

Viking CCS Pipeline

9.66 Applicant's Comments on the Submissions made at Deadline 4

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a Harbour Energy Company
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Table of Contents

1	Introduction	1
1.1	Purpose of this Document.....	1
1.2	The DCO Proposed Development	1
2	The Applicant's comments on submissions made at Deadline 4.....	2

Tables

Table 2-1: Air Products (BR) Limited Deadline 4 Submission - Comments regarding Protective Provisions [REP4-089].....	2
Table 2-2: Anglian Water Services Limited Deadline 4 Submission - Comments on Strategic Matters for consideration at Issue Specific Hearing 2 [REP4-102].....	3
Table 2-3: Associated Petroleum Terminals (Immingham) Limited and Humber Oil Terminals Trustee Limited	4
Table 2-4: East Lindsey District Council Deadline 4 Submission - Note relating to Issue Specific Hearing 3 action point regarding noise assessment [REP4-096].....	6
Table 2-5: East Lindsey District Council BSI Standards publication - Code of practice for noise and vibration control on construction and open sites – Part 1: Noise [REP4-097].....	7
Table 2-6: East Lindsey District Council - Response to Issue Specific Hearing 2 action points [REP4-098]	8
Table 2-7: Environment Agency - Comments on any other information and submissions received at Deadline 3 [REP4-104].....	9
Table 2-8: James Hewitt Deadline 4 Submission - Comments on Strategic Matters for consideration at Issue Specific Hearing 2 [REP4-101]	10
Table 2-9: Lincolnshire County Council- Written summary of oral submissions made at Issue Specific Hearing 3 (ISH3) [REP4-056].....	11
Table 2-10: Lincolnshire County Council- Written summary of oral submissions made at Issue Specific Hearing 2 (ISH2) [REP4-057].....	12
Table 2-11: Lincolnshire County Council- Response to Issue Specific Hearing 2 action points [REP4-099]	14
Table 2-12: Lincolnshire County Council- Response to Issue Specific Hearing 3 action points [REP4-100]	17
Table 2-13: National Highways Deadline 4 Submission - Written summaries of oral submissions made at Issue Specific Hearing 2 and Issue Specific Hearing 3, including any response to action points [REP4-059].....	20
Table 2-14: Natural England: Cover letter and Annex A - Summary of Natural England's updated advice and Table of updated advice for each Written Representation issue [REP4-093]	26
Table 2-15: North East Lincolnshire - Responses to Issue Specific 2 and Issue Specific 3 action points [REP4-094].....	29
Table 2-16: Phillips 66 Limited Deadline 4 Submission - Written summary of oral submissions made at Compulsory Acquisition Hearing 2, responses to action points and update on negotiations [REP4-061].....	32

1 Introduction

1.1 Purpose of this Document

- 1.1.1 This document has been prepared for the Viking CCS Pipeline (the 'Proposed Development') on behalf of Chrysaor Production (UK) Limited ('the Applicant'), in relation to an application ('the Application') for a Development Consent Order (DCO) that has been submitted under Section 37 of the Planning Act 2008 (PA 2008) to the Secretary of State (SoS) for Energy Security and Net Zero.
- 1.1.2 This document provides the Applicant's responses to additional submissions from Interested Parties that were made at Deadline 4.

1.2 The DCO Proposed Development

- 1.2.1 The Proposed Development comprises a new onshore pipeline which will transport CO₂ from the Immingham industrial area to the Theddlethorpe area on the Lincolnshire coast, supporting industrial and energy decarbonisation, and contributing to the UK target of Net-Zero by 2050. The details of the Proposed Development can be found within the submitted DCO documentation. In addition to the pipeline, the Proposed Development includes a number of above ground infrastructure, including the Immingham Facility, Theddlethorpe Facility and three Block Valve Stations.
- 1.2.2 A full, detailed description of the Proposed Development is outlined in Environmental Statement (ES) Volume II Chapter 3: Description of the Proposed Development **[APP-045]**.

2 The Applicant's comments on submissions made at Deadline 4

This section provides the Applicant's response to submissions from Interested Parties made at Deadline 4.

Table 2-1: Air Products (BR) Limited Deadline 4 Submission - Comments regarding Protective Provisions [REP4-089]

Ref	Topic	Interested Party Comment	Applicant's Response
2.1.1	General	<p>1 INTRODUCTION</p> <p>1.1 This submission is made on behalf of Air Products (BR) Limited (Air Products) in respect of the application for development consent for the Viking CCS Pipeline (the Project) submitted by the Applicant to the Planning Inspectorate which was Accepted for Examination on 17 November 2023.</p> <p>1.2 Air Products made a Relevant Representation [RR-003] on this Application on 8 January 2024 and submitted a Written Representation [REP1-085] on 26 April 2024.</p> <p>1.3 As set out in its Written Representation [REP1-085], Air Products has a Category 2 interest in a number of plots over which powers of compulsory acquisition are sought. To the extent that the Applicant seeks powers in the draft DCO to either (a) compulsorily acquire land (including subsurface) or rights or (b) to extinguish, suspend or override existing rights, Air Products' ability to maintain and operate its existing infrastructure must be preserved.</p> <p>1.4 Accordingly, Air Products' representations seek to ensure it can protect its existing infrastructure and assets within Order Limits.</p>	<p>The Applicant and Air Products (BR) Limited are making good progress on the Protective Provisions, with the latest draft with the Applicant for comment. The Applicant will respond to Charles Russell Speechlys in w/c 2 September.</p> <p>Protective Provisions for Air Products (BR) Limited will be included in the final draft DCO.</p>
2.1.2	Protective Provisions	<p>2 ASSET PROTECTION</p> <p>2.1 Since submitting its Written Representation [REP1-085], there has been progress with the Applicant in negotiating Protective Provisions and an asset protection agreement in favour of Air Products in respect of its assets within the proposed Order Limits, with the most recent mark up of the Protective Provisions and a draft asset protection agreement being provided to the Applicant's solicitors on 5 July for their review and comments.</p> <p>2.2 In light of that progress, Air Products has been maintaining a watching brief of the Examination and did not attend Issue Specific Hearing 2 (ISH2). In agenda item 3(c) for ISH2, the Examining Authority requested an update on Protective Provisions, however, at the hearing the position as regards Air Products was not covered. For completeness, therefore, Air Products wishes to confirm that notwithstanding the progress that has been made in relation to its requested Protective Provisions and asset protection agreement, unless and until those documents are agreed, Air Products maintains its objection to compulsory acquisition powers being granted over land in which it has an interest. 2.3 Air Products looks forward to continuing productive engagement with the Applicant to resolve these outstanding matters.</p>	

Table 2-2: Anglian Water Services Limited Deadline 4 Submission - Comments on Strategic Matters for consideration at Issue Specific Hearing 2 [REP4-102]

Ref	Topic	Interested Party Comment	Applicant's Response
2.2.1	Negotiations	<p>As set out at the Hearing, AWS is pleased to support the reduction in potential land take area for the project to the east of the Louth Water Recycling (WRC) facility. As a developer of pipelines, we understand that their often needs to be a degree of flexibility and therefore land take particularly when pipelines cross under other infrastructure and features such as the canal and river. We have agreed with the Viking project that the CCS pipeline will be as far east as possible within our parcel of land without compromising the existing 560mm water pipe and limiting our ability to access the water pipe on our land for maintenance or in the event of an emergency. The exact route will therefore be determined on site by the project working with our network team to minimise the land that may be sterilised by the CCS pipelines route in this parcel of land, that will be needed for the future expansion of the WRC to accommodate increased flows from existing and planned housing growth at Louth.</p> <p>AWS will work with the project to finalise our SoCG so this can be agreed and submitted upon the confirmation of the proposed changes and before Deadline 5 of 2.9.24.</p>	<p>The Applicant welcomes Anglian Water's support for the changes made to the Proposed Development. The Applicant will continue to engage with Anglian Water through the detailed design phase.</p>

Table 2-3: Associated Petroleum Terminals (Immingham) Limited and Humber Oil Terminals Trustee Limited

