership</u>
Deadline 5 – 21 August 2015	
Deadline for receipt of:	
<ul style="list-style-type: none"> • Comments on responses to ExA’s second written questions (if issued) • Responses to any requests under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) 	
REP5-001	<u>TMPL - Statement of Common Ground between the applicant, North Yorkshire County Council and Selby District Council</u>
REP5-002	<u>TMPL - Updated note on progress with discussions on Protective Provisions</u>
REP5-003	<u>TMPL - Response to the Examining Authority's request for further information</u>
REP5-004	<u>Yorkshire Wildlife Trust - Response to the Examining Authority's request for further information</u>
REP5-005	<u>Environment Agency - Response to the Examining Authority's request for further information</u>
REP5-006	<u>John Neville Stones - Submission to Deadline 5</u>
REP5-007	<u>NHS England - Submission to the Deadline 5</u>
REP5-008	<u>Environment Agency - Late submission regarding Environmental Enhancements</u>

Deadline 6 – 28 August 2015

Deadline for receipt of:

- Comments on responses to request under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 issued on 6 August 2015

REP6-001	<u>TMPL - Applicant's Response to Deadline 6</u>
REP6-002	<u>TMPL - Final Draft Development Consent Order</u>
REP6-003	<u>TMPL - Draft Development Consent Order comparison – Submission version and Final draft</u>
REP6-004	<u>National Grid and TMPL - David Wood of Hogan Lovells International LLP confirming Joint Statement between National Grid and the Applicant</u>
Other Documents	
OD-001	<u>Certificate of compliance with section 56 of the Planning Act 2008</u>
OD-002	<u>Certificate of compliance with section 59 of the Planning Act 2008</u>
OD-003	<u>TMPL – Rule 13 Hearing Notification – June 2015</u>
OD-004	<u>Scoping Opinion adopted by the Secretary of State on 5 December 2012</u>
OD-005	<u>Regulation 24 Transboundary Screening Document</u>

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
ACH-1 (2,3,4 etc)	ExA's Archeology and cultural Heritage questions
AGI	Above Ground Installation
AOD	Above Ordnance Datum
APP	Application document
AS	Additional Submission
BS	British Standard
BoR	Book of Reference
CA	Compulsory Acquisition
CDM	Construction, Design and Management (regulations 2015)
CEMP	Construction Environmental Management Plan
CCS	Carbon Capture and Storage
CCGT	Combined Cycle Gas Turbine
CRT	Canal and River Trust
CTMP	Construction Traffic Management Plan
DCLG	Department for Communities and Local Government
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DECC	Department of Energy and Climate Change
Defra	Department for Environment, Food and Rural Affairs
DMBC	Doncaster Metropolitan Borough Council
EA	Environment Agency
EEA	European Economic Area
EC	European Community
EEC	European Economic Community
EHS	Environmental, Health and Safety (procedures)
EIA	Environmental Impact Assessment
EMP	Ecological Management Plan
EN-1 (2,3,4 etc)	National Policy Statement for Energy
EPA	Environmental Protection Act 1990
EPS	European Protected Species
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EPUK	Environmental Protection UK
ERYC	East Riding of Yorkshire Council
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FRA	Flood Risk Assessment
GRF	Gas Reception Facility
HAP	Humber Archaeology Partnership
HRA	Habitat Regulations Assessment
HSE	Health and Safety Executive
HGV	Heavy Goods Vehicle
IAQM	Institute of Air Quality Management
IDB	Internal Drainage Board

Abbreviation or usage	Reference
IP	Interested Party
ISH	Issue Specific Hearing
LIR	Local Impact Report
LPA	Local Planning Authority
LSE	Likely Significant Effects
LVA -1 (2,3,4 etc)	ExA's Landscape and Visual Amenity questions
LWS	Local Wildlife Site
MBC	Metropolitan Borough Council
MMO	Marine Management Organisation
MOC	Minimum Off-take Connection
NCA	National Character Area
NE	Natural England
NERC Act	Natural Environment and Rural Communities Act 2006
NGET	National Grid Electricity Transmission Limited
NGG	National Grid Gas Plc
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSER	No Significant Effects Report
NTS	National Transmission System
OCEMP	Outline Construction Environmental Management Plan
PA2008	Planning Act 2008
PD	Procedural Decision
PIG	Pipeline Internal Gauging
PM	Preliminary Meeting
PRoW	Public Rights of Way
PSR	Pipeline Safety Regulations 1996
PWA	Pipeline Works Authorisation
NPPF	National Planning Policy Framework
NSIP	Nationally Significant Infrastructure Project
NYCC	North Yorkshire County Council
RBMPs	River Basin Management Plans
REP	Representation
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SE-1 (2,3,4 etc)	ExA's Socio-Economic questions
SEM -1 (2,3,4 etc)	ExA's Safety and Environmental Management questions
SDC	Selby District Council
SNCB	Statutory Nature Conservation Body
SOCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest
SUDS	Sustainable Urban Drainage System
WFD	Water Framework Directive
WRF-1 (2,3,4 etc)	ExA's Water Resources and Flood questions
WSI	Written Scheme of Investigation

Abbreviation or usage	Reference
YWT	Yorkshire Wildlife Trust

APPENDIX D: DRAFT DEVELOPMENT CONSENT ORDER

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201[] No. []

INFRASTRUCTURE PLANNING

The Thorpe Marsh Gas Pipeline Order 20[]**

Made - - - - []
Coming into force - - []

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SCHEDULES

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PART 4 — For the Protection of Operators of Electronic Communications Code Networks

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

The application has been examined by a single appointed person who has made a report to the Secretary of State under section 83(1) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the single appointed person, has taken into consideration the environmental information in accordance with regulation

^(a) 2008 c.29.

3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009((a)) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application with modifications that in the opinion of the Secretary of State do not make any substantial change to the proposals.

Citation and Commencement

1. This Order may be cited as the Thorpe Marsh Gas Pipeline Order 20[**] and will come into force on [**] 20[**].

Interpretation

2.—(1) In this Order—

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

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

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(e);

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

(a) 2009 c.2263.

(b) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(c) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991(c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(d) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22): Sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51): Section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29): Sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37): Section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177: Section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51): Section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(e) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

(f) 1990 c.8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 c. 21, and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule

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

“the 1997 Regulations” means the Hedgerows Regulations 1997(b);

“the 2008 Act” means the Planning Act 2008;

“AGI plan” means the plan certified as the AGI plan by the Secretary of State for the purposes of this Order;

“AGI site” means the land coloured green on sheet 2 of the works plan and shown on the AGI plan and comprising Works No. 5, 6 and 7;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“Crown land plan” means the plan certified as the Crown land plan by the Secretary of State for the purposes of this Order;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“flood risk assessment addendum” means the document certified as the flood risk assessment addendum by the Secretary of State for the purposes of this Order;

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

“Highways England” means Highways England Company Limited (company registration number 9346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ or its successor from time to time as the strategic highways company for England;

“historic environment plan” means the plan certified as the historic environment plan by the Secretary of State for the purposes of this Order;

“important hedgerows plan” means the plan certified as the important hedgerows plan by the Secretary of State for the purposes of this Order;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of development referred to in article 6 (limits of deviation);

“maintain” includes to inspect, maintain, adjust, alter, repair, test, cleanse, re-lay, divert, make safe, decommission, reconstruct, demolish, abandon, replace, remove and improve the authorised development or any of its parts and any derivative of “maintain” should be construed accordingly and includes diversion of the authorised development in accordance with article 5 (maintenance of authorised development) and article 6 (limits of deviation) but not so as to vary from the description of the authorised development in Schedule 1 to this Order and only to the extent assessed in the environmental statement;

“National Grid Gas” means National Grid Gas plc (company registration no. 02006000) or any successor company performing the same function;

17. to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.

(a) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(b) SI 1997/1160.

“nature conservation plan” means the plan certified as the nature conservation plan by the Secretary of State for the purposes of this Order;

“Order land” means the land shown on the land plan which is within the limits of land and interests in or rights over land to be acquired and/or used and described in the book of reference;

“Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“outline construction environmental management plan” means the document certified as the outline construction environmental management plan by the Secretary of State for the purposes of this Order;

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order;

“outline public rights of way plan” means the document certified as the outline public rights of way plan by the Secretary of State for the purposes of this Order;

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

“pipe dump plan” means the plan certified as the pipe dump plan by the Secretary of State for the purposes of this Order;

“pipeline works” means Works No. 9, 10, 11, 13, 14, 15, 19, 20, 23, 24, 26, 27, 28, 31, 33, 34, 35, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51, 53, 55, 57, 58, 59, 60, 62, 63, 64, 65, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 87, 89, 90, 91, 92, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 109, 110, 111, 113, 114, 115, 118, 119, 121, 122 and 123 as described in Part 1 of Schedule 1 (authorised development) to this Order;

“public rights of way plan” means the plan certified as the public rights of way plan by the Secretary of State for the purposes of this Order;

“relevant highway authority” means Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council or North Yorkshire County Council as appropriate for the area in which the relevant highway to which the relevant provision of this Order applies is situated or any successors to their statutory functions as highway authority and, in the case of trunk roads, the relevant highway authority means the Secretary of State for Transport;

“relevant local authority” means Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council or North Yorkshire County Council as appropriate for the area in which the land to which the provisions of this Order apply is situated or any successors to their statutory functions or any joint committee they choose to establish pursuant to section 102 and 106 of the Local Government Act 1972(b);

“relevant planning authority” means Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council or Selby District Council as appropriate for the area in which the land to which the provisions of this Order apply is situated or any successors to their statutory functions as planning authorities;

“requirements” means those matters set out in Part 2 of Schedule 1 (requirements) to this Order;

“runway 07/25” means the runway identified as runway 07/25 on the runway plan;

“runway plan” means the plan certified as the runway plan by the Secretary of State for the purposes of this Order;

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

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 1972 c.70.

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“temporary compounds” means Works No. 1, 3, 8, 16, 18, 21, 22, 25, 29, 32, 36, 42, 52, 56, 61, 66, 82, 88, 93, 106, 108, 112, 116 and 120 as described in Part 1 of Schedule 1 (authorised development) to this Order;

“Thorpe Marsh Power Limited” means Thorpe Marsh Power Limited (company registration number 06637894) whose registered office is at Carlton House, 4 Ellerbeck Way, Stokesley Business Park, Stokesley, North Yorkshire TS9 5JZ;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

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

“undertaker” means Thorpe Marsh Power Limited (company registration number 06637894) whose registered office is at Carlton House, 4 Ellerbeck Way, Stokesley Business Park, Stokesley, North Yorkshire TS9 5JZ or its successor body or any other person to whom Thorpe Marsh Power Limited transfers any or all of the benefit of this Order;

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

“working width” means the land coloured blue and yellow and labelled “working width” on the works plan;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

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

(5) Unless otherwise stated, a reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

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

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to the requirements in Part 2 of Schedule 1 (requirements) to this Order the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Operation and use of the authorised development

4. The undertaker may at any time operate and use the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

Maintenance of authorised development

5. The undertaker may at any time maintain the authorised development within the Order limits and, in so far as the maintenance involves diversion and such diversion would not be contrary to the provisions of this Order and the requirements in Part 2 of Schedule 1 (requirements) to this Order, divert the authorised development within the limits of deviation but, in each case, not so as to vary from the description of the authorised development in Schedule 1 to this Order and only to the extent assessed in the environmental statement.

Limits of deviation

6. In carrying out and/or maintaining the authorised development the undertaker may—

(1) deviate the pipeline works laterally from the lines or situations of the authorised development shown on the works plans within the extent of the limits of deviation shown on those plans;

(2) deviate the pipeline works vertically—

(a) upwards to a limit of not less than 1.2 metres below the surface of the ground (except where ground conditions make compliance with this upwards limit impracticable in which case the upwards limit will be 0.7 metres below the surface of the ground); and

(b) to any extent downwards as may be found to be necessary as practical to a maximum depth of 20 metres below the surface of the ground

except that, for the avoidance of doubt, the upwards limits of deviation specified in sub-paragraph (2)(a) above will not apply to Works No. 83, 84, 122 or 123;

except that, for the avoidance of doubt, the downwards limits of deviation specified in sub-paragraph (2)(b) above will not apply to Work No. 57

(3) deviate Works No. 5, 6 or 7 vertically only to the maximum extent assessed in the environmental statement.

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order are to have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

8.—(1) The undertaker may, with the consent of the Secretary of State—

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

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

except where paragraph (3) applies in which case no such consent will be required.

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

(3) This paragraph applies to a transfer to National Grid Gas of any part of the benefit of this Order and those obligations and liabilities of this Order and any related statutory rights which relate to, or any which may be necessary or expedient for or ancillary to, the construction, operation, maintenance and diversion of Work No. 5.

Application and modification of the 1997 Regulations

9. The provisions of regulation 6(1) of the 1997 Regulations apply to the development consent granted by this Order except that the regulation is modified so as to read for the purposes of this Order only as if there were inserted after sub-paragraph (j) the following—

“(k) or for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”

Defence to proceedings in respect of statutory nuisance

10.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order will be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include a statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), will not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Procedure in relation to certain approvals etc.

11.—(1) Where an application is made to the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of this Order, such consent, agreement or approval must, if given, be given in writing and must not be unreasonably withheld.

(2) In relation to all agreements or approvals granted, refused or withheld in relation to requirements, the following provisions apply so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission as if the relevant requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(3) For the purposes of paragraph (2) a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(4) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989(c).

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(c) 1989 c.29.

Street works

12.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

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

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

(3) The provisions of sections 54 (advance notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1) and, in relation to the M62, reasonable conditions may be imposed by Highways England pursuant to Schedule 3 of the 1991 Act, provided that—

- (a) section 61(1) of the 1991 Act (under which the consent of the street authority is required for the placing of apparatus in a protected street) does not apply to the placing of apparatus in the course of the authorised development;
- (b) section 62(2) of the 1991 Act (power following the designation of a protected street to require removal or repositioning of apparatus already placed in the street) does not, unless otherwise agreed between the street authority and the undertaker, apply in relation to apparatus placed in the course of the authorised development; and
- (c) section 62(4) of the 1991 Act (power to give directions with respect to works in progress where a designation as a protected street commences or ceases) does not, unless otherwise agreed between the street authority and the undertaker, apply in relation to the authorised development.

(4) In this article “apparatus” and “street works” have the same meanings as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks and electricity cabinets.

Temporary stopping up of streets

13.—(1) Subject to sub paragraph (4) below, the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

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

(2) Without prejudice to paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

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

(4) The undertaker may not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.

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

Temporary stopping up of public rights of way

14. The undertaker may, in connection with the carrying out of the authorised development, temporarily stop up, alter or divert each of the public rights of way specified in column (2) of Schedule 3 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the public rights of way plan.

Access to works

15. The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 4 (access to works).

Agreements with street authorities

16.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order;
- (b) the carrying out in or under the street of any of the works referred to in article 12(1) (street works).

(2) Such agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Discharge of water

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

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

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

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

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

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension; but nothing in this Order requires the undertaker to maintain a watercourse or public sewer or drain.

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and amended by section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 38 of the Environmental Permitting (England & Wales) Regulations 2010(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in Environmental Permitting (England & Wales) Regulations 2010 have the same meaning as in those Regulations.

Authority to survey and investigate the land

18.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

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

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

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

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

(4) No trial holes, trial pits or boreholes may be made under this article—

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

but such consent must not be unreasonably withheld.

(5) As soon as reasonably practicable following the exercise of any powers under paragraph (1), any apparatus must be removed and the land restored to the reasonable satisfaction of the owners of the land.

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

Removal of human remains

19.—(1) In this article “the specified land” means that land within the Order limits.

(a) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (SI 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (SI 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (SI 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

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

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

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question will be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

- (a) send to the Registrar General a certificate of re-interment or cremation giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) send to the relevant local authority mentioned in paragraph (4) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9).

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

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

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

Compulsory acquisition of land

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

(2) This article is subject to article 22 (time limit for exercise of authority to acquire land compulsorily), paragraph (2) of article 23 (compulsory acquisition of rights), article 26 (acquisition of subsoil only) and paragraph (9) of article 29 (temporary use of land for carrying out the authorised development).

(3) Nothing in this article authorises the acquisition of an interest which is for the time being held by or on behalf of the Crown.

Compulsory acquisition of land – incorporation of the mineral code

21. Parts 2 and 3 of Schedule 2 to the 1981 Act (minerals) are incorporated in this Order subject to the modifications that—

- (1) paragraph 8(3) is not incorporated; and
- (2) for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) will cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

23.—(1) The undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(a) 1857 c.81.

(2) Subject to the provisions of this article, article 24 (private rights), article 29 (temporary use of land for carrying out the authorised development), article 30 (temporary use of land for maintaining the authorised development) and article 31 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 5 (land in which new rights, etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights or the imposition of restrictive covenants affecting the land for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1), the undertaker cannot be required to acquire a greater interest in that land.

(4) Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker the undertaker may, with the consent of the Secretary of State, transfer to the statutory undertaker in question the power to acquire such rights or impose such covenants except where paragraph (8) applies in which case no such consent will be required.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(8) This paragraph applies to a transfer to National Grid Gas of the powers to acquire rights or impose restrictive covenants under paragraph (1) which relate to, or which may be necessary or expedient for or ancillary to, the construction, operation, maintenance and diversion of Work No.5.

(9) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictive covenants affecting, an interest which is for the time being held by or on behalf of the Crown.

Private rights

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

- (a) As from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) On the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this article (and including those lands specified in column (1) of Schedule 5 (land in which new rights, etc. may be acquired)) will be extinguished in so far as their continuance would be inconsistent with the exercise of the right—

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

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land,
- (ii) the undertaker's appropriation of it,
- (iii) the undertaker's entry onto it, or,
- (iv) the undertaker's taking temporary possession of it,

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

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

(7) If any such agreement as is referred to in paragraph (6)(b)—

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

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

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

25.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, has effect with the following modifications.

(3) In section 1 (acquisition of Act), for subsection (2) there is substituted —

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

(4) In section 3 (preliminary notices), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land or right over land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(5) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(6) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(7) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(9) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land or rights over land under this Order.

Acquisition of subsoil only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 27 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

27.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat will, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; and
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat will be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

28.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

29.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 7 (A: land of which temporary possession may be taken) for the purposes specified in relation to that land in column (2) of that Schedule;
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct any works, temporary works (including the provision of means of access), security fencing, structures and buildings on that land;
- (d) use the land for the purposes of a construction working site with access to the construction working site in connection with the authorised development; and
- (e) construct or carry out any works for the purposes of the authorised development, or to use the land, or to carry out any mitigation works or operations required by the relevant planning authority as a condition to discharging any of the requirements in Part 2 (Requirements) of Schedule 1.

(2) The undertaker may, for the purpose of obtaining access to construct the authorised development—

- (a) make temporary use, in common with other persons enjoying rights over that land, of access routes over the land specified in Schedule 7 (B: land over which temporary access may be taken where others use the same); and
- (b) carry out any necessary works to improve those access routes (and for that purpose only take temporary possession of the area in which the work is to be carried out for the duration of that work).

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the relevant part of the authorised development unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must (subject to paragraph (b) of Requirement 4) remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker will not be required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any works have been constructed under paragraph 1(e), if the owners and occupiers consent to the works remaining; or
- (c) remove any ground strengthening works which have been placed in that land to facilitate the construction of the authorised development.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not precluded from—

- (a) acquiring new rights over or imposing restrictive covenants on any part of that land including the subsoil under article 23 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) on that land under article 25 (acquisition of subsoil only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land or rights over land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) Nothing in this article will prevent the taking of temporary possession more than once in relation to any land specified in Schedule 7.

Temporary use of land for maintaining the authorised development

30.—(1) Subject to paragraph (2) the undertaker may at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land or rights over land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

the requirement to serve not less than 28 days' notice under paragraph (3) does not apply and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

(12) In this article “the maintenance period” means, in relation to any part of the authorised development, the period of 5 years beginning with the date on which the authorised development is first brought into operational use for the purpose for which it was designed.

Statutory undertakers

31. Subject to the provisions of Schedule 9 (Protective Provisions), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers as specified in column 1 of Schedule 5 to this Order (land in which new rights etc. may be acquired) as may be required for the purpose specified in relation to that land in column 2 of that Schedule;
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land and/or described in the book of reference;
- (c) extinguish the rights of, and/or remove, and/or reposition the apparatus belonging to statutory undertakers and other like bodies over or within the Order land; and
- (d) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain and/or remove the same, and install such service media under and/or over the existing apparatus needed in connection with the authorised development.

Recovery of costs of new connections

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

Application of landlord and tenant law

33.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants is to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

34. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Guarantees in respect of payment of compensation

35.—(1) The undertaker must not begin to exercise the powers of compulsory acquisition set out in Articles 20 and 22–32 of this Order in relation to any land unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land or an alternative form of security for that purpose is in place which has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(3) The guarantee or alternative form of security must be in place for a maximum of 15 years from the date that the relevant power of the Order is exercised.

No double recovery

36. Compensation will not be payable in respect of the same matter both under this Order and any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Felling or lopping of trees and removal of hedgerows

37.—(1) Save for any trees subject to tree preservation orders which are dealt with pursuant to article 38 (trees subject to tree preservation orders), the undertaker may fell, lop or prune any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development or from constituting a danger to persons constructing, maintaining, operating or using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits that may be required for the purposes of the carrying out of the authorised development; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 8 (removal of important hedgerows) and identified on the important hedgerows plan.

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the 1997 Regulations.

Trees subject to tree preservation orders

38.—(1) The undertaker may fell, lop or prune any tree within the Order limits subject to a tree preservation order which was made after 18 November 2014, or cut back its roots, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) will not apply.

(3) The authority given by paragraph (1) will constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, will be determined under Part 1 of the 1961 Act.

Crown rights

39.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee—

- (a) to enter upon, use and carry out the authorised development on or in any manner interfere with any land or rights of whatsoever description—
 - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that Government Department; or

- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and will be deemed to have been given in writing where it is sent electronically.

Certification of plans etc.