Ref	Topic	Interested Party Comment	Applicant's Response
2.3.1	General	<p>1. Introduction</p> <p>1.1 We are instructed by Associated Petroleum Terminals (Immingham) Limited (“APT”) and Humber Oil Terminals Trustee Limited (“HOTT”) (hereinafter referred to as “the IOT Operators”) in respect of the application (“the Application1 ”) made by Chrysaor Production (UK) Limited (“the Applicant”) for The Viking CCC Carbon Dioxide Pipeline Development Consent Order (“the Proposed Order”) to authorise the construction, operation and decommissioning of a pipeline that will transport captured carbon dioxide from Immingham to the Theddlethorpe Facility, together with associated development (“the Scheme”).</p> <p>1.2 The Application for the Proposed Order was submitted and is being promoted by the Applicant and has been allocated Planning Inspectorate reference EN070008.</p> <p>1.3 This Deadline 4 submission should be read together with and alongside: (a) The Relevant Representations (“RRs”) of the IOT Operators dated 15th January 2024; (b) The Written Representations (“WRs”) of the IOT Operators dated 25th April 2024; and (c) Comments made by the IOT Operators at ISH 1, CAH 1, and CAH 2.</p> <p>1.4 This Deadline 4 submission: (a) Provides a written summary of the oral submissions made at CAH 2 on 25th June; (b) Responds to the relevant action points from CAH 2; and (c) Updates on negotiations with the Applicant.</p> <p>1.5 Each of the above points are considered below in turn for ease of reference.</p>	<p>The Applicant and the IOT Operators are finalising the legal documentation to reflect an agreed position on the Protective Provisions to be included in the draft DCO. The IOT Operators are also considering some additional technical information provided by the Applicant.</p> <p>The Applicant anticipates that this will be completed in advance of Deadline 6 and will advise the Examining Authority when that is the case.</p>
2.3.2	Protective Provisions	<p>2. Summary of oral submissions made at CAH 2 on 25 June 2024</p> <p>2.1 The IOT Operators are joint venture companies owned equally by Phillips 66 Limited (“P66”) and Prax Lindsey Oil Refinery Limited (“Prax”). The primary activity of the IOT Operators is the operation of marine terminals on behalf of P66 and Prax. They are also responsible for the operation of much of the pipeline system in the pipeline corridor between the IOT, the Oil Depot, the HR, and the LOR (collectively referred to as “the Refineries”). Their operations are highly complex, heavily regulated, and extremely sensitive to disruption and interference.</p> <p>2.2 The IOT Operators support the principle of the Scheme and remain committed to assist in its implementation. The reason for the IOT Operators original objection to the Application related to the proposed details of the Scheme and how, in particular, they impacted or may impact on their operations and interests.</p> <p>2.3 Change Request 1 was welcomed by the IOT Operators which, in summary, reduced the Order Limits for works related to the Immingham Facility and associated accesses; and removed Pipeline Route Option 22 in section 1 of the Scheme.</p> <p>2.4 As such, the IOT Operators remaining objection now relates to Order Plot 1/74 and, in particular, the proposed location of this component of the Scheme relative to the HOTT pipelines and their interface.</p> <p>2.5 The engagement from the Applicant, until recently, has been less than the IOT Operators would have liked. Following CAH 1, there has been one technical discussion meeting between the parties and a further meeting will be arranged. A draft set of protective provisions has also now been received from the Applicant which the IOT Operators hope will, in substance, address the bulk of its concerns. The IOT Operators have considered and marked up this draft set of protective provisions and returned them to the Applicant. That was over a month ago and no further response from the Applicant on this mark up has been received.</p> <p>2.6 Overall, the IOT Operators are seeking, through the protective provisions, sufficient safeguards and protective provisions to be put in place to protect their interests and to enable them to continue to carry out their critically important operations. The IOT Operators are targeting an early resolution of these matters and would ask for further and more frequent engagement from the Applicant in this regard to work towards settling the protective provisions and to resolve the technical discussions which concern, among other things, clarification from the Applicant how close the Scheme is intended to run relative to the HOTT pipelines.</p>	

Ref	Topic	Interested Party Comment	Applicant's Response
2.3.3	Protective Provisions	<p>3. CAH 2 Actions</p> <p>3.1 The Examining Authority (“ExA”) have asked the IOT Operators to provide detail on the internal governance processes regarding agreeing to Protective Provisions (and/or removal of an objection) and to give an indication whether the objection would be withdrawn prior to the close of the Examination or not.</p> <p>3.2 Having considered this action point with the IOT Operators, we can confirm that: (a) the internal approvals process for the IOT Operators can take 3-4 weeks to conclude and (b) it is very much the hope and intention of the IOT Operators to work towards settling the terms of the protective provisions shortly and the accompanying agreement (see below) and thereafter (and subject to the necessary internal approvals and completion of the agreement) to withdraw its remaining objection to the Application during the currency of the examination.</p>	
2.3.4	Protective Provisions	<p>4. Update on negotiations with the Applicant</p> <p>4.1 Further to the oral submissions at CAH 2, which are summarised above, we are pleased to be able to confirm that the engagement from the Applicant has improved since CAH 2 and a further set of technical discussions have now been scheduled. In addition, the terms of the draft protective provisions, which have been the subject of several draft iterations, are now at an advanced stage of negotiation with the Applicant. It is now intended that alongside the protective provisions that an overarching agreement will be entered into by the IOT Operators with the Applicant which broadly regulates: (a) the exercise of their powers; (b) the withdrawal of the objection; and (c) the request for the protective provisions to be added to the Proposed Order.</p> <p>4.2 Subject to agreeing these remaining points of detail on the protective provisions and agreeing the terms of the overarching agreement, it is anticipated that the same will be settled in around the middle or end of August. Thereafter, the parties can proceed to obtain the necessary internal approvals and complete the agreement during the currency of the examination whereupon it would be the intention of the IOT Operators to proceed to write to the ExA to withdraw its objection to the Application.</p> <p>4.3 The ExA will appreciate that unless and until the terms of the protective provisions have been settled and the accompanying agreement has been finalised that the IOT Operators wish to maintain their objection to the Application on a protective basis.</p> <p>4.4 The IOT Operators will keep the ExA updated as to developments as negotiations continue to progress.</p>	

Table 2-4: East Lindsey District Council Deadline 4 Submission - Note relating to Issue Specific Hearing 3 action point regarding noise assessment [REP4-096]

Ref	Topic	Interested Party Comment	Applicant's Response
2.4.1	Noise	East Lindsey District Council (ELDC) submitted a memo at Deadline 4 which had been provided by Royal HaskoningDHV, responding to the Development Consent Order (DCO) application for the proposed Viking CCS Pipeline project. Tim Britton attended Issue Specific Hearing (ISH) 3 to represent ELDC on noise impacts.	<p>The Applicant has no further comments in relation to this document.</p> <p>The Applicant's responses to the issues raised relating to noise were responded to via the Applicant's deadline 4 submission [REP4-047]. Noise related questions raised by the ExA have been responded to in the Applicant's response to the ExA's second written questions [EN070008/EXAM/9.64].</p>

Table 2-5: East Lindsey District Council BSI Standards publication - Code of practice for noise and vibration control on construction and open sites – Part 1: Noise [REP4-097]

Ref	Topic	Interested Party Comment	Applicant's Response
2.5.1	BSI Standards	<p>The interested party shared BSI Standards publication - <u>Code of practice for noise and vibration control on construction and open sites – Part 1: Noise</u> (BS 5228-1:2009+A1:2014) which “<i>refers to the need for the protection against noise and vibration of persons living and working in the vicinity of, and those working on, construction and open sites. It recommends procedures for noise and vibration control in respect of construction operations and aims to assist architects, contractors and site operatives, designers, developers, engineers, local authority environmental health officers and planners</i>”</p>	<p>The Applicant notes this response.</p>

Table 2-6: East Lindsey District Council - Response to Issue Specific Hearing 2 action points [REP4-098]

Ref	Topic	Interested Party Comment	Applicant's Response
2.6.1	CEMP & OLEMP	<p>Actions arising from the Issues Specific Hearing 2</p> <p>8. To review the Construction Environment Management Plan (CEMP) and the Outline Landscape and Ecology Management Plan (OLEMP), with a view to checking whether such documents do satisfactorily secure biodiversity net gain to the extent that a separate requirement in the DCO is not required.</p> <p>Response: In the Outline Landscape and Ecological Management Plan Revision A at 1.5.40 it advises that "the applicant will provide at least 10% BNG as part of the proposed development." A Draft Biodiversity Net Gain Assessment (document 6.7.1) and Biodiversity Net Gain Strategy (document 6.7.2) have also been submitted as part of the application documents. Provided the principles from the two documents are included as part of the Landscape and Ecological Management Plan, which is secured by requirement number 11, it is considered that a separate requirement would not be necessary</p>	<p>The oLEMP was updated at Deadline 4 [REP4-021] to provide greater clarity regarding the Applicant's proposals in relation to BNG. These proposals are in accordance with the Applicant's Biodiversity Net Gain Assessment [APP-125] and Biodiversity Net Gain Strategy [APP-126].</p>
2.6.2	Noise assessment	<p>Actions arising from the Issue Specific Hearing 3.</p> <p>12. Provide details of other DCO schemes which are appropriate comparators in terms of noise assessment</p> <p>Response: Please see separate document submitted from Royal Haskoning on behalf of this Council.</p>	<p>The Applicant has set out its position within its note on Noise Assessment - Justification of Approach in REP4-038 and further expanded on consideration of all factors of BS 5228:2009 within its response to ExA WQ 2.14.1 [EN070008/EXAM/9.64].</p>

Table 2-7: Environment Agency - Comments on any other information and submissions received at Deadline 3 [REP4-104]

Ref	Topic	Interested Party Comment	Applicant's Response
2.7.1	Consultation	<p>In accordance with the Examination Timetable, please find below the Environment Agency's Deadline 4 submission in respect of:</p> <p>[REP3-030] Applicant's Comments on the Additional Submissions made by Interested Parties at Deadline 2</p> <p>We note the Applicant's response (ref 2.2.2) in respect of the timescales contained in Requirement 22 in relation to other recently made Orders. We remain of the view that any consultation timescales that do not, as a minimum, reflect the requirements of the Development Management Procedure Order 2015 will be inadequate – please refer to paragraphs 3.13 to 3.16 of the Environment Agency's Relevant Representation [RR034] for our original representation on this matter and our Deadline 2 submission [REP2-038] for additional comments following the amendments made to satisfy the Local Authorities representations.</p> <p>We look forward to reviewing the update to the Hydrogeological Risk Assessment, which the Applicant (at ref 2.2.4) has committed to submit for Deadline 4.</p>	<p>The Applicant has updated the timescales in requirement 23 (previously requirement 22) of the draft DCO (Revision G) [EN070008/APP/2.1] in response to the Examining Authority's schedule of proposed changes to the draft DCO.</p> <p>Following further discussion between the Applicant and the Environment Agency, an updated version (Revision A) of the Hydrogeological Risk Assessment [EN070008/APP/6.4.9.3] has been submitted to the ExA at Deadline 5.</p>
2.7.2	Protective provisions	<p>Other Matters</p> <p>Our solicitor is currently reviewing the protective provisions for the Environment Agency and we will provide an update on these as soon as possible.</p>	<p>The Applicant notes that this is still under review by the Environment Agency and would be grateful for an update as soon as possible, noting that there is less than a month until the close of the Examination.</p>

Table 2-8: James Hewitt Deadline 4 Submission - Comments on Strategic Matters for consideration at Issue Specific Hearing 2 [REP4-101]

Ref	Topic	Interested Party Comment	Applicant's Response
2.8.1	Strategic Matters	<p>The investment company EIG has recently sold its ownership of West Burton CCGT power station to the petrochemicals group Total. Harbour Energy and EIG had an agreement concerning a potential pipeline system to transport CO2 captured at that power station to the network of Viking CCS. Unless it differs from the recent trend amongst its peers, Total may follow the industry trend of investing in further fossil fuel production – delaying any commitment to design post-combustion carbon capture facilities at West Burton.</p> <p>That trend (which BP, Harbour Energy's partner in Viking CCS, appears to be following) tends to undermine hopes that, by 2030 (the year by which the electricity grid must be fully decarbonised), the onshore Viking pipeline will have both CO2 to transport and somewhere suitable beyond Theddlethorpe to send it (and something suitable to convey it).</p> <p>This reinforces concern that the Applicant's "salami slice" proposal serves as a convenient fig leaf for the fossil fuel sector (and flawed government climate policy). By boosting their apparent credentials (and investor sentiment), proponents buy themselves time.</p> <p>The recent Supreme Court judgement overturning Surrey Council's planning approval for Horse Hill fossil fuel project may affect commitment to Viking CCS. Clause 108 of that judgment includes the following sentence:</p> <p><i>"An assumption made for planning purposes that non-planning regimes will operate effectively to avoid or mitigate significant environmental effects does not remove the obligation to identify and assess in the EIA the effects which the planning authority is assuming will be avoided or mitigated."</i></p> <p>This presumably requires estimates for the probability that all greenhouse gas transported by the onshore pipeline will be permanently stored, from the moment the first supplies are transported, and that this will be before 2030.</p> <p>Similarly, recent Judicial Reviews concerning the Secretary of State's granting of approval for two DCOs - Net Zero Teesside (current) and carbon capture facilities at Drax power station (withdrawn, perhaps under pressure) – and court cases over-ruling approvals for Whitehaven coal mine (Cumbria) and oil development in Biscathorpe (Lincolnshire) highlight fundamental weaknesses in policy.</p>	<p>The Applicant notes the reference to the recent UK Supreme Court decision in <i>R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others</i> [2024] UKSC 20 and refers to its response to the Examining Authority's WQ 2.4.3 [EN070008/EXAM/9.64].</p>

Table 2-9: Lincolnshire County Council- Written summary of oral submissions made at Issue Specific Hearing 3 (ISH3) [REP4-056]

Ref	Topic	Interested Party Comment	Applicant's Response
2.9.1	Highways / Traffic	<p>1. Under agenda item 3 Lincolnshire County Council ("LCC") made the following points:</p> <p>2. In relation to the use of Thoroughfare and Thacker Bank as routes by traffic (HGV's) associated with the development, LCC reiterated that there were concerns remaining about the width of these routes and that passing bays would be required. LCC advised that there have been recent discussions with the applicant and LCC are anticipating details in plan form to be provided by the applicant of proposed passing bays. Subject to receiving these details and the Highway Authority (HA) being satisfied with the details provided these remaining concerns should be addressed. LCC will provide further comments once the information has been received and reviewed.</p>	<p>The Applicant issued technical notes regarding the need for passing places to Lincolnshire County Council (LCC). A meeting was held with LCC on 28 August 2024. It was agreed that the best way to take forward proposals for passing places on these roads was through an additional commitment to be included in the CEMP [EN070008/APP/6.4.3.1]. The wording of the additional measure is as follows:</p> <p>"H15 - Temporary passing places will need to be installed on Washingdales Lane, Thoroughfare, and Thacker Bank. Applications will be made to North East Lincolnshire Council and Lincolnshire County Council prior to construction to seek permission to install the temporary passing places. These applications will include the necessary details for each passing place, including both existing unmade passing places and new passing places."</p>
2.9.2	Archaeology	<p>3. LCC were asked a number of questions in relation to Archaeology by the ExA. Due to the absence of the Council's Archaeologist at the hearing it was agreed that LCC would respond in writing. LCC's response to these questions is provided in our response to Action Point 14 from the hearing.</p>	<p>This is noted by the Applicant.</p>
2.9.3	Heritage	<p>4. In response to the ExA's questions on Built Heritage, LCC confirmed that it is satisfied with the applicant's study area and methodology for identifying heritage assets. LCC agree that all relevant heritage assets (above ground) have been identified and appropriately assessed. This includes the assets raised in LCC's response to ExA's first written questions (REP1-059). Regarding designated assets, we refer to the statement of common ground between the applicant and Historic England (REP3-017). LCC have reviewed this document and found no points of difference to raise. Additionally, we confirm that the less than substantial harm anticipated for each heritage asset does not outweigh the public benefits of the proposed development.</p>	<p>This is noted by the Applicant.</p>

Table 2-10: Lincolnshire County Council- Written summary of oral submissions made at Issue Specific Hearing 2 (ISH2) [REP4-057]