40.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the AGI plan;
- (b) the book of reference;
- (c) the Crown land plan;
- (d) the environmental statement;
- (e) the flood risk assessment addendum;
- (f) the historic environment plan;
- (g) the important hedgerows plan;
- (h) the land plan;
- (i) the nature conservation plan;
- (j) the outline construction environmental management plan;
- (k) the outline construction traffic management plan;
- (l) the outline public rights of way plan;
- (m) the pipe dump plan;
- (n) the runway plan; and
- (o) the works plan,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Protection of interests

41. Schedule 9 (protective provisions) to the Order has effect.

Arbitration

42. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Energy and Climate Change

Address	<i>Name</i>
Date	Head of [Unit] Department for Energy and Climate Change

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

PART 1

Authorised Development

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 21 of the 2008 Act comprising the construction of an up to 24 inch (609.6 millimetre) external diameter cross-country gas pipeline (to be known as the Thorpe Marsh Gas Pipeline) for the conveyance of gas and covering a distance of approximately 19.1 kilometres starting from the National Transmission System approximately 1.5 kilometres west Camblesforth in the County of North Yorkshire, District of Selby and ending at the proposed Thorpe Marsh Power Station to be constructed at Barnby Dun in the Metropolitan Borough of Doncaster. It will include the laying, placing, use, inspection, maintenance and diversion of the Thorpe Marsh Gas Pipeline and the works numbered and described below (including the works that are “associated development” for the purposes of section 115 of the 2008 Act and are identified “” below)—*

In the County of North Yorkshire, District of Selby

*Work No. 1** – A temporary compound comprising an approximate area of 20,180 square metres housing a temporary site office and temporary welfare facilities;

*Work No. 2** – A temporary vehicular access running in a generally southerly direction from Common Lane to Work No. 1 and Work No. 3 and visibility splay and along Footpaths 35.14/5/1 and 35.14/6/2;

*Work No. 3** – A temporary compound comprising an approximate area of 14,045 square metres housing temporary stores/workshops and a temporary pipe dump;

*Work No. 4** – A new permanent vehicular access road of up to 4 metres in width and 75 metres in length together with mains power and telecommunication cables and a landscaping strip laid in a north to south direction from the southern side of Sandwith Lane to Work No. 5, Work No. 6 and Work No. 7;

Work No.5 – A permanent secure compound housing equipment for the monitoring and control of gas (comprising an approximate area of 522 square metres and all with a maximum height of 3.2 metres except Work No.5(j) with a maximum height of 4.0 metres) as shown indicatively on the AGI plan to be sited within the AGI site. Works to be carried out as part of Work No. 5 include—

- (a) security fencing and incidental security boundary treatment;
- (b) double entrance gate (with an approximate width of 5.0 metres);
- (c) single personnel gate (with an approximate width of 1.5 metres);
- (d) installation of a control kiosk (with an approximate width and length of 3.0 metres) containing instrumentation, security and electrical equipment;
- (e) lighting attached to the control kiosk;
- (f) installation of above or below ground pipework;
- (g) installation of an above or below ground isolation joint;
- (h) installation of an above or below ground remote operating valve with gas actuation;
- (i) installation of above or below ground line valves and a double block and bleed valve;
- (j) installation of an above ground pole with satellite dish; and

- (k) changes to ground levels as may be necessary including the provision of drainage works and the laying of hard standing;

Work No. 6 – A permanent secure compound housing equipment for the monitoring and control of gas (comprising an approximate area of 833 square metres) as shown indicatively on the AGI plan to be sited within the AGI site. Works to be carried out as part of Work No. 6 include—

- (l) security mesh fencing topped with razor wire (with an approximate maximum height of 3.2 metres);
- (m) double entrance gate (with an approximate width of 5.0 metres and an approximate maximum height of 3.0 metres);
- (n) single personnel gate (with an approximate width of 1.5 metres and an approximate maximum height of 2.1 metres);
- (o) installation of a control kiosk (with an approximate length of 6.0 metres, width of 4 metres and a maximum height of 2.5 metres) containing instrumentation, security and electrical equipment;
- (p) lighting attached to the control kiosk;
- (q) lighting situated on six lighting columns (with an approximate maximum height of 4.0 metres);
- (r) closed circuit television cameras situated on three columns (with an approximate height of 4.0 metres);
- (s) installation of below ground pipework;
- (t) installation of above ground pipework (with an approximate maximum height of 1.5 metres);
- (u) installation of emergency shutdown valves with gas actuation (with an approximate maximum height of 2.5 metres);
- (v) installation of line valves and double block and bleed valves (with an approximate maximum height of 2.0 metres);
- (w) installation of a pigging facility (with an approximate maximum height of 2.0 metres);
- (x) internal access roadway with an approximate length of 30.0 metres and width of 4.0 metres; and
- (y) changes to ground levels as may be necessary including the provision of drainage works and the laying of hard standing;

*Work No. 7** – Facilities for the benefit of Work No. 5 and Work No. 6 including access roadway, car parking and hard standing, perimeter landscaping and the planting of trees and shrubs, mains power and telecommunication cables (suspended from a wooden pole with a maximum height of 6.0 metres), freestanding electrical meter cabinet and transformer unit serving Work No. 5 and Work No. 6;

*Work No. 8** – Facilities for the benefit of Work No. 5 and Work No. 6 including a new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities, use as an additional working area and for the benefit of Work No. 9 to provide a temporary access;

Work No. 9 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 7 and Work No. 8 to Work No. 10;

Work No. 10 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 9 to Work No. 11 and crossing under the track known as Race Lane;

Work No. 11 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 10 to Work No. 13;

*Work No. 12** – A temporary construction access to the west of Work No. 11;

Work No. 13 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 11 to Work No. 14 and crossing under the track known as Bull Alley Lane;

Work No. 14 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 13 to Work No. 15;

Work No. 15 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 14 to Work No. 19 and passing under the Knottingley to Drax Power Station railway line;

*Work No. 16** – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 17** – A temporary construction access to the west of Work No. 16;

*Work No. 18** – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 19 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 15 to Work No. 20;

Work No. 20 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 19 to Work No. 23 and crossing under Hirst Road and the Trans Pennine Trail;

*Work No. 21** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 22** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 23 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 20 to Work No. 24;

In both the County of North Yorkshire, District of Selby and the East Riding of Yorkshire

Work No. 24 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 23 to Work No. 26 and passing under the River Aire and Gowdall Footpath 7;

*Work No. 25** – Temporary compounds for the storage of excavated material;

In the East Riding of Yorkshire

Work No. 26 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 24 to Work No. 27;

Work No. 27 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 26 to Work No. 28 and crossing under an unnamed drainage ditch;

Work No. 28 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 27 to Work No. 31;

*Work No. 29** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 30** – A temporary construction access from Low Road to Work No. 29;

Work No. 31 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 29 to Work No. 33 and crossing under Low Road and the Trans Pennine Trail and passing under the Pontefract railway line;

*Work No. 32** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 33 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 31 to Work No. 34;

Work No. 34 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 33 to Work No. 35 and crossing under Gowdall Footpath 1 (Dorr Lane);

Work No. 35 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 34 to Work No. 38;

*Work No. 36** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 37** – New temporary construction accesses and visibility splays from the A645 Pontefract Road to Works No. 36 and 38;

Work No. 38 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 35 to Work No. 39 and crossing under the A645 Pontefract Road;

Work No. 39 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 38 to Work No. 40;

Work No. 40 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 39 to Work No. 41 and crossing under Snaith and Cowick Footpath 22;

Work No. 41 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 40 to Work No. 43;

*Work No. 42** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 43 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 41 to Work No. 44 and crossing under the M62 motorway;

Work No. 44 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 43 to Work No. 45;

Work No. 45 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 44 to Work No. 47 and crossing under an unnamed track;

*Work No. 46** – A temporary construction access from Long Lane to Work No. 45;

Work No. 47 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 45 to Work No. 48;

Work No. 48 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 47 to Work No. 49 and crossing under Pollington Footpath 3;

Work No. 49 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 48 to Work No. 50;

Work No. 50 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 49 to Work No. 51 and crossing the Government Pipelines and Storage System oil pipeline;

Work No. 51 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 50 to Work No. 53;

*Work No. 52** – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 53 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 51 to Work No. 55 and crossing under Snaith and Cowick Footpath 20 (Balne Croft Lane);

*Work No. 54** – A temporary construction access from Works No. 52 and 53

Work No. 55 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 53 to Work No. 57;

*Work No. 56** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 57 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 55 to Work No. 58 and passing under the Aire and Calder Navigation Knottingley to Goole Canal and crossing under an unnamed drain and an unnamed road;

Work No. 58 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 57 to Work No. 59;

Work No. 59 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 58 to Work No. 60 and crossing under the Pollington Fleet Drain;

In both the East Riding of Yorkshire and the County of North Yorkshire, District of Selby

Work No. 60 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 59 to Work No. 62;

In the County of North Yorkshire, District of Selby

*Work No. 61** – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 62 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally westerly direction from Work No. 60 to Work No. 63 and crossing under a disused railway;

Work No. 63 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally westerly direction from Work No. 62 to Work No. 64;

Work No. 64 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally westerly direction from Work No. 63 to Work No. 65 and crossing under Public Footpath 35.3/17/1 and the Trans Pennine Trail;

Work No. 65 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally westerly direction from Work No. 64 to Work No. 70;

*Work No. 66** – A new temporary compound for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities, use as an additional working area and for the welding of the pipe string required for Work No. 70;

*Work No. 67** – A temporary construction access from Balne Hall Farm (off Lowgate) to Works No. 65, 66 and 70;

*Work No. 68** – Works to facilitate a temporary construction access from Balne Hall Farm (off Lowgate) to Work No. 67;

*Work No. 69** – Works to facilitate construction access along Lowgate;

In both the County of North Yorkshire, District of Selby and the Metropolitan Borough of Doncaster

Work No. 70 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 65 to Work No. 71 and crossing under Public Footpath 35.3/15/2 and passing under the River Went;

In the Metropolitan Borough of Doncaster

Work No. 71 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 70 to Work No. 72;

Work No. 72 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 71 to Work No. 73 and crossing under Fenwick Footpath No. 12 (Bunfold Shaw Lane);

Work No. 73 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 72 to Work No. 74;

Work No. 74 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 73 to Work No. 75 and crossing under Fenwick Footpath No. 10;

Work No. 75 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 74 to Work No. 76;

Work No. 76 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 75 to Work No. 77 and crossing under Fenwick Footpath No. 15;

Work No. 77 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 75 to Work No. 78;

Work No. 78 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 77 to Work No. 79 and crossing under Fenwick Footpath No. 14;

Work No. 79 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 78 to Work No. 80;

Work No. 80 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 79 to Work No. 81 and crossing under Moss Footpath No. 6;

Work No. 81 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 80 to Work No. 85;

*Work No. 82** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 83 – Cables laid underground from the high pressure gas pipeline at Work 81 to Work No. 84;

Work No. 84 – One free-standing steel cabinet and one free-standing steel kiosk (each with an approximate maximum height of 1.5 metres) standing on a concrete base and surrounded by a post and rail fence and galvanised gate, with the cabinet to house an electricity meter and the kiosk to house a transformer rectifier, together with a permanent pedestrian access way from the edge of Moss Road to the cabinet and kiosk, also to accommodate a mains power cable;