Ref	Topic	Interested Party Comment	Applicant's Response
2.10.1	Highways / Street Works	<p>1. Under agenda item 3(b) Lincolnshire County Council (“LCC”) raised the following concerns:</p> <p>2. In relation to Articles 8 and 9 LCC made representations that our position remained the same as set out in written representations and the post ISH summary in relation to the operation of these articles in so far as they permit highways works or traffic regulation in LCC’s administrative area but without proper authorisation from LCC as highway authority (“HA”). However, LCC acknowledged that discussions were on going with the applicant and both parties were now clear on respective positions. LCC has set out its current position on Articles 8 and 9 and the New Roads and Street Works Act 1991 (NRSWA) as presented in Article 10 in its response to Action Point 1. LCC wish to highlight that the same point applies in relation to Articles 12 and 13 as raised at ISH1. LCC is confident that such issues can be rectified by amendments to the drafting and the agreement of a side agreement and looks forward to engaging with the Applicant on proposed changes and side agreement.</p>	<p>The Applicant has agreed to use the Council’s permitting system and has incorporated its use into the latest update of the draft Development Consent Order [EN070008/APP/2.1] as Article 8</p> <p>The Applicant understands that this has addressed the County Council’s concerns in respect of these articles.</p>
2.10.2	Highways / Street Works	<p>3. LCC were asked by the Examining Authority (ExA) to provide further detail in relation to its permitting scheme. Further details are provided in LCC’s response to Action Point 2.</p>	<p>Please see response ref. 2.6.1 above.</p>
2.10.3	Highways / Street Works	<p>4. LCC were asked by the ExA what mechanism would the Council like to see in terms of Section 278 agreements. Further details are provided in LCC’s response to Action Points 1 and 3.</p>	<p>Please see response ref. 2.6.1 above.</p>
2.10.4	Article 43	<p>5. In relation to Article 43 LCC advised that they were broadly in agreement with the drafting of the new Article 43 but had some concerns in relation to drafting of paragraph 3 which refers to land adjacent to the order limits and conditions attached to extant planning permission ceasing to have effect.</p> <p>a. LCC’s concern is in relation to the current drafting of Article 43(3). Post-ISH2 discussions between LCC and the Applicant confirmed that substantively the intention and purpose of Article 43 is not a matter in dispute. LCC’s concern is in respect of Article 43(3) which permits non-compliance with conditions attached to planning permissions which relate to land within the Order limits or land adjacent to the Order limits to the extent they are inconsistent with the authorised development. LCC is undertaking a review exercise to consider the extent to which the current drafting may lead to non-compliance with the entirety of a condition where that is not the intention of Article 43. For example, if there is a restoration condition, which in part relates to land within the order limits and thus cannot wholly and fully complied with, there is an argument that it would cease to have effect because the condition itself is indivisible. LCC is currently reviewing the same and will subsequently discuss the drafting with the Applicant as it appears now to be a minor drafting matter.</p>	<p>The Applicant notes this response and would welcome any further comments from LCC on the drafting. The Applicant’s position is set out in its response to Action Point 6 from ISH2 [REP4-060]:</p> <p><i>The wording “or land adjacent to the Order limits...” in sub-paragraph (3) is intended to address a possible situation where a planning permission covers both land within the Order limits and land adjacent to the Order limits. The provision in sub-paragraph (3) is qualified by the wording “to the extent that they are inconsistent with the authorised development...” A restoration condition would clearly be inconsistent with the Proposed Development to the extent that it could not be undertaken as a result of new built infrastructure having been developed. However, the Applicant considers that restoration would remain possible over the wider landholding, and therefore to the extent that such restoration can be completed the condition would continue to apply.</i></p>
2.10.5	Biodiversity Net Gain	<p>6. LCC were asked by the ExA for their opinion on the ‘without prejudice’ text provided by the applicant for securing biodiversity net gain (BNG). LCC has provided a response to the text wording under Action Point 9. LCC raised a general point of principle that as long as BNG is provided for and secured through the DCO that it can be considered by the ExA as a benefit in the planning balance.</p> <p>a. LCC accepts the Applicant’s position that a minimum percentage uplift in BNG can be secured through the CEMP and LEMP to be approved and which must be substantially in accordance with the outline plans. However, ‘substantially in accordance with’, as provided by Requirements 5 and 11 of Schedule 2, are not sufficient to secure any precise figures that might be considered to be contained in the oCEMP [REP3-011] and oLEMP [REP2- 026], see (b) below. To that extent, LCC consider a separate requirement to secure a prescribed minimum BNG would be more precise and clear. If it is not precisely secured in a separate requirement in LCC’s submission the ExA ought to approach the figures in the oCEMP and oLEMP with a degree of uncertainty in the planning balance.</p> <p>b. As currently drafted the oCEMP and the oLEMP do not contain detailed information in respect of BNG. The oCEMP does not specify a figure for BNG, but refers the reader to the oLEMP. The oLEMP at paragraph</p>	<p>The oLEMP was updated at Deadline 4 [REP4-021] to provide greater clarity regarding the Applicant’s proposals in relation to BNG. These proposals are in accordance with the Applicant’s Biodiversity Net Gain Assessment [APP-125] and Biodiversity Net Gain Strategy [APP-126].</p>

Ref	Topic	Interested Party Comment	Applicant's Response
		1.5.40 provides a commitment to deliver at least 10% BNG as part of the Proposed Development. The BNG potential of the Proposed Development is analysed in the initial Biodiversity Net Gain Assessment [APP-125]. The draft Biodiversity Net Gain Strategy [APP-026] sets out opportunities to achieve the applicant's voluntary 10% BNG target.	
2.10.6	Articles 39 and 40	In relation to Articles 39 and 40, please refer to LCC's response in relation to Action point 9	The Applicant refers to its response to Action Point 9 from ISH2 [REP4-060]
2.10.7	Consultation	8. LCC made representation that it would wish to be consulted for a number of the requirements. LCC is currently in dialogue with applicant to agree which authority should be named as a consultee in relation to these requirements and would hope to see this reflected in the next version of the dDCO. By way of an update, at ISH2 LCC requested to be a consultee for requirements 11, 12, 15 and 18. Since, LCC have reviewed the position and instead considers that it should be consulted just for requirements 11 and 15 (i.e. no longer 12 and 18).	Requirement 11 – the Applicant has updated the draft DCO (Revision G) [EN070008/APP/2.1] to include Lincolnshire County Council as a named consultee. Requirement 15 – this requirement does not require to be discharged by any planning authority, and therefore there are no named consultees in the requirement.
2.10.8	Fees provision for the discharge of requirements	9. LCC made representation in relation to fees provision for the discharge of requirements and referred to the recent decision for the Mallard Pass Solar scheme and representations LCC has made for other NSIP proposals. LCC considered that the fees prescribed for the discharge of conditions attached to planning permissions would be woefully inadequate to cover the costs of discharge of requirements in respect of an infrastructure project of this scale. a. Schedule 17 (5) Fees for discharge – advice note 15 suggested drafting for this provision includes space for the insertion of a set fee. This is proposed here and LCC suggests. (1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement discharge, a fee is to apply and must be paid to the relevant planning authority for each application. (2) The fee payable for each application under sub-paragraph (1) is as follows— (a) a fee of £2,535 for the first application for the discharge of each of the requirements 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, and 18; (b) a fee of £578 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and (c) a fee of £145 for any application for the discharge of— (i) any other requirements not listed in paragraph (a); and (ii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.	The Applicant refers to its response to Action Point 10 from ISH2 [REP4-060].

Table 2-11: Lincolnshire County Council- Response to Issue Specific Hearing 2 action points [REP4-099]

Ref	Topic	Interested Party Comment	Applicant's Response
2.11.1	Highways / Street Works	<p>Action 1: Provide position statement on articles 8 and 9, as well as the situation with New Roads and Street Works Act (NRSWA), and whether objections are retained as to the principle and/or wording of these Articles.</p> <p>LCC has previously made representations in relation to the wording of articles 8 and 9 in so far as they permit highway works or traffic regulation without authorisation from LCC as Highway Authority.</p> <p>The applicant's legal advisors, as part of on-going discussions, have provided LCC with a summary description of how it views the mechanics of Articles 8 and 9 in conjunction with other articles and requirements of the draft Development Consent Order (dDCO) [AS-064] to LCC, as set out below:</p> <p><i>Part 3 of the DCO sets out the streets powers that the undertaker is seeking. Article 8(1) and Article 9(1) give the undertaker powers to carry out works within the streets, as are specified in Schedule 3 of the DCO.</i></p> <p><i>The authority given by article 8 is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and section 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991 (the "NRSWA"), which means that the DCO replaces the need to apply for a street works licence under that Act. This puts the undertaker in a similar position to an electricity undertaker, or sewerage undertaker, for example, when they undertake street works under their own statutory powers.</i></p> <p><i>The powers within articles 8 and 9 are drafted in broad terms, but they are restricted by other provisions of the DCO:</i></p> <ul style="list-style-type: none"> <i>• Article 10 provides for application of NRSWA, subject to certain disapplications on provisions primarily designed to regulate the carrying out of street works by utility companies in respect of their apparatus. The undertaker therefore has to give notice and to co-operate with the street authority in undertaking the works in the usual manner. They also have to comply with the relevant code of practice.</i> <i>• Requirement 8 (highway accesses) prevents Construction of any new permanent or temporary means of access to a highway, or alteration must not commence until an access plan for that access has been submitted to and approved by the relevant highway authority. This states that the access plan must include details of the siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the access it relates to.</i> <i>• The third column in parts 1 and 2 of schedule 3 sets out the scope of street works that are proposed to be authorised through article 9 of the DCO without further consent of the street authority. These make reference to the access and rights of way plan. It is noted that a large number of these relate to accesses onto the working corridor, the design of which would need to be approved under requirement 8.</i> <p><i>In addition, article 14 (agreements with street authorities) allows the street authorities and the undertaker to enter into agreements relating to various street works activities, any stopping up, alteration or diversion of a street and the carrying out of any works referred to in Article 8(1). This provision could be used to put in place specific agreements for works in a similar manner to an agreement under section 278 of the Highways Act 1980. It could also be used to add in more detail on the notification procedure and practicalities that the undertaker will comply with before undertaking works where Lincolnshire County Council are the streets authority.</i></p>	<p>The Applicant has agreed to use the Council's permitting system and has incorporated its use into the latest update of the draft Development Consent Order (Revision G) [EN070008/APP/2.1] as Article 8.</p> <p>The Applicant understands that this has addressed the County Council's concerns in respect of these articles.</p>
2.11.2	Highways / Street Works	<p>Whilst LCC are of the view that the applicant's legal advisors description of the mechanics are accurate it does not change the position that the first part of Article 8 and 9 still allow works to be carried out without consent, other than the general approval of highway access details as part of Schedule 2, requirement 7 (Highway Accesses). It is LCC's opinion that Articles 8 and 9 would still require the Highway Authority to be notified of works, rather than ask for consent and this is further backed by Article 10 (2) a-h. Article 10 (4) however removes the powers to direct on timing and placement of apparatus. This is needed, when appropriate, to be able to ensure that any works taking place do not unjustifiably impede others.</p>	<p>Please see response to item 2.7.1 above.</p>