Work No. 85 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 81 to Work No. 87 and crossing under Moss Road;

*Work No. 86** – A temporary construction access and visibility splay from Moss Road to Works No. 81, 82, 85 and 87;

Work No. 87 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 85 to Work No. 89;

*Work No. 88** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 89 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 87 to Work No. 90 and crossing under Trumfleet Lane;

Work No. 90 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 89 to Work No. 91;

Work No. 91 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 90 to Work No. 92 and crossing under Moss Footpath No. 20;

Work No. 92 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 91 to Work No. 94;

*Work No. 93** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 94 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 92 to Work No. 96 and crossing under Wrancarr Lane and Wrancarr Drain;

*Work No. 95** – A temporary construction access and visibility splays from Wrancarr Lane to Works No. 93 and 94;

Work No. 96 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 94 to Work No. 97;

Work No. 97 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 96 to Work No. 98 and crossing under Moss Bridleway No. 22 (Old House Lane);

Work No. 98 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 97 to Work No. 99;

Work No. 99 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 98 to Work No. 100 and crossing under Thorpe in Balne Footpath No. 3;

Work No. 100 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 99 to Work No. 101;

Work No. 101 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 100 to Work No. 102 and crossing under Thorpe in Balne Footpath No. 1;

Work No. 102 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 101 to Work No. 103;

Work No. 103 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-westerly direction from Work No. 102 to Work No. 104 and crossing under Thorpe in Balne Bridleway No. 10 (Airey Lane);

Work No. 104 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 103 to Work No. 105;

Work No. 105 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 104 to Work No. 107 and crossing under Bell Croft Lane and the Trans Pennine Trail;

*Work No. 106** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 107 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 105 to Work No. 109;

*Work No. 108** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 109 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 107 to Work No. 110 and crossing under Applehurst Lane;

Work No. 110 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 109 to Work No. 111;

Work No. 111 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally south-easterly direction from Work No. 110 to Work No. 113 and crossing under a disused railway;

*Work No. 112** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area and crossing Thorpe in Balne Footpath No. 2;

Work No. 113 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 111 to Work No. 114;

Work No. 114 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 113 to Work No. 115 and crossing under Thorpe in Balne Footpath No. 2, Thorpe in Balne Footpath No. 13 and Thorpe Marsh Drain;

Work No. 115 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 114 to Work No. 118;

*Work No. 116** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

*Work No. 117** – A temporary construction access to the north of Work No. 118 and running parallel to Thorpe in Balne 11 Bridleway;

Work No. 118 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly direction from Work No. 115 to Work No. 119 and crossing under Thorpe in Balne Bridleway No. 11;

Work No. 119 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally easterly, then southerly direction from Work No. 118 to Work No. 121;

*Work No. 120** – New temporary compounds for the storage of materials and excavated material, the erection of temporary welfare facilities, temporary car parking facilities and use as an additional working area;

Work No. 121 – A high pressure gas pipeline up to 24 inches (609.6 millimetres) in external diameter laid underground in a generally southerly direction from Work No. 119 to the Thorpe Marsh Power Station site and passing under the railway line;

Work No. 122 – Pipeline marking including—

- (z) aerial marker posts (with an approximate maximum height of 3.0 metres) set at intervals of approximately 2.0 kilometres (or closer where required);
- (aa) marker posts (with an approximate maximum height of 1.0 metre) set at every road, rail, drain, watercourse, fence, wall and hedgerow crossing; and
- (bb) any other marking required to comply with current or future legislation and regulations;
- (cc) together with any other necessary works required in connection with the above;

Work No. 123 – cathodic protection test posts (with an approximate maximum height of 1.0 metre) with cables connected onto the pipeline and set at intervals of approximately 1.0 kilometre at locations in close proximity to road crossings.

And in connection with the above Works No. 1 to 123, any further associated development and incidental works (which fall within the scope of the environmental impact assessment recorded in the environmental statement) as may be required to carry out the authorised development and comply with the requirements.

PART 2

Requirements

Interpretation

In this part of this Schedule—

“European protected species” has the meaning given in Part 3 of the Conservation of Habitats and Species Regulations 2010(a); and

“stage” means a defined section or part of the authorised development (including maintenance), the extent of which is shown in a scheme submitted to and approved in writing by the relevant planning authority pursuant to requirement 2 (stages of authorised development) and stages are to be construed accordingly.

Time limits

1. The authorised development must be commenced within five years of the date that this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

Stages of authorised development

2. No authorised development may commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved by the relevant planning authority.

Detailed design approval

3.—(1) The following stages of development must not be carried out until details of the layout, scale and external appearance of that stage have been submitted to and approved in writing by the relevant planning authority—

- (a) Work No. 4;
- (b) Work No. 5;
- (c) Work No. 6;
- (d) Work No. 7;
- (e) the detailed alignment of the pipeline works; and
- (f) the working width and temporary compounds.

(2) Any works approved by the relevant planning authority under paragraph (1) must accord with the plans (or relevant parts of plans) submitted with the application for this Order or subsequently in connection with the examination of this Order and certified by the Secretary of State and be within the Order limits.

(3) The authorised development must be carried out in accordance with the approved details.

(a) S.I. 2010/490.

Construction environmental management plan

4.—(1) No stage of the authorised development may commence until a written construction environmental management plan for that stage, based upon the outline construction environmental management plan and the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency, any relevant Internal Drainage Boards and the Canal and River Trust.

(2) The construction environmental management plan must set out written details of—

- (a) relevant health, safety and environmental legislation and compliance;
- (b) local community liaison responsibilities;
- (c) any proposed temporary fences or other means of enclosure including any top or subsoil mounds in areas at high risk of flooding to be erected during the construction of that stage of the authorised development;
- (d) any temporary external lighting to be installed at any of the construction sites during the construction of that stage, including measures to manage and mitigate artificial light emissions and prevent light spillage and measures to ensure that any temporary lighting does not distract drivers on roads in the vicinity of the Order limits;
- (e) measures for the management of noise and vibration during the construction of that stage, to include details of noise attenuation measures to minimise noise resulting from the construction of the authorised development, including any noise limits, and a scheme for monitoring noise during the construction of the authorised development to ensure compliance with the noise limits and the effectiveness of the attenuation measures;
- (f) measures for the management and mitigation of dust emissions during the construction of the authorised development;
- (g) measures for the management, storage, handling and recycling of construction waste;
- (h) measures for the restoration and reinstatement of land within the Order limits which is used temporarily for construction and which is not incorporated in permanent works or approved landscaping
- (i) measures for the management of water resources, including an assessment of the risks to controlled ground and surface waters and measures to mitigate such risks, including pollution incident control; and
- (j) measures for the handling, placing, compaction and management of soil;
- (k) measures to allow plant to cross rivers, drains or any works within or around river or drain banks;
- (l) a flood plan for the construction of the authorised development;
- (m) measures to manage flood risk when drilling between defended and undefended areas;
- (n) the crossing methods to be employed at each crossing, including the means by which the environmental and structural effects of that method will be controlled;
- (o) measures for the management of construction vehicle movements around public footpaths within Burn airfield;
- (p) measures to ensure the security of land within and accesses to the Order limits during the construction of the authorised development;

and any other matters the relevant planning authority reasonably requires.

(3) The measures set out in the construction environmental management plan for each stage must be implemented as approved.

Construction traffic and temporary highway accesses

5.—(1) No stage of the authorised development may commence until a construction traffic management plan for that stage in accordance with the outline construction traffic management plan and the mitigation measures included in the environmental statement and containing details

of construction traffic and temporary highway access arrangements has been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority.

- (2) The construction traffic management plan for each stage must set out written details of—
 - (a) construction vehicle routing;
 - (b) site accesses;
 - (c) the management of junctions to and crossings of the public highway and other public rights of way;
 - (d) the scheduling and timing of movements, in particular the details of abnormal load movements;
 - (e) temporary warning signs;
 - (f) the marking and identification of construction vehicles;
 - (g) a workforce travel plan; and
 - (h) access routes along the highway network to construction compounds.
- (3) The construction traffic management plan for each stage must be implemented as approved.

Construction hours

6.—(1) Subject to paragraph (2), construction work must not take place other than between 0700 hours and 1900 hours Monday to Friday, 0700 hours and 1300 hours on Saturdays, with no activity on Sundays or bank holidays.

- (2) Work outside of these days or times may take place only if—
 - (a) it is associated with the hydrostatic pressure testing of the pipeline constructed as part of the authorised development;
 - (b) it is associated with the horizontal directional drilling of crossings in the locations assessed in the environmental statement;
 - (c) it is associated with an emergency; or
 - (d) it is carried out with the prior written approval of the relevant planning authority.

Lighting management measures at the AGI site

7.—(1) The construction of the AGI site must not commence until written details of the permanent external lighting to be installed at the AGI site, measures to prevent light spillage and measures to regulate the times at which the permanent external lighting may operate have been submitted to and approved in writing by the relevant planning authority.

- (2) The authorised development must be operated in accordance with the approved details.

Provision of landscaping at the AGI site

8.—(1) The construction of the AGI site must not commence until a written landscaping scheme in relation to those works has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) cultivation, importing of materials and other operations to ensure plant establishment;
- (b) proposed finished ground levels;
- (c) hard surfacing materials;
- (d) vehicular and pedestrian access, parking and circulation areas;
- (e) minor structures such as furniture, refuse or other storage units, signs and lighting;
- (f) proposed and existing functional services above and below ground including drainage, power and communications cables and pipelines, manholes and supports;

- (g) details of existing trees to be retained with measures for their protection during the construction period;
- (h) implementation timetables for all landscaping works; and
- (i) future maintenance regimes.

(2) All landscaping works must be carried out in accordance with the landscaping scheme and the implementation timetables approved under requirement 8(1).

AGI site and highway accesses

9.—(1) The construction of the AGI site must not commence until written details of the siting, design and layout of the permanent means of access to Sandwith Lane to be used by vehicular traffic at the AGI site has, after consultation with the relevant highway authority, been submitted to and approved in writing by the relevant planning authority.

(2) The highway access to the AGI site must be constructed in accordance with the approved details.

Hedgerows and trees

10.—(1) For any stage of the authorised development that would affect any hedgerow and/or tree, no construction of the authorised development may commence until (for that stage and in relation to the relevant works within that stage) a written plan for the management of the removal and (where appropriate) reinstatement of all hedgerows and/or trees (as applicable) has been approved in writing by the relevant planning authority in consultation with the relevant highway authority. The written plan must be consistent with and have regard to the ecological management plan to be approved pursuant to Requirement 15.

(2) The plan must identify hedges and/or trees (as applicable) where mitigation measures are to be applied and include a detailed reinstatement and after-care plan.

(3) The removal and reinstatement of the hedgerows and/or trees (as applicable) must be carried out in accordance with the plan.

(4) Any hedges and/or trees (as applicable) which are to be reinstated must be reinstated in the first planting season following the completion of construction.

(5) Any hedge and/or tree planting which is part of an approved reinstatement plan that, within a period of five years beginning with the date of planting, is removed, uprooted, destroyed, dies or (in the opinion of the relevant planning authority) becomes seriously damaged or defective, must be replaced in the first available planting season with planting material of the same specification as that originally planted.

Public rights of way

11.—(1) No stage of the authorised development may commence that would affect any public right of way until, following consultation with the relevant highway authority, a written plan based upon the outline public rights of way plan for the temporary closure, diversion (where appropriate), and re-opening of the right of way has been submitted to and approved in writing by the relevant planning authority.

(2) The temporary closure, re-opening and/or diversion of the relevant right of way must be carried out in accordance with the approved details.

Surface and foul water drainage

12.—(1) No stage of the authorised development may commence until for that stage, written details of the surface and (if any) foul water drainage system (including means of pollution control) for both temporary and permanent works have, in accordance with the flood risk assessment included in the environmental statement and the flood risk assessment addendum, been

submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency and the sewerage and drainage authority.

(2) The surface water drainage system for each stage must be constructed in accordance with the approved details.

(3) No discharge of water used under article 17 of the Order must be made until details of the location and rate of discharge have been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency and the sewerage and drainage authority.

Contaminated land and groundwater

13.—(1) No stage of the authorised development may commence until a written scheme applicable to that stage to deal with the contamination of any land (including groundwater) within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include an intrusive geotechnical investigation and assessment report to identify the extent of any contamination and any remedial measures to be taken to render the land fit for its intended purpose.

(3) Should any remediation be identified as necessary in the investigation and assessment report such remediation must be carried out in accordance with the approved scheme.

(4) If during the construction of the authorised development further contamination not previously identified is found to be present at the site then no further work may be carried out on that part of the site until—

- (a) a risk assessment has been carried out and the results of the risk assessment have been provided to the relevant planning authority; and
- (b) such additional mitigation measures (if any) as may be identified by the risk assessment have been incorporated into the approved scheme.

Archaeology

14.—(1) No stage of the authorised development may commence until for that stage a written scheme for the investigation of areas of archaeological interest as identified in the environmental statement has, after consultation with Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council and their respective archaeological advisors or North Yorkshire County Council (as appropriate) and English Heritage, been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where an agreed scheme of archaeological works is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found and must include an implementation timetable.

(3) Any archaeological works carried out under the scheme must be carried out by a suitably qualified person or body and approved by the relevant planning authority.

(4) Any archaeological works must be carried out in accordance with the approved scheme.

Ecological management plan

15.—(1) No stage of the authorised development may commence until a written ecological management plan for that stage reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement must, after consultation with Yorkshire Wildlife Trust and relevant statutory body, be submitted to and approved in writing by the relevant planning authority. The ecological management plan must be consistent with and have regard to the written management plan for hedgerows and trees to be approved pursuant to Requirement 10.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

(3) Any ecological works carried out under the ecological management plan must be carried out by a suitably qualified person or body and approved by the relevant planning authority.

(4) The undertaker must replace with an equivalent work at the earliest practicable opportunity any ecological works carried out in accordance with the approved ecological management plan that, within a period of five years beginning with the date of the implementation of the plan, become seriously damaged, destroyed, defective or are removed.

European protected species

16.—(1) No stage of the authorised development may commence until it has been established by existing or further survey work whether any European protected species is present on any of the land affected, or likely to be affected, by the authorised development.

(2) Where a European protected species is shown to be present, no authorised development of that stage may be begun until, after consultation with the relevant statutory body, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority; and the authorised development must be carried out in accordance with the approved scheme.

Operational noise

17.—(1) Operational noise from all fixed plant at the AGI site, measured at the façade of the nearest sensitive residential receptor, must be no higher than 26dB LAeq, 1 hr between the hours of 0700 and 2300 and no higher than 22dB LAeq, 15 mins between the hours of 2300 and 0700.

(2) A scheme of post-completion noise monitoring at the AGI site must be submitted to and agreed in writing with the relevant planning authority.

(3) The scheme of post-completion noise monitoring at the AGI site must be implemented as approved.

Decommissioning

18.—(1) Upon the cessation of commercial operation of the authorised development, a written scheme for the decommissioning of the authorised development and the final proposed condition of the relevant land, including a proposed timetable for decommissioning, must be submitted to and approved in writing by the relevant planning authority, in consultation with the Health and Safety Executive or any successor to its statutory functions.

(2) The scheme for decommissioning must be implemented as approved.

Written approval

19. Where under any of the above requirements the written approval or agreement of the relevant planning authority or another person or authority is required, that approval or agreement must be given in writing.

Amendments to approved details

20.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or another approval authority (as specified), the approved details must be carried out as approved unless an amendment or variation is previously agreed by the relevant planning authority or that other approval authority as specified in the relevant requirement, in accordance with paragraph (2) and in consultation with any body specified in the relevant requirement.

(2) No amendments to or variations from the approved details may be approved if their likely significant effects on the environment are not assessed in the environmental statement, or have not

been subject to such further assessment as the relevant planning authority or that other approval authority may require.

(3) The approved details must be taken to include any amendments that may subsequently be approved by the relevant planning authority or that other approval authority.

Flooding mitigation

21.—(1) No stage of the authorised development may commence until for that stage there has been submitted to and approved in writing by (and deposited with) the relevant planning authority, in consultation with the Environment Agency and the relevant internal drainage board, a scheme for the mitigation of flood risk during the construction and operation of the authorised development prepared in accordance with the flood risk assessment included in the environmental statement, the flood risk assessment addendum and the outline construction environmental management plan.

(2) The approved scheme must be implemented fully and adhered to during the construction and operation of the relevant stage of the authorised development.

Local employment

22.—(1) No stage of the authorised development may commence until for that stage a written scheme for the promotion of local employment opportunities has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must set out the means by which the undertaker will work with local agencies, including the relevant planning authority, to secure as far as reasonably practicable the use of local labour, contractors, goods and services during the construction stage of the authorised development.

(3) The approved scheme must be implemented in full during the construction stage of the authorised development.

Burn airfield

23.—(1) The authorised development must not commence until a written scheme for the management of the interaction between the authorised development and gliding operations at Burn airfield has been submitted to and approved in writing by the relevant planning authority in consultation with Burn Gliding Club.

(2) The scheme must set out written details of—

- (a) the layout and operation of Works No. 1, 2 and 3 adjacent to runway 07/25;
- (b) the means by which a minimum 50 metre offset from Works No. 1, 2 and 3 to runway 07/25 will be achieved;
- (c) the means by which the undertaker will manage activity within 100 metres of runway 07/25 on days on which runway 07/25 is operational for gliding;
- (d) a communications and management strategy to ensure that operations in relation to Works No. 1, 2 and 3 do not conflict with gliding operations on runway 07/25; and
- (e) a strategy for the provision to and use by Burn Gliding Club of new cables during winch launches to minimise the risk of cable breaks.

(3) The approved scheme must be substantially in accordance with the pipe dump plan and must be implemented in full during the construction stage of the authorised development.

SCHEDULE 2

Article 12

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>	<i>(3)</i> <i>Indicative location on the works plan</i>	<i>(4)</i> <i>Works plan sheet number</i>
In the County of North Yorkshire, District of Selby	Sandwith Lane, Camblesforth	4	2
In the County of North Yorkshire, District of Selby	Race Lane, Camblesforth	10	2
In the County of North Yorkshire, District of Selby	Bull Alley Lane, Carlton	13	2
In the County of North Yorkshire, District of Selby	Hirst Road, Carlton	20	2
In the East Riding of Yorkshire	Low Road, Gowdall	31	4
In the East Riding of Yorkshire	A645 Pontefract Road, Snaith	38	4
In the East Riding of Yorkshire	M62, Snaith	43	4
In the East Riding of Yorkshire	Balne Croft Lane, Pollington	53	5
In the East Riding of Yorkshire	Unnamed road south of the Aire and Calder Navigation	57	5
In the Metropolitan Borough of Doncaster	Moss Road, Moss	85	8
In the Metropolitan Borough of Doncaster	Trumfleet Lane, Moss	89	8
In the Metropolitan Borough of Doncaster	Wrancarr Lane, Trumfleet	94	9
In the Metropolitan Borough of Doncaster	Airey Lane, Thorpe in Balne	103	10
In the Metropolitan Borough of Doncaster	Bell Croft Lane, Thorpe in Balne	105	10
In the Metropolitan Borough of Doncaster	Applehurst Lane, Thorpe in Balne	109	10

SCHEDULE 3

Article 14

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
In the East Riding of Yorkshire	Gowdall Footpath No. 1 (Dorr Lane)	Approximately 30 metres of Dorr Lane shown orange and marked "05" on sheet 4 of the public rights of way plan
In the East Riding of Yorkshire	Snaith and Cowick Footpath No. 22	Approximately 30 metres of the unnamed public right of way shown orange and marked "06" on sheet 4 of the public rights of way plan
In the East Riding of Yorkshire	Pollington Footpath No. 3	Approximately 30 metres of the unnamed public right of way shown orange and marked "07" on sheet 5 of the public rights of way plan

In the County of North Yorkshire, District of Selby	Bridleway No. 35.3/17/1 (Forming part of the Trans Pennine Trail)	Approximately 30 metres of the unnamed public right of way shown orange and marked "09" on sheet 6 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Fenwick Footpath No. 12 (Bunfold Shaw Lane)	Approximately 30 metres of Fenwick Footpath No. 12 shown orange and marked "11" on sheet 7 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Fenwick Footpath No. 10	Approximately 30 metres of Fenwick Footpath No. 10 shown orange and marked "12" on sheet 7 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Fenwick Footpath No. 15	Approximately 30 metres of Fenwick Footpath No. 15 shown orange and marked "13" on sheet 7 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Fenwick Footpath No. 14	Approximately 30 metres of Fenwick Footpath No. 14 shown orange and marked "14" on sheet 8 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Moss Footpath No. 6	Approximately 30 metres of Moss Footpath No. 6 shown orange and marked "15" on sheet 8 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Moss Footpath No. 20	Approximately 30 metres of Moss Footpath No. 20 shown orange and marked "16" on sheet 9 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Moss Bridleway No. 22 (Old House Lane)	Approximately 30 metres of Old House Land/Moss Bridleway No. 22 shown orange and marked "17" on sheet 9 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe in Balne Footpath No. 3	Approximately 30 metres of Thorpe in Balne Footpath No. 3 shown orange and marked "18" on sheet 9 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe in Balne Footpath No. 1	Approximately 30 metres of Thorpe in Balne Footpath No. 1 shown orange and marked "19" on sheet 10 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe In Balne Bridleway No. 10 (Airey Lane)	Approximately 30 metres of Thorpe in Balne Bridleway No. 10 (Airey Lane) shown orange and marked "20" on sheet 10 of the public rights of way plan

		way plan
In the Metropolitan Borough of Doncaster	Thorpe in Balne Footpath No. 2	Approximately 30 metres of Thorpe in Balne Footpath No. 2 shown orange and marked “22” on sheet 10 of the public rights of way plan
In the Metropolitan Borough of Doncaster	Thorpe In Balne Bridleway No. 11	Approximately 30 metres of Thorpe in Balne Bridleway No. 11 shown orange and marked “24” on sheet 10 of the public rights of way plan