Ref	Topic	Interested Party Comment	Applicant's Response
2.11.3	Highways / Street Works	LCC would point out that the noticing requirements under the 1991 NRSWA, sections 55 and 57, were replaced by powers provided in Part 3 of the Traffic Management Act 2004 ("TMA") and the Traffic Management Permit Scheme (England) Regulations 2007 ("the 2007 Regulations"), Statutory Instrument 2007 No. 3372 made on 28 November 2007, as amended by the Traffic Management Permit Scheme (England) (Amendment) Regulations 2015, Statutory Instrument 2015 No. 958 made on 26 March 2015 ("the Amendment Regulations"), which resulted in the development of the Lincolnshire Permit Scheme (referred to as LiPS), further details of which are provided under LCC's response to action point 2 below.	Please see response to item 2.7.1 above.
2.11.4	Highways / Street Works	LCC are not seeking to unduly restrict the development but seek to ensure that certain details are provided upfront and that a mechanism is in place for recording works in the highway. We need to be clear regarding the level of development in order to understand the impact, be given the ability to co-ordinate it with other activities taking place and to protect the safety and longevity of assets through robust recording mechanisms post-installation. LCC are of the opinion that the detail of the notification requirements and any necessary approvals for streetworks that would not be caught by requirement 7 (Highway Accesses) could potentially be addressed through a side agreement as suggested by the applicant's legal advisers, however, LCC would wish to see 'without the consent of the street authority' removed from article 8(1). On the basis that a satisfactory head of terms can be agreed for a side agreement and an amendment to the wording of article 8 (1) then LCC would not object to the principle and/or wording of Articles 8 and 9.	Please see response to item 2.7.1 above.
2.11.5	Highways / Street Works	<p>Action 2: Provide further detail on the Council's road permitting scheme and how/ why it should be applicable to the Development Consent Order (DCO).</p> <p>The Lincolnshire Permit Scheme applies to the whole of the Lincolnshire road network. Anyone who wants to carry out highways works in Lincolnshire must apply for a permit. This includes:</p> <ul style="list-style-type: none"> • utility companies (telephone, gas, electricity, water) • the council itself • anyone working on a permitted development that affects the highway <p>The scheme's primary objectives are:</p> <ul style="list-style-type: none"> • to increase the efficient running of the highway network by minimising the disruption and inconvenience caused by road works and other highway events and activities through proactive management of activities on the highway • to improve the quality and timeliness of information received from all activity promoters to increase and improve the publicly available data for integration into the Council-wide travel information • to encourage a proactive approach to planning and undertaking of works on the highway from promoters and thus lessen the impact of activities on road users • to protect the structure of the street and the integrity of the apparatus in it • to improve the level of on-site compliance by works promoters ensuring works are correctly permitted and conditions adhered to •to ensure safety of those using the street and those working on activities that fall under the Scheme, with particular emphasis on people with disabilities •to ensure parity of treatment for all activity promoters particularly between statutory undertakers and highway authority works and activities <p>A full copy of the Council's permitting scheme is available on the Council's website https://www.lincolnshire.gov.uk/licences-permits/lincolnshire-permit-scheme</p> <p>In line with the aims of the permitting scheme as set out above, the Council are of the opinion that the scheme should apply to the DCO, as it does for statutory undertakers, which is the power sought by the</p>	Please see response to item 2.7.1 above.

Ref	Topic	Interested Party Comment	Applicant's Response
		<p>applicant in the DCO.</p> <p>As stated above the application of the permitting scheme could potentially be incorporated into a side agreement.</p>	
2.11.6	Highways / Street Works	<p>Action 3: Provide commentary on whether a mechanism needs to be written into the DCO for the application of s278 of the Highways Act 1980, or whether a separate side agreement is sufficient</p> <p>As stated in LCC's response to action point 1 above this could potentially be addressed through a side agreement.</p>	Please see response to item 2.7.1 above.
2.11.7	Biodiversity Net Gain	<p>Action 7: To review the wording of the 'without prejudice' requirement in respect of biodiversity net gain and provide any comments on the drafting.</p> <p>The applicant's commitment to deliver biodiversity net gain (BNG) as part of the development is welcomed. LCC understand that BNG is not mandatory for NSIPs but are of the view that it should be applied to the installation of the pipeline itself (rather than just AGIs and BVSs) in order to deliver ecological enhancements wherever possible. LCC are of the opinion that this should not be particularly difficult to achieve e.g. reinstatement of hedgerows in a better condition than those removed (albeit this would take time for establishment), potential for enhancing reinstated field margins by introduction of appropriate seed mixes where appropriate and/or subsoil inversion to promote the establishment of species which require nutrient poor conditions such as wildflowers. These sorts of measure would be localised in their impact but still fall within the spirit of what is intended for BNG. On that basis LCC are of the view that the suggested wording of the 'without prejudice' requirement in respect of BNG is too restrictive, as currently drafted it would only require delivery of BNG to the AGIs and BVSs areas only. The wording should also refer to the "Statutory Biodiversity Metric" rather than "Natural England Biodiversity Metric 4.0" Clarification will also be required as to who the "relevant planning authority" is for determination purposes. LCC would wish to be a consultee for the determination of any such requirement.</p>	<p>The oLEMP was updated at Deadline 4 [REP4-021] to provide greater clarity regarding the Applicant's proposals in relation to BNG. These proposals are in accordance with the Applicant's Biodiversity Net Gain Assessment [APP-125] and Biodiversity Net Gain Strategy [APP-126]. The Applicant maintains its position with regards to delivering biodiversity net gain.</p> <p>Regarding restoration of hedgerows, the Applicant has already committed to using species mixes that would typically result in a better condition than those removed, as set out in section 3.2 of the OLEMP [REP2-026]. An updated version of the OLEMP has been submitted to the ExA at Deadline 5.</p>
2.11.8	Articles 39 and 40	<p>Action 9: To refine or otherwise agree on the scope and limitation of articles 38 and 39, or whether a separate tree/ hedge removal schedule is required for the DCO.</p> <p>LCC reiterates its concerns raised in respect of the wording of these articles (which LCC notes are articles 39 and 40) at ISH1. LCC understand the applicant's position that articles 39 and 40 would in practice be restricted by the requirements to approve a detailed CEMP and LEMP. The current detail provided in the Arboricultural Report [APP-086] regarding hedgerows and trees that would be impacted is also noted. However, as Advice Note 15 says, if there is a general power of removal the powers themselves should be subject to later consent, so therefore LCC are of the opinion that the same ought to be included in the articles. In other words, Advice Note 15 is clear that the powers should be limited and that it is preferable that is also in the drafting of the articles rather than solely through the approval of other plans/ requirements so it is clear on the fact of the DCO itself. LCC notes that this is an action for both the applicant and LCC and we have approached the applicant for a meeting to see if agreement can be reached.</p>	<p>The Applicant considers that sufficient detail has been provided with the Application to assess the environmental impact of the powers sought in these articles, and that sufficient mitigation measures are secured through existing outline management plans, including the draft CEMP (Revision E) [EN070008/APP/6.4.3.1], outline LEMP [REP4-021] and Arboriculture Report [APP-086]. As such, the Applicant does not intend to update the draft DCO.</p> <p>The Applicant's position is set out in more detail in paragraphs 3.13 – 3.17 of the Applicant's written summary of oral submissions given at hearings during the week commencing 25 March 2024 [REP1-048], The Applicant's position is set out in its response to Action Point 9 from ISH2 [REP4-060] and paragraphs 2.26 – 2.29 of Applicant's Summary of Oral Submissions Issue Specific Hearing 2 (ISH2) [REP4-054].</p>

Table 2-12: Lincolnshire County Council- Response to Issue Specific Hearing 3 action points [REP4-100]