SCHEDULE 4

Article 15

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the County of North Yorkshire, District of Selby	Temporary vehicular access from Common Lane shown purple and marked “2” on sheet 1 of the works plan
In the County of North Yorkshire, District of Selby	Permanent vehicular access from Sandwith Lane shown brown and marked “4” on sheet 2 of the works plan
In the County of North Yorkshire, District of Selby	Temporary vehicular access shown purple and marked “12” on sheet 2 of the works plan
In the County of North Yorkshire, District of Selby	Temporary vehicular access from Hirst Road shown purple and marked “17” on sheet 2 of the works plan
In the East Riding of Yorkshire	Temporary vehicular access from Low Road shown purple and marked “30” on sheet 4 of the works plan
In the East Riding of Yorkshire	Temporary vehicular access from the A645 Pontefract Road marked “37” and “38” on sheet 4 of the works plan
In the East Riding of Yorkshire	Temporary vehicular access from Long Lane shown purple and marked “46” on sheet 5 of the works plan
In the East Riding of Yorkshire	Temporary vehicular access from Balne Croft Lane marked “54” on sheet 5 of the works plan
In the County of North Yorkshire, District of Selby	Temporary vehicular access from Lowgate shown purple and marked “67” on sheet 6 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Moss Road marked “85” and “86” on sheet 8 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Trumfleet Lane marked “89” on sheet 8 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Wrancarr Lane marked “94” and “95” on sheet 9 of the works plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Bell Croft Lane marked “105” on sheet 10 of the works

	plan
In the Metropolitan Borough of Doncaster	Temporary vehicular access from Thorpe Bank shown purple and marked “117” on sheet 10 of the works plan

SCHEDULE 5

Article 24

LAND IN WHICH NEW RIGHTS, ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
5	<p>The right to:</p> <ul style="list-style-type: none"> (a) pass and re-pass with or without vehicles, machinery, plant and equipment for the purposes of survey, and for the purposes of laying down, installing, constructing, adjusting, altering, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, removing and replacing the AGI site (as defined in Article 2 (interpretation) of the Order), mains power and telecommunication cables and associated works, plant and equipment, and to effect access to the highway and site compounds; (b) lay down, use, repair, alter and remove matting, trackways, hard standings for the purposes of access to the AGI site and associated works, plant and equipment, and to restore and re-instate the land to its prior condition; (c) remove, store and stockpile topsoil and subsoil, employ water barriers and pumping equipment, remove materials and to restore and re-instate the land to its prior condition; (d) fell, lop, prune or cut trees, shrubs or hedges, or uproot and remove the roots of trees, shrubs and hedges for the purposes of enabling the right to pass and re-pass to adjoining land; (e) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary drainage; to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping; (f) remove fences, hedges, gates or other barriers during any period during

	<p>which installation, construction, maintenance renewal, repair, upgrading, or replacement of the AGI site and associated works, plant and equipment is being carried out or for the exercise of the power to access the AGI site and associated works, plant and equipment (subject to the prior erection of any temporary stock proof fencing as is reasonably required) and the replacement, replanting or re-instatement of fences, hedges or other barriers following the exercise of the new rights;</p> <p>(g) erect temporary bridges (including the bridging over of or protection of the apparatus of the statutory undertakers) and supporting or protective structures for the purposes of access to the AGI site and associated works, plant and equipment from adjoining land.</p>
<p>8, 9, 11, 12, 13, 16, 17, 20, 21, 22, 31, 41, 44, 45, 50, 51, 63, 65, 68, 69, 70, 71, 79, 81, 84, 88, 89, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 115, 128, 129, 132, 134, 135, 136, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 183, 186, 187, 196, 199, 202, 211, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 231, 239, 240, 243, 245, 246, 247, 248, 251, 259, 264, 265</p>	<p>The right to enter and remain upon the land for the purposes of the operation, maintenance and decommissioning of the authorised development and to:</p> <p>(h) lay down, construct, install, adjust, alter, test, use, maintain, repair, renew, upgrade, inspect, survey, cleanse, re-lay, divert, make safe, make incapable of operation, replace and remove the pipeline together with ancillary equipment including cathodic protection to include installation by digging trenches, the use of or resorting to directional drilling, auger boring, thrust boring, micro tunnelling or pipe ramming or other similar trenchless techniques for the laying of the pipeline within a corridor of up to 7.6 metres in width;</p> <p>(i) enter and be upon that part of the land over which the new rights are acquired and remain with or without all necessary plant, vehicles, machinery, materials, drilling fluids, apparatus and equipment:</p> <p>(i) for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection;</p>

- (ii) to remove, store and stockpile topsoil and subsoil and materials;
- (iii) install water barriers, trench shuttering and pumping equipment; and
- (iv) to restore and reinstate the land to its condition prior to commencement of the works to install the pipeline and ancillary equipment to include cathodic protection (subject to the retention of permanent works) following their installation within the land;
- (j) retain and use the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired for the purpose of the transmission of gas and for associated purposes;
- (k) upgrade, improve, widen, repair, maintain and adapt existing tracks and roadways and to pass and re-pass within that part of the land over which the new rights are acquired with or without vehicles, plant and machinery;
- (l) place and use apparatus, materials (including matting, trackways, hard standing and other material in connection with construction of haul and access roads and storage areas), plant, machinery, trench shuttering, temporary structures and welfare accommodation for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired; and to construct, lay down, use and remove temporary haul and access roads, trackways, matting and other suitable materials, including for any necessary temporary bridging of statutory undertakers' apparatus, other apparatus, conduits, watercourses, ditches and drains; and to effect access to the highway;
- (m) install, keep, maintain, replace, renew and remove pipeline marker posts, test posts and aerial markers within that part of the land over which the new rights are acquired, to identify the location of the pipeline (subject to the

	<p>undertaker seeking to locate the marker posts so as to minimise interference with the owner's future use and operations within the land);</p> <p>(n) fell, lop, prune or cut trees, shrubs or hedges or remove roots of trees, hedges or shrubs within that part of the land over which the new rights are acquired for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection;</p> <p>(o) use, inspect, modify, maintain, adjust, alter, support, renew, repair, improve, extend, test or cleanse and to connect in to existing drainage, watercourses, sewers or culverts and to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping within that part of the land over which the new rights are acquired;</p> <p>(p) alter, re-lay, maintain, adjust or remove existing pipes, cables or conduits or service media and associated apparatus (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(q) install, construct, maintain, use, improve, cleanse, repair, replace and remove new pipes, cables, conduits, service media and associated apparatus that are used for the purposes of transmitting or distributing electricity, communications, gas, oil, water supply, sewerage and drainage (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(r) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired;</p> <p>(s) remove fences, hedges, gates or other barriers during any period during</p>
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	<p>which laying down, construction, installation, adjusting, altering, testing, maintaining, repairing, renewing, upgrading, cleansing, relaying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement, replanting or re-instatement of fences, hedges or other barriers following the exercise of the new rights);</p> <ul style="list-style-type: none"> (t) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary and permanent drainage; (u) carry out environmental surveys, mitigation works, maintenance and enhancement works within that part of the land over which the new rights are acquired; (v) enter for the purposes of intrusive surveys including for site investigation and environmental surveys, making of boreholes, trial pits and archaeological trenches, auger hole sampling and the taking of soil and other samples, and to reinstate the land to its condition prior to commencement of such works; (w) benefit from continuous vertical and lateral support for the pipeline and associated apparatus; (x) erect temporary signage and provide measures for benefit of public and personnel safety; (y) erect, maintain and remove temporary noise alleviation measures as well as temporary barriers for the protection of fauna within that part of the land over which the new rights are acquired.
	<p>A restrictive covenant over the land for the benefit of the remainder of the Order land:</p> <ul style="list-style-type: none"> (z) not to undermine or damage the pipeline nor to do anything which may interfere with free flow and passage of gas through the pipeline or support for the pipeline within that part of the land over which the new rights are acquired; (aa) not to alter or permit or allow to be altered the then existing level of the

	<p>land nor to cover or permit or allow to be covered the surface of the land over which the new rights are acquired in such manner as to render the access to the pipeline impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired;</p> <p>(bb) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on or within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.</p>
<p>10, 18, 19, 30, 37, 38, 48, 49, 61, 62, 64, 73, 77, 85, 86, 87, 133, 179, 180, 190, 193, 205, 208, 227, 229, 235, 237, 263</p>	<p>The right to enter and remain upon the land for the purposes of the operation, maintenance and decommissioning of the authorised development and to:</p> <p>(cc) lay down, construct, install, adjust, alter, test, use, maintain, repair, renew, upgrade, inspect, survey, cleanse, re-lay, divert, make safe, make incapable of operation, replace and remove the pipeline together with ancillary equipment including cathodic protection to include installation by digging trenches, the use of or resorting to directional drilling, auger boring, thrust boring, micro tunnelling or pipe ramming or other similar trenchless techniques for the laying of the pipeline within a corridor of up to 7.6 metres in width;</p> <p>(dd) enter and be upon that part of the land over which the new rights are acquired and remain with or without all necessary plant, vehicles, machinery, materials, drilling fluids, apparatus and equipment:</p> <p>(i) for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection;</p> <p>(ii) to remove, store and stockpile topsoil and subsoil and materials;</p> <p>(iii) install water barriers, trench</p>

	<p>shuttering and pumping equipment; and</p> <p>(iv) to restore and reinstate the land to its condition prior to commencement of the works to install the pipeline and ancillary equipment to include cathodic protection (subject to the retention of permanent works) following their installation within the land;</p> <p>(ee) retain and use the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired for the purpose of the transmission of gas and for associated purposes;</p> <p>(ff) upgrade, improve, widen, repair, maintain and adapt existing tracks and roadways and to pass and re-pass within that part of the land over which the new rights are acquired with or without vehicles, plant and machinery;</p> <p>(gg) place and use apparatus, materials (including matting, trackways, hard standing and other material in connection with construction of haul and access roads and storage areas), plant, machinery, trench shuttering, temporary structures and welfare accommodation for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired; and to construct, lay down, use and remove temporary haul and access roads, trackways, matting and other suitable materials, including for any necessary temporary bridging of statutory undertakers' apparatus, other apparatus, conduits, watercourses, ditches and drains; and to effect access to the highway;</p> <p>(hh) install, keep, maintain, replace, renew and remove pipeline marker posts, test posts and aerial markers within that part of the land over which the new rights are acquired, to identify the location of the pipeline (subject to the undertaker seeking to locate the marker posts so as to minimise interference with the owner's future use and operations within the land);</p>
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	<ul style="list-style-type: none"> (ii) fell, lop, prune or cut trees, shrubs or hedges or remove roots of trees, hedges or shrubs within that part of the land over which the new rights are acquired for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection; (jj) use, inspect, modify, maintain, adjust, alter, support, renew, repair, improve, extend, test or cleanse and to connect in to existing drainage, watercourses, sewers or culverts and to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping within that part of the land over which the new rights are acquired; (kk) alter, re-lay, maintain, adjust or remove existing pipes, cables or conduits or service media and associated apparatus (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired; (ll) install, construct, maintain, use, improve, cleanse, repair, replace and remove new pipes, cables, conduits, service media and associated apparatus that are used for the purposes of transmitting or distributing electricity, communications, gas, oil, water supply, sewerage and drainage (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired; (mm) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired; (nn) remove fences, hedges, gates or other barriers during any period during which laying down, construction, installation, adjusting, altering, testing, maintaining, repairing, renewing, upgrading, cleansing, relaying,
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	<p>diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement, replanting or reinstatement of fences, hedges or other barriers following the exercise of the new rights) ;</p> <p>(oo) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary and permanent drainage;</p> <p>(pp) carry out environmental surveys, mitigation works, maintenance and enhancement works within that part of the land over which the new rights are acquired;</p> <p>(qq) enter for the purposes of intrusive surveys including for site investigation and environmental surveys, making of boreholes, trial pits and archaeological trenches, auger hole sampling and the taking of soil and other samples, and to reinstate the land to its condition prior to commencement of such works;</p> <p>(rr) benefit from continuous vertical and lateral support for the pipeline and associated apparatus;</p> <p>(ss) erect temporary signage and provide measures for benefit of public and personnel safety; and</p> <p>(tt) erect, maintain and remove temporary noise alleviation measures as well as temporary barriers for the protection of fauna within that part of the land over which the new rights are acquired.</p>
175	<p>The right to enter and remain upon the land for the purposes of the operation, maintenance and decommissioning of the authorised development and to:</p> <p>(uu) lay down, construct, install, adjust, alter, test, use, maintain, repair, renew, upgrade, inspect, survey, cleanse, re-lay, divert, make safe, make incapable of operation, replace and remove cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road;</p> <p>(vv) enter and be upon that part of the land over which the new rights are acquired and remain with or without all</p>

	<p>necessary plant, vehicles, machinery, materials, drilling fluids, apparatus and equipment;</p> <p>(i) for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road;</p> <p>(ii) to remove, store and stockpile topsoil and subsoil and materials, install water barriers, trench shuttering and pumping equipment; and</p> <p>(iii) to restore and reinstate the land to its condition prior to commencement of the works to install the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road (subject to the retention of permanent works) following their installation within the land</p> <p>(ww) Retain and use the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road within that part of the land over which the new rights are acquired for the purposes of the authorised development;</p> <p>(xx) upgrade, improve, widen, repair, maintain and adapt existing tracks and roadways and to pass and re-pass within that part of the land over which the new rights are acquired with or without vehicles, plant and machinery;</p> <p>(yy) place and use apparatus, materials (including matting, trackways, hard standing and other material in connection with construction of haul and access roads and storage areas), plant, machinery, trench shuttering, temporary structures and welfare accommodation for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting,</p>
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	<p>removal and replacing of the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road within that part of the land over which the new rights are acquired; and to construct, lay down, use and remove temporary haul and access roads, trackways, matting and other suitable materials, including for any necessary temporary bridging of statutory undertakers' apparatus, other apparatus, conduits, watercourses, ditches and drains; and to effect access to the highway;</p> <p>(zz) install, keep, maintain, replace, renew and remove cathodic protection marker posts and test posts within that part of the land over which the new rights are acquired, to identify the location of the cathodic protection infrastructure (subject to the undertaker seeking to locate the marker posts so as to minimise interference with the owner's future use and operations within the land);</p> <p>(aaa) fell, lop, prune or cut trees, shrubs or hedges or remove roots of trees, hedges or shrubs within that part of the land over which the new rights are acquired for the purposes of installing, constructing, adjusting, altering, testing, using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road;</p> <p>(bbb) use, inspect, modify, maintain, adjust, alter, support, renew, repair, improve, extend, test or cleanse and to connect in to existing drainage, watercourses, sewers or culverts and to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping within that part of the land over which the new rights are acquired;</p> <p>(ccc) alter, re-lay, maintain, adjust or remove existing pipes, cables or conduits or service media and associated apparatus (including apparatus of statutory undertakers)</p>
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	<p>within that part of the land over which the new rights are acquired;</p> <p>(ddd) install, construct, maintain, use, improve, cleanse, repair, replace and remove new pipes, cables, conduits, service media and associated apparatus that are used for the purposes of transmitting or distributing electricity, communications, gas, oil, water supply, sewerage and drainage (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;</p> <p>(eee) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired;</p> <p>(fff) remove fences, hedges, gates or other barriers during any period during which laying down, construction, installation, adjusting, altering, testing, maintaining, repairing, renewing, upgrading, cleansing, relaying, diverting, making safe, making incapable of operation, replacing and removing the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement, replanting or reinstatement of fences, hedges or other barriers following the exercise of the new rights) ;</p> <p>(ggg) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary and permanent drainage;</p> <p>(hhh) carry out environmental surveys, mitigation works, maintenance and enhancement works within that part of the land over which the new rights are acquired;</p> <p>(iii) enter for the purposes of intrusive surveys including for site investigation and environmental surveys, making of boreholes, trial pits and archaeological trenches, auger hole sampling and the taking of soil and other samples, and to reinstate the land to its condition prior</p>
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	<p>to commencement of such works;</p> <p>(jjj) benefit from continuous vertical and lateral support for the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road;</p> <p>(kkk) erect temporary signage and provide measures for benefit of public and personnel safety;</p> <p>(lll) erect, maintain and remove temporary noise alleviation measures as well as temporary barriers for the protection of fauna within that part of the land over which the new rights are acquired.</p> <p>A restrictive covenant over the land for the benefit of the remainder of the Order land :</p> <p>(mmm) not to undermine or damage the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road, nor to do anything which may interfere with the operation of or support for such equipment within that part of the land over which the new rights are acquired;</p> <p>(nnn) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land within that part of the land over which the new rights are acquired in such manner as to render the access to the cathodic protection, mains power and telecommunications cables, cabinets and kiosks and permanent access road impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired;</p> <p>(ooo) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.</p>
176	<p>The right to:</p> <p>(ppp) pass and re-pass with or without vehicles, machinery, plant and equipment for the purposes of survey, and for the purposes of laying down, installing, constructing, adjusting,</p>

	<p>altering, using, maintaining, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, removing and replacing cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road, and to effect access to the highway and site compounds;</p> <p>(qqq) lay down, use, repair, alter and remove matting, trackways, hard standings for the purposes of access to the cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road and to restore and re-instate the land to its prior condition;</p> <p>(rrr) remove, store and stockpile topsoil and subsoil, employ water barriers and pumping equipment, remove materials and to restore and re-instate the land to its prior condition;</p> <p>(sss) fell, lop, prune or cut trees, shrubs or hedges, or uproot and remove the roots of trees, shrubs and hedges for the purposes of enabling the right to pass and re-pass to adjoining land;</p> <p>(ttt) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary drainage; to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping;</p> <p>(uuu) remove fences, hedges, gates or other barriers during any period during which installation, construction, maintenance renewal, repair, upgrading, or replacement of the cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road is being carried out or for the exercise of the power to access the cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road (subject to the prior erection of any temporary stock proof fencing as is reasonably required) and the replacement, replanting or re-instatement of fences, hedges or other barriers following the exercise of the new rights;</p> <p>(vvv) erect temporary bridges</p>
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	(including the bridging over of or protection of the apparatus of the statutory undertakers) and supporting or protective structures for the purposes of access to the cathodic protection, mains power and telecommunication cables, cabinets and kiosks and permanent access road from adjoining land.
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SCHEDULE 6

Article 23

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

24. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

25.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition) as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there are substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

26.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land so that, in the appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(a) 1973 c.26.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act will apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

27. For section 7 of the 1965 Act (measure of compensation) there will be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

28. For section 8 of the 1965 Act (provisions as to divided land) there will be substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (aa) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (bb) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs.

the Thorpe Marsh Gas Pipeline Order 201[**] (“the Order”) will, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice will be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section will be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made, but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

29. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

will be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

30. Section 11 of the 1965 Act (powers of entry) will be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which will be deemed for this purpose to have been created on the date of service of the notice), and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act will be modified correspondingly.

31. Section 20 of the 1965 Act (protection for the interests of tenants at will, etc.) will apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

32. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) will be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 7

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

PART A

Land of which temporary possession may be taken

Part 1: In the County of North Yorkshire, District of Selby

<i>(1)</i> <i>Number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
5, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 30, 31, 37, 38, 41, 44, 45, 48, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 162	Construction and carrying out of the authorised development, work sites for the construction and carrying out of the authorised development, the laying of temporary haul roads and improvements to tracks, access for the carrying out of the authorised development.
3, 4, 7, 25, 32, 33, 34, 35, 36, 39, 40, 42, 43, 46, 47, 141, 148	Working site, construction and storage compound, access for the carrying out of the authorised development.
23, 26, 28, 149, 151, 152, 153, 154, 156, 157, 158, 159, 160, 161	The laying of temporary haul roads and improvements to tracks, modifications to roads, access for the carrying out the authorised development.

Part 2: In the East Riding of Yorkshire

<i>(1)</i> <i>Number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
49, 50, 51, 61, 62, 63, 64, 65, 68, 69, 70, 71, 73, 77, 79, 81, 84, 85, 86, 87, 88, 89, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 115, 128, 129, 132, 133, 134, 135, 136,	Construction and carrying out of the authorised development, work sites for the construction and carrying out of the authorised development, the laying of temporary haul roads and improvements to tracks, access for the carrying out of the authorised development.
52, 53, 54, 55, 66, 67, 72, 75, 78, 80, 82, 83, 90, 91, 112, 113, 130, 131	Working site, construction and storage compound, access for the carrying out of the authorised development.
59, 60, 74, 76, 92, 97, 98, 100, 116, 117, 118, 124, 125, 126, 127	The laying of temporary haul roads and improvements to tracks, modifications to roads, access for the carrying out the authorised development.

Part 3: In the Metropolitan Borough of Doncaster

<i>(1)</i> <i>Number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 175, 176, 179, 180, 183, 186, 187, 190, 193, 196, 199, 202, 205, 208, 211, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 229, 231, 235, 237, 239, 240, 243, 245, 246, 247, 248, 251, 259, 263, 264, 265	Construction and carrying out of the authorised development, work sites for the construction and carrying out of the authorised development, the laying of temporary haul roads and improvements to tracks, access for the carrying out of the authorised development.
173, 174, 178, 181, 182, 184, 185, 188, 189, 191, 192, 194, 195, 197, 198, 200, 201, 203, 204, 206, 207, 209, 210, 212, 213, 226, 228, 230, 232, 233, 234, 236, 238, 241, 242, 244, 249, 250, 260, 261, 262	Working site, construction and storage compound, access for the carrying out of the authorised development.
177, 252, 256, 257, 258	The laying of temporary haul roads and improvements to tracks, modifications to roads, access for the carrying out the authorised development.

PART B

Land over which temporary access may be taken where others use the same

Part 1: In the County of North Yorkshire, District of Selby

<i>(1)</i> <i>Number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
1, 2, 14, 15, 24, 27, 29, 150, 155	The laying of temporary haul roads and improvements to tracks; access for carrying out the authorised development.

Part 2: In the East Riding of Yorkshire

<i>(1)</i> <i>Number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
56, 57, 58, 93, 94, 95, 96, 99, 119, 120, 121, 122, 123	The laying of temporary haul roads and improvements to tracks; access for carrying out the authorised development.

Part 3: In the Metropolitan Borough of Doncaster

<i>(1)</i> <i>Number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
253, 254, 255	The laying of temporary haul roads and improvements to tracks; access for carrying out the authorised development.