Ref	Topic	Interested Party Comment	Applicant's Response
2.12.1	National Policy Statement	<p>Action 14: Provide responses to questions from Examining Authority raised at ISH3 including why they think National Policy Statement for renewable energy infrastructure (EN-3) is relevant to this Application.</p> <p>LCC has set out its position on National Policy Statements (NPS's) in its Local Impact Report (LIR) (REP1-058) section 5 and in its response to the Examining Authorities first round of written questions (ExQ1 1.1.3) (REP1-059). Overarching National Policy Statement for Energy (EN-1) (2011) outlines requirements for understanding the significance of heritage assets that will be affected, including 5.8.10: 'The applicant should ensure that the extent of the impact of the proposed development on the significance of any heritage assets affected can be adequately understood from the application and supporting documents.' This statement is repeated at paragraph 5.9.12 of the 2023 EN-1. The significance of any heritage assets cannot be assessed until there has been sufficient evaluation to identify the currently unknown archaeology across the proposed development area. Trial trenching is essential in finding and characterising the archaeology, and is currently ongoing. The results of the trenching are required to understand 'the significance of any heritage assets' so this cannot be determined until the trenching programme is complete and a record of the findings has been produced, in line with EN-1.</p>	<p>The Applicant refers to its Note on Policy Referenced at Issue Specific Hearing 3 [REP4-048], which sets out its position in more detail.</p> <p>The Applicant considers that the ES is based on a sufficient baseline to enable an understanding of the significance of heritage assets that will be affected, and notes that this sufficient baseline information is further supported by trial trenching, which is underway to an agreed WSI. Please see our responses to LCC 2.8.2 and 2.8.3 below and the Applicant's response to LCC's comments on D2 submissions [REP4-051, ref. 2.2.6].</p>
2.12.2	National Policy Statement	<p>LCC accept that National Policy Statement for Renewable Energy Infrastructure (EN-3) (2023) is not a directly relevant policy for this proposal, however it references EN-1 (discussed above) and also includes the following useful advice: 'The results of pre-determination archaeological evaluation inform the design of the scheme and related archaeological planning conditions' (footnote 94) that is not contained in any of the NPS's that are deemed to be relevant to this proposal and is flagged by LCC as a good practice point.</p> <p>In the context of the NPS's, the point that LCC is seeking to reiterate is that the trial trenching must be completed and the results produced, as they are required to form the basis for a reasonable and fit for purpose mitigation strategy which will adequately deal with the developmental impact on the surviving archaeology across the redline boundary.</p>	<p>The Applicant refers to its Note on Policy Referenced at Issue Specific Hearing 3 [REP4-048], which sets out its position in more detail.</p> <p>Archaeological evaluation can include a range of techniques, and the Applicant has consulted LCC and other scheme heritage consultees in pursuing a programme of geophysical survey which, together with desk-based assessment and aerial photograph and LiDAR analysis, provides a sufficient baseline for the assessment in the ES. Please see the Applicant's response to LCC comments on D2 submissions [REP-051, ref 2.2.6].</p> <p>The Applicant notes that this sufficient baseline information is further supported by trial trenching, which is underway to an agreed WSI. LCC have been kept informed of progress and emerging results on a regular basis. The results will be produced in the form of an archaeological evaluation report once the trial trenching is complete and will form the basis for a reasonable and fit for purpose mitigation strategy. The Applicant confirms that a draft Detailed Archaeological Mitigation Strategy (DAMS) [EN070008/EXAM/9.52] and Overarching Written Scheme of Investigation (OWSI) has been shared with LCC, the other local planning authority archaeologists and Historic England, for comment in advance of Deadline 5.</p>
2.12.3	EIA Regulations	<p>Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) state that 'The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors...(d)material assets, cultural heritage and the landscape.' (Regulation 5 (2d)) The direct and indirect significant effects of the development on cultural heritage cannot be understood until sufficient trial trenching has been undertaken across the full impact zone. Again the trenching programme must be completed and the results produced in order to comply with the EIA Regulations.</p>	<p>Please see the Applicant's response to LCC's comments on D2 submissions [REP4-051, ref. 2.2.6] and its Note on Policy Referenced at Issue Specific Hearing 3 [REP4-048].</p> <p>The Applicant considers that the ES is based on a sufficient baseline and correctly identifies the direct and indirect likely significant effects of the Proposed Development, including effects on material assets, cultural heritage and the landscape. Trial trenching is underway to an agreed WSI [REP2-016]. LCC have previously acknowledged that the extent of the proposed trial trenching is sufficient [REP3-035, ref. 2.2.1].</p>

Ref	Topic	Interested Party Comment	Applicant's Response
2.12.4	Archaeology	<p>In terms of chronological order, in accordance with standard archaeological practice the trenching programme will need to be completed and a report of the trenching results should be produced. The results will form the evidence base for the site-specific mitigation strategy and is required to identify significant surviving archaeology across the impact zone. Mitigation will consist of preservation in situ, preservation by record or a combination of these two options. Preservation in situ means an archaeological area and its extent is identified and the area will be protected from any developmental impact including for example fencing to exclude plant movement during construction and inclusion in the scheme's management plans. Preservation by record means that an archaeological area is identified and dealt with archaeologically, for example by Set-Piece Excavation or Strip Map and Record at a level appropriate to the significance of the surviving archaeology.</p>	<p>Please see the Applicant's response to LCC's comments on D2 submissions [REP4-051, refs. 2.2.2 and 2.2.3] with regard to development and agreement of the archaeological mitigation strategy (DAMS and OWSI). The Applicant notes the definitions of the mitigation techniques put forward by LCC.</p>
2.12.5	CEMP	<p>The mitigation strategy will lay out the mitigation areas which have been agreed across the site and the appropriate migration responses for each, once agreed it will form the basis for the archaeological work undertaken across the scheme, and will inform the Construction Environment Management Plan (CEMP). Once the archaeological work is completed across the site a report will need to be produced and placed in the county's Historic Environment Record so the results are publicly disseminated and the archive will need to be deposited in an appropriate depository. Details on specific concerns through the CEMP have been expressed in LCC written response to the ExA's first round of written questions submitted at Deadline 1 (REP1-058) and carried over to our response at Deadline 3 (REP3-035) as no changes have been made. The changes we're asking for are for the proposed measures to be informed by the trenching results and subsequent agreed mitigation measures across the site. For example D3 of Table 3: Draft Mitigation Register states that only archaeological monitoring will be used 'where evaluation indicates this approach is appropriate.' There will be parts of the scheme where a more intensive level of archaeological work would be appropriate but these are not included. The Draft CEMP does not include full details of the required measures for preservation in situ mitigation.</p>	<p>The Applicant notes LCC's comments on the mitigation strategy. Please see the Applicant's response to LCC's comments at 2.8.2 above and our response to LCC's comments on D2 submissions [REP4-051, ref. 2.2.2] with regard to development and agreement of the archaeological mitigation strategy (DAMS and OWSI).</p> <p>The Applicant confirms that the mitigation measures to be included in the final CEMP, DAMS and OWSI and in subsequent SSWSIs for approval by the relevant local planning authority archaeologists will be informed by the trenching results and the subsequent agreed mitigation measures across the site.</p> <p>The Applicant notes the comment that, 'there will be parts of the scheme where a more intensive level of archaeological work would be appropriate'. However, it is not correct that D3 of Table 3: draft Mitigation Register states that 'only' archaeological monitoring will be used 'where evaluation indicates this approach is appropriate': the word 'only' is not included in the text of D3, which seeks to explain the circumstances in which archaeological monitoring would be applied, i.e. 'in areas where prior archaeological evaluation <u>indicates this approach is appropriate</u> [emphasis added] and/or in areas where archaeological investigation and recording in advance of construction are not feasible due to safety or logistical considerations, or undesirable due to environmental or engineering constraints'. More intensive archaeological work is provided for under D2 of Table 3 (namely, 'archaeological excavation and recording in advance of construction').</p> <p>The Applicant's position is that there is no need for the CEMP to include 'full details of the required measures for preservation in situ mitigation' – Table 3: Draft Mitigation Register serves as a record of commitments, not a detailed specification. The draft DAMS [EN070008/EXAM/9.52] and OWSI, together with subsequent SSWSIs for approval by the relevant local planning authority archaeologists, will provide the necessary specifications, taking into account the results of the trial trenching. Please see the Applicant's response to LCC's comment on D2 submissions [REP4-051, ref. 2.2.4].</p>
2.12.6	Archaeology	<p>D12 is 'Limiting stripping for construction compounds, laydown, welfare and parking areas, haul roads and other associated works in areas where archaeology is recorded to avoid disturbance, and instead using geotextile and stone over topsoil.' Again, this should be informed by the results of the trenching and the agreed</p>	<p>The Applicant notes LCC's comments regarding D12 of Table 3: Draft Mitigation Register of the Draft CEMP [EN070008/APP/6.4.3.1] and confirms that implementation of this approach will be informed by the</p>

Ref	Topic	Interested Party Comment	Applicant's Response
		<p>site-specific mitigation strategy. If archaeology in these areas is, for example, Saxon skeletons 20cm from the ground surface as has been found in evaluation trenches for a Lincolnshire NSIP recently, then stripping and associated groundworks would remove the last layer of soil protection and compaction would destroy the archaeology, in this case the individuals, without recording. On the other hand, if surviving archaeology is for example boundary ditches of a Medieval field system that survive at a reasonable depth and have been sufficiently recorded and characterised elsewhere then there would be no need for special measures in groundworks if the area has not been determined to be significant enough to warrant being a mitigation area. Any proposed measures in the CEMP dealing with the archaeology will need to be informed by the trenching results and agreed mitigation strategy if it is to be reasonable, appropriate and fit for purpose.</p>	<p>results of the trenching and the agreed site-specific mitigation strategy. Please see the Applicant's response to LCC's comments on D2 submissions [REP-051, ref 2.2.5].</p>

Table 2-13: National Highways Deadline 4 Submission - Written summaries of oral submissions made at Issue Specific Hearing 2 and Issue Specific Hearing 3, including any response to action points [REP4-059]

Ref	Topic	Interested Party Comment	Applicant's Response
2.13.1	General	<p>1 Introduction</p> <p>1.1 This document sets out the latest submissions of National Highways Limited (National Highways) provided at Deadline 4 of the examination.</p> <p>1.2 The proposed development would have an impact on the Strategic Road Network (SRN) and as such it is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public resources that the development proceeds in consultation and agreement with National Highways and with appropriate protections in place.</p> <p>1.3 National Highways does not object to the principle of the development subject to the inclusion of adequate protections to manage any potential interface between the proposed development and the SRN.</p>	This point is noted by the Applicant
2.13.2	Draft DCO	<p>2 ISH 2 – Post-hearing submissions, including written summaries of oral submissions to the hearing.</p> <p>2.1 National Highways confirms that substantial progress has been made with the Applicant to address many of National Highways original concerns with the draft DCO. There remain a few matters between the parties not yet agreed and discussions are ongoing in the hope that agreement can be reached on all matters to enable National Highways to withdraw its objection at the earliest opportunity.</p>	This point is noted by the Applicant
2.13.3	Draft DCO	<p>2.2 Articles of the dDCO</p> <p>2.2.1 Protective provisions for the benefit of National Highways are being negotiated which will address the majority of concerns National Highways would otherwise have with regards to the articles of the draft DCO ensuring that National Highways protections apply to any relevant works.</p> <p>2.2.2 Two relevant articles have however been excluded by the Applicant from the protection afforded by protective provisions and this causes National Highways concern. The articles are (13) Access to works and (16) Traffic regulation.</p> <p><u>Article (13) Access to works</u></p> <p>2.2.3 National Highways has two concerns with this article as drafted. Firstly, article 13 permits the undertaker to form and lay out means of accesses as reasonably required for the purposes of the proposed development. The consent of National Highways would not be required in respect of any accesses provided pursuant to Schedule 1 or Schedule 4. National Highways' concern relates to Schedule 1.</p> <p>2.2.4 Work No 03 and Work No 08 both adjoin the SRN and, in respect of both, Schedule 1 permits the construction of temporary accesses. The location of such accesses does not appear to be fixed and therefore could be sited anywhere within that work area.</p> <p>2.2.5 Article 13 would therefore permit the undertaker to construct an access off the SRN roundabout where the A160 (part of the SRN) joins the A1173 local road. No consent of National Highways as the relevant highway authority would be required.</p> <p>2.2.6 Article 13 would also give the undertaker the power to construct an access off the A180. Again, no consent of National Highways as the relevant highway authority would be required.</p> <p>2.2.7 Article 13 establishes the principle of accesses being acceptable, yet it has not been established whether or not an access can be safely accommodated from the SRN in any of the locations that would be permitted by article 13. The only control that National Highways would have is pursuant to Requirement 7. However, this control is limited to agreeing an access plan. There does not appear to be a possibility for National Highways to object to or prevent an access being provided off the SRN on safety grounds if it is felt that an access cannot be safely accommodated in such a location.</p> <p>2.2.8 It is for these reasons that National Highways has asked the Applicant to include article 13 within the</p>	The Applicant has now confirmed that it will include articles 14 and 17 (previously 13 and 16) of the draft DCO (Revision G) [EN070008/APP/2.1] within the scope of the Protective Provisions for National Highways. These Protective Provisions will be included in the final version of the draft DCO.

Ref	Topic	Interested Party Comment	Applicant's Response
		<p>protective provisions for National Highways' benefit. Whilst National Highways would not object to an access if one can be safely accommodated, it does have grave concerns over a third party being granted a power to include an access off the SRN even if National Highways, as the relevant highway authority, considered it to be unsafe.</p> <p>2.2.9 If the Applicant is unwilling to include article 13 within the protective provisions then National Highways respectfully requests that article 13 is amended to ensure that it does not apply to accesses taken from the SRN.</p>	
2.13.4	Draft DCO	<p><u>Deemed consent</u></p> <p>2.2.10 The second concern that National Highways has with article 13 is that it grants a wide power for accesses to be constructed anywhere within the order limits. Whilst National Highways' consent is required for any accesses from the SRN falling outside of Schedules 1 and 4, this would be subject to deemed consent provisions. Applying deemed consent would mean that National Highways' explicit consent could be bypassed which is not considered appropriate given the safety issues at play.</p> <p>2.2.11 National Highways appreciates that the Applicant's rationale for seeking deemed consent provisions is to ensure appropriate engagement from statutory bodies, such as National Highways. It ought to be recognised however that National Highways has statutory responsibilities to support economic growth¹ (i.e. to support developments such as this one) and as a public body must act reasonably. It should not therefore be necessary for National Highways to be made subject to deemed consent provisions to ensure its engagement.</p> <p>2.2.12 Furthermore, whilst the need for the proposed development is recognised, Section 5(2) of the Infrastructure Act 2015 places a statutory duty on National Highways to always have regard to the safety of users of the SRN when exercising its functions. Its licence also requires it to support economic growth (and therefore appropriate development) whilst balancing its statutory duty to protect the safety of road users and the SRN generally. Deemed consent risks placing National Highways in breach of its own statutory duties and Licence obligations.</p> <p>2.2.13 National Highways has no intention of slowing down this development however it has strict procedures in place to ensure that safety is not compromised. Given the safety implications of not following due process National Highways cannot risk its approvals being bypassed as a result of deemed consent provisions and so it is likely that refusals would have to be issued, even in cases where an extra day or two would result in an approval. National Highways would have to put automated systems in place to ensure that this happens and deemed consent cannot apply by default. National Highways does not believe this is in anyone's interest and the benefit that the applicant is seeking here would not be achieved.</p>	<p>As noted above, the Applicant will include this article within the Protective Provisions for National Highways as an article requiring their prior consent before the powers granted by it can be exercised.</p>
2.13.5	Draft DCO	<p><u>Article (16) Traffic regulation</u></p> <p>2.2.14 Article 16 provides the undertaker with a very wide power to make traffic regulation orders. This power would permit the undertaker to amend existing traffic regulation orders that National Highways has made, as well as make new ones.</p> <p>2.2.15 As the strategic highway company appointed by the Secretary of State for Transport National Highways should be the only body permitted to have traffic regulation powers in respect of the SRN. Article 16 as drafted provides a private company with very wide regulatory powers in respect of a vitally important national asset.</p> <p>2.2.16 Whilst the undertaker is required to obtain the consent of the traffic authority, this is qualified with reference to "such consent not to be unreasonably withheld" and reference to 'reasonable' conditions. Paragraph (7) of article 16 also makes National Highways subject to a deemed consent provision (if no response is given within 42 days).</p> <p>2.2.17 National Highways' concerns around deemed consent are the same as stated at paragraphs 2.2.10 – 2.2.13.</p> <p>2.2.18 National Highways strongly believes that any interference with the SRN should be subject to its explicit</p>	<p>As noted above, the Applicant will include this article within the Protective Provisions for National Highways as an article requiring their prior consent before the powers granted by it can be exercised.</p>

Ref	Topic	Interested Party Comment	Applicant's Response
		<p>consent with the ability to attach any necessary conditions (without limitation or qualification). National Highways does appreciate the Applicant will not want undue delay in the delivery of a nationally significant infrastructure project but it is National Highways' position that this shouldn't override National Highways concerns, particularly when those concerns relate to the safety of the travelling public that could be put at risk if proper processes are not followed.</p> <p>2.2.19 As the highway authority responsible for the SRN National Highways makes numerous traffic regulation orders each year. It has well established practices in place for such and has major concerns that a private company, with no prior experience as a traffic or highway authority, could be granted these powers and bypass standard procedures.</p> <p>2.2.20 It is noted that article 16, as drafted, would enable a traffic regulation order to be brought into force without the usual level of public consultation that is ordinarily necessary – for example the undertaker is only obliged to consult the chief officer of the police and traffic authority, whereas traffic authorities before making such orders must consult a substantial list of stakeholders depending on the circumstances and effects of the order. There is also no requirement within article 16 to publish notification of such orders. National Highways when making its own orders has a statutory obligation to publish notices, including details of diversion routes to inform the public. As part of its order making processes National Highways would also consider whether any existing restrictions that may be indirectly impacted by the order would need suspending to ensure the safe and efficient flow of traffic. All of these usual requirements will be bypassed under article 16 and National Highways is concerned that this may impact the safe operation of the SRN.</p> <p>2.2.21 Should due process not be followed then there is a risk that traffic regulation orders are made that create unsafe driving conditions; this would particularly be the case if restrictions are not adequately spaced and/or indirectly effect each other.</p>	
2.13.6	Draft DCO	<p>2.3 Requirements</p> <p>2.3.1 National Highways is in ongoing discussions with the Applicant regarding its traffic and transport concerns. As currently drafted National Highways only has a limited role as a consultee in terms of discharging requirements relating to certain management plans. National Highways' concerns can be alleviated if it had an approval role where those management plans relate to traffic and transport impacts on the SRN. National Highways had similar concerns and has recently agreed an approval role with the applicant for the Immingham Eastern Ro Ro Development Consent Order. The following amendment has been agreed with the applicant for Immingham Eastern Ro Ro:</p> <p>2.3.2 Whilst there has not been consistency from order to order, there are other DCOs that have granted National Highways an approval role in similar circumstances. National Highways acknowledges that this may not be appropriate in every instance but where there is expected to be an impact on the SRN, which National Highways believes raises issues around public safety, then it is best placed to grant any such approval in accordance with its statutory and Licence obligations.</p> <p>2.3.3 Examples of DCOS that have given National Highways an approval role include: The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015</p> <p>2.3.4 In addition it is noted that, where relevant, Network Rail has been given an approval role showing that there is much precedent for other bodies to have an approval role (rather than mere consultee) in circumstances where it is appropriate: The Hornsea Four Offshore Wind Farm Order 2023</p> <p>2.3.5 Further detail around National Highways' concerns in this regard was provided at ISH 3 and is set out in section 3 below.</p>	<p>The Applicant refers to its response to WQ 2.16.11 [EN070008/EXAM/9.64], which sets out its position on this matter.</p>