SCHEDULE 8

Article 37

REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Important hedgerow</i>
In the County of North Yorkshire, District of Selby	The important hedgerow marked “1” on sheet 3 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “2” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “3” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “4” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “5” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “6” on sheet 4 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “9” on sheet 5 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “10” on sheet 5 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “11” on sheet 5 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “12” on sheet 5 of the important hedgerows plan
In the East Riding of Yorkshire	The important hedgerow marked “13” on sheet 6 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “14” on sheet 6 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “15” on sheet 7 of the important hedgerows plan

In the Metropolitan Borough of Doncaster	The important hedgerow marked “17” on sheet 7 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “19” on sheet 7 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “20” on sheet 7 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “21” on sheet 8 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “22” on sheet 8 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “26” on sheet 9 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “27” on sheet 9 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “28” on sheet 9 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “29” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “31” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “32” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “35” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “36” on sheet 10 of the important hedgerows plan
In the Metropolitan Borough of Doncaster	The important hedgerow marked “37” on sheet 10 of the important hedgerows plan

SCHEDULE 9

Article 41

PROTECTIVE PROVISIONS

PART 1

For the Protection of Network Rail Infrastructure Limited

33. The following provisions of this part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 14, any other person on whom rights or obligations are conferred by that paragraph.

34. In this part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the

meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

35.—(1) Where under this part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

36.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and—

- (a) if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker;
- (b) if by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be

approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

37.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable and properly incurred expenses to which Network Rail may be put and compensation for any loss which it may properly sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

38. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

39. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this part of this Schedule during their construction and must supply the undertaker with all such information as it may reasonably require with regard to such works or the method of constructing them.

40.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable and proper cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably and

properly incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail may assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 4(3), pay to Network Rail all reasonable and properly incurred expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

41. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it may be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

42.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 4(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 4(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 4(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of commercial operation of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 5.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 14(1) applies to the costs and expenses reasonably and properly incurred or losses properly suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 9(a) any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 42 (arbitration) to an arbitrator to be agreed is to be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers to be agreed.

43. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

44. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

45. Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

46.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this part of this Schedule which may be occasioned to or reasonably and properly incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure of them; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker notice of any such claim or demand as soon as is reasonably practicable and no settlement or compromise of such a claim or demand may be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs may, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably and properly incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

47. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this part of this Schedule (including the amount of the relevant costs mentioned in paragraph 14) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this part of this Schedule (including any claim relating to those relevant costs).

48. In the assessment of any sums payable to Network Rail under this part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this part of this Schedule or increasing the sums so payable.

49. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

50. The undertaker must give written notice to Network Rail where any submission is proposed to be made by the undertaker for the Secretary of State’s consent under article 8 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such submission is made and must describe or give (as appropriate)—

- (a) the nature of the submission to be made;
- (b) the extent of the geographical area to which the submission relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the submission is to be made.

51. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (certification of plans etc.), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 2

For the Protection of National Grid Electricity Transmission Plc and National Grid Gas Plc

Application

52. For the protection of the protected person referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned, have effect.

Interpretation

53. In this part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the protected person to enable the protected person in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of National Grid Electricity Transmission Plc, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission Plc;

(b) in the case of National Grid Gas Plc, any mains, pipes or other apparatus belonging to or maintained by National Grid Gas Plc for the purposes of gas supply;

“commence” has the same meaning as in article 2;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the protected person including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“protected person” means—

(c) in relation to its undertaking for the purposes of electricity transmission, National Grid Electricity Transmission Plc; and

(d) in relation to its undertaking for the purposes of gas supply, National Grid Gas Plc

(e) as applicable.

54. Except for paragraphs 4 (apparatus of protected person in stopped up streets), 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) this part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of protected person in stopped up streets

55. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of streets) or article 14 (temporary stopping up of public rights of way), a protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

56.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any land interest or apparatus or override any easement or other interest of a protected person or create any new rights over the same otherwise than by agreement of the relevant protected person such agreement not to be unreasonably withheld or delayed (having regard to the protected person’s existing and future requirements for such land or interests).

(2) The undertaker and the protected person agree that where there is any inconsistency or duplication between the provisions set out in this part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the protected person as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

Removal of apparatus

57.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus of the protected person is placed, that apparatus shall not be removed under this part of this Schedule and any right of a protected person to maintain that apparatus in that land shall not be

extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the protected person in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to its satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the protected person in question shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the protected person to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker (both parties acting reasonably).

(5) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

Facilities and rights for alternative apparatus

58.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a protected person facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question and shall be no less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected person.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under paragraph 7(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection for National Grid Gas Plc

59.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by

the undertaker under paragraph 6(2) or otherwise, the undertaker shall submit to the protected person in question a plan.

(2) In relation to works which will or may be situated on, over, under or within [15] metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) intended maintenance regimes.

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan submitted under sub-paragraph (1) or, as relevant, sub-paragraph (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where a protected person requires any protective works to be carried out either itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's satisfaction prior to the commencement of any works (or any relevant part thereof) and the protected person shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (5) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from Underground Services".

Retained apparatus: protection for National Grid Electricity Transmission Plc

60.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker shall submit to the protected person in question a plan and seek from the protected person in question details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) In relation to any works which will or may be situated on, over, under or within [10] metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the protected person's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of OHL construction traffic

(4) The undertaker shall not commence any works to which sub-paragraph (2) or (3) apply until the protected person has given written approval of the plan so submitted.

(5) Any approval of the protected person required under sub-paragraph (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or 8);
- (b) shall not be unreasonably withheld.

(6) In relation to a work to which sub-paragraph (2) or (3) apply, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under this Order shall be executed only in accordance with the plan submitted under sub-paragraph (1) or, as relevant, sub-paragraph (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(8) Where a protected person requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's satisfaction prior to the commencement of any works (or any relevant part thereof) and the protected person shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (5) (except in an emergency).

(9) If a protected person in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

61.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to a protected person on demand all charges, costs and expenses reasonably incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected person elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;

- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this part of this Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a protected person in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected person any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

62.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and

- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any requirement of a protected person or under its supervision shall not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of this sub-paragraph (1)).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a protected person, its officers, servants, contractors or agents.

Ground subsidence monitoring scheme in respect of protected person's apparatus

63.—(1) No works within 15 metres of any apparatus or alternative apparatus which are capable of interfering with or risking damage to a protected person's apparatus shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as the "monitoring scheme") has been submitted to and approved by the relevant protected person, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) shall set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the relevant protected person's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraph (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development, and any requirements of the protected person will be notified within 28 days of receipt of the monitoring scheme; thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to the protected person for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected person retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 2 of Schedule 1 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

Enactments and agreements

64. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person in respect of any

apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

65. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 6(2) or a protected person makes requirements for the protection or alteration of apparatus under paragraph 8 and/or 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and each protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

66. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

67. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 9, any difference or dispute arising between the undertaker and a protected person under this part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 42 (arbitration).

PART 3

For the Protection of Electricity, Gas, Water and Sewerage Statutory Undertakers

68. The provisions of this part of this Schedule have effect for the protection of the statutory undertakers referred to in this part of this Schedule, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned.

69. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition, electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989^(a)), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition, any gas mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition, water mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a statutory undertaker within paragraph (d) of the definition—

(a) The definition of “electrical plan” in section 64 was amended by paragraph 38(3) of Schedule 6 to the Utilities Act 2007.

- (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991(a); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,
- (e) and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“statutory undertaker” means—

- (f) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (g) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
- (h) a water undertaker(c); and
- (i) a sewerage undertaker,

for the area of the authorised development (save National Grid Gas and National Grid Electricity Transmission Plc, which are not statutory undertakers for the purposes of this part of this Schedule) and, in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

70. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

71. Despite any provision in this Order or anything shown on the book of reference or on the land plans, the undertaker does not acquire any apparatus other than by agreement.

72.—(1) If, in the exercise of the powers conferred by this Order or otherwise obtained by private treaty, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on, over or under any land purchased, held, appropriated or used under this Order or in, on, over or under any land within the Order limits, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration),

(a) Section 102(4) was amended by section 96 of the Water Act 2003. Section 104 was amended by section 96 of, and by Part 3 of Schedule 9 to, the Water Act 2003 and by section 42(3) of the Flood and Water Management Act 2010 (c.29).

(b) 1986 c.44. “Gas transporter” is defined by section 7. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45) and was further amended by section 76 of the Utilities Act 2000.

(c) “Water undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(5) Despite anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

73.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that will or may adversely affect any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and if this is done, the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

74.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including the proper and reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) The value of any apparatus removed under the provisions of this part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by undertaker or, in default of agreement, is not determined by arbitration in accordance with article 34 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding those which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

75.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the proper and reasonable cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) make proper and reasonable compensation to that statutory undertaker for any other expenses, loss, damages, penalty or costs incurred by the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

PART 4

For the Protection of Operators of Electronic Communications Code Networks

76. The provisions of this Part have effect for the protection of the operators referred to in this part of this Schedule, unless otherwise agreed in writing between the undertaker and the operator concerned.

77. In this part of this Schedule—

“2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code(b);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“operator” means the operator of an electronic communications code network.

78. The exercise of the powers conferred by article 31 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(d).

79.—(1) Subject to sub-paragraphs (2) to (4), if, as the result of the authorised development or its construction, or of any subsidence resulting from any of those works,—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the reasonable and proper cost incurred by the operator in making good such damage or restoring the supply as the case may be and must make proper and reasonable compensation to an operator for any other expenses, loss, damages, penalty or costs incurred by it.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

80. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(a) 2003 c.21

(b) Paragraph 1(3A) was added to the code (Schedule 2 to the Telecommunications Act 1984) by paragraph 4 of Schedule 3 to the Communications Act 2003.

(c) “The electronic communications code” is defined in section 106(1).

(d) 1984 c.12. Paragraph 23 was amended by paragraph 68 of Schedule 25 to the Water Act 1989 (c.15), Schedule 27 to that Act, Schedule 18 to the Electricity Act 1989 and paragraphs 5 and 8 of Schedule 3 to the Communications Act 2003.

81. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Thorpe Marsh Power Limited to construct, operate and maintain an up to 24 inch (609.6 millimetre) external diameter cross-country gas pipeline (to be known as the Thorpe Marsh Gas Pipeline) for the conveyance of gas and covering a distance of approximately 19.1 kilometres starting from the National Transmission System approximately 1.5 kilometres west Camblesforth in the County of North Yorkshire, District of Selby and ending at the proposed Thorpe Marsh Power Station to be constructed at Barnby Dun in the Metropolitan Borough of Doncaster, together with all necessary and associated development. For the purposes of the development that it authorises, Thorpe Marsh Power Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 40 (certification of plans, etc.) of this Order may be inspected free of charge at the offices of Selby District Council at Civic Centre, Doncaster Road, Selby, North Yorkshire YO8 9FT; East Riding of Yorkshire Council at County Hall, Cross Street, Beverley, East Riding of Yorkshire HU17 9BA; and Doncaster Metropolitan Borough Council at Civic Office, Waterdale, Doncaster DN1 3BU.