Ref	Topic	Interested Party Comment	Applicant's Response
2.13.7	Protective Provisions	<p>2.4 Protective Provisions</p> <p>2.4.1 National Highways and the Applicant have made good progress in reaching common ground on the inclusion of protective provisions for National Highways' benefit. However, unfortunately the protective provisions are not yet in a position that would fully satisfy all of National Highways' concerns.</p> <p>2.4.2 As already mentioned, National Highways requests the inclusion of article (13) and article (16) within the list included at paragraph 115(2). This would ensure that those articles are governed by the approval processes set out within the protective provisions. For the reasons stated, and not repeated further, National Highways considers this appropriate given the safety implications of works taking place on, or in the vicinity of, the SRN without following established practices.</p> <p>2.4.3 The parties are yet to reach full agreement on the extent of National Highways oversight and approval requirements for works that may impact the SRN, as set out in the protective provisions. The Applicant is of the view that some of National Highways' requirements may be unnecessary or disproportionate to the works. In response National Highways' view is that all of its requirements are proportionate and as many of its standard protective provisions are phrased "as far as is relevant" then the Applicant can take comfort that National Highways is not requesting irrelevant information. This preferred drafting also ensures that National Highways has comfort that everything that is relevant will be provided. It is especially needed to ensure that National Highways can make a relevant request should something unforeseen happen – e.g. if damage to the SRN was caused by the drilling and National Highways needed to step in and arrange traffic management and emergency repair works.</p> <p>2.4.4 National Highways and the Applicant are also discussing how best to protect each other's assets from unauthorised interference. National Highways has no intention of carrying out any works to the pipeline itself however given the pipeline is being located beneath the SRN National Highways cannot have provisions that prevent it touching the pipeline in the event that it needs to access the area to fulfil its statutory duties. To date the parties have been unable to reach agreement in this regard.</p> <p>2.4.5 Finally, National Highways has concerns that to date the Applicant has not accepted its request for financial security. This is a standard requirement of National Highways in respect of third party works to ensure that the public purse is protected. The Department for Transport does not fund National Highways in respect of third party works. National Highways must therefore ensure that adequate security is in place that it can call upon should something go wrong and National Highways need to exercise step in rights. 2.4.6 Negotiations regarding all of these issues are ongoing. If agreement cannot be reached beforehand then National Highways will submit a track-changed copy of the draft protective provisions with appropriate commentary at Deadline 5.</p>	<p>The Applicant refers to its response to WQ 2.7.8 [EN070008/EXAM/9.64] in respect of the outstanding matters.</p> <p>The Applicant will continue to engage with National Highways to seek agreement on a suitable form of Protective Provisions.</p>
2.13.8	Traffic and Transport	<p>3 ISH 3 – Post-hearing submissions, including written summaries of oral submissions to the hearing.</p> <p>3.1 National Highways' traffic and transport concerns are amplified due to it only having a limited role as a consultee in discharging requirements related to management plans that directly relate to the SRN. National Highways' concerns could be alleviated if it had an approval role for those management plans affecting traffic and transport impacts on the SRN, namely the Construction Traffic Management Plan (CTMP) and Decommissioning Environmental Management Plan (DEMP).</p>	<p>The Applicant has responded to this point in answer to question 2.16.11 of the Examining Authority's second written questions [EN070008/EXAM/9.64] and requests for information [PD-021] submitted at Deadline 5.</p>
2.13.9	Traffic and Transport	<p>3.2 The Applicant has stated that they do not consider it appropriate for National Highways to be identified as an approving consultee for either the CTMP or the DEMP. The draft DCO lists National Highways as an interested party to be consulted by the relevant Local Planning Authority (LPA) who ultimately hold the approval role. 3.3 National Highways has requested to be considered as an approving body due to the volume of construction traffic (858 two-way trips per day) and its potential to result in a severe impact to the operation of the SRN, including the interrelationship between Habrough Roundabout, situated within the SRN, the site access to the proposed Northern Compound and Habrough Road. 3.4 It is important to note as a precis to this position, that no information has been provided to National Highways regarding the potential safety</p>	<p>The Applicant has responded to this point in answer to question 2.16.11 of the Examining Authority's second written questions [EN070008/EXAM/9.64] and requests for information [PD-021] submitted at Deadline 5.</p> <p>The Applicant has assessed the potential effects of construction traffic on the SRN (A180 and A160) as reported in ES Chapter 12 Traffic and Transport [REP2-006]. For all types of impact the assessment</p>

Ref	Topic	Interested Party Comment	Applicant's Response
		<p>implications or impacts on the operation of Habrough Roundabout. Whilst National Highways has concerns that still need addressing in this regard, to avoid delaying the application process, National Highways has agreed to address these impacts at a later stage, in conjunction with the CTMP review. National Highways needs assurance that the proposed construction phase and cumulative impacts will not result in severe or unacceptable road safety issues and because it has agreed to push the assessment to a later date it is appropriate that it has more than just a consultee role at that time. 3.5 In principle, National Highways does not anticipate, at this stage, a severe road safety issue in relation to the use of the Northern Compound access, however, National Highways requires sufficient evidence is provided to ensure that the access is safe for the proposed use, with consideration of the concerns regarding the interrelationship between Habrough Roundabout, the site access and Habrough Road 3.6 National Highways understands the Applicant has proposed to ensure that construction worker shift changeovers are scheduled outside of peak network periods (07:00-10:00 and 16:00-18:00), ensuring that the 858 forecasted arrivals and departures do not coincide with peak network periods; however, National Highways would note that due to the increasing level of forecast development within the North and North East Lincolnshire area, it is anticipated that there will be a significant volume of construction traffic utilising the SRN outside the typical network peak periods. 3.7 The following are known developments that, depending on construction programmes, may compete with construction traffic from the proposed development on the same sections of the SRN (namely the A180 and A160):</p> <ul style="list-style-type: none"> . NSIPs <ul style="list-style-type: none"> o Immingham Eastern Ro-Ro Terminal o Able Marine Energy Park o South Humber Bank Energy Centre o VPI Immingham OCGT o Immingham Green Energy Terminal . Planning Applications <ul style="list-style-type: none"> o Phillips 66 Ltd, Eastfield Road, South Killingholme (Ref PA/2023/422) o A180 Solar Farm (Ref DM/0108/24/FUL) o Land Off Turing Road Immingham North East Lincolnshire (Ref DM/0122/24/FUL) o NEL Energy Park, Mauxhall Farm, Stallingborough (Ref DM/1145/19/FUL) o Business Park, Stalinborough Interchange (Ref DM/0105/18/FUL) o North Beck Energy Centre (Ref DM/0026/18/FUL) o Great Coates Renewable Energy Centre (Ref DM/0329/18/FUL) o South Humber Bank Energy Centre (Ref DM/1070/18/FUL) o 525 residential development, Stallingborough Road, Immingham (Ref DM/0728/18/OUT) o VPI Immingham Energy Park "A" (Ref PA/2018/918) m. Rock revetment repair and reinforcement, Humber Estuary (Ref DM/1071/22/FUL) o Land south of the A160, South Killingholme (Ref PA/2024/584) <p>3.8 Consequently, the CTMP and DEMP should be submitted to National Highways for approval to ensure that there will not be an unacceptable impact on highway safety and that the residual cumulative impacts on the SRN would not be severe.</p> <p>3.9 National Highways, therefore, would recommend the following amendments to Requirement 6 and Requirement 16:</p> <p>6. (1) No stage of the authorised development must commence until a CTMP for that stage, in accordance</p>	<p>concluded the effects to be negligible (not significant).</p> <p>The Applicant has provided a cumulative assessment of construction traffic resulting from the Proposed Development, in both Chapter 12 Traffic and Transport [REP2-006] and the quantitative cumulative assessment submitted at Deadline 2 [REP2-033]. The list of other developments to be included in the assessment were agreed with the local planning authorities. In all instances the cumulative assessment concluded that effects on all construction access routes, including the A160 and A180, would be negligible (not significant).</p> <p>A 'long list' of the cumulative schemes considered within the ES was outlined with ES Volume IV: Cumulative Effects Assessment Long List [APP-117]. An explanation was also provided for each scheme determining whether it was taken forward as part of the 'short list' for further assessment within the ES, which was included within ES Volume II Chapter 20: Cumulative Effects Assessment [APP-062]. Additionally, a Quantitative Cumulative Assessment for Traffic and Transport [REP2-033] was submitted to the ExA at Deadline 2 which included a further cumulative assessment using available information from other schemes considered as part of the cumulative assessment.</p> <p>Regarding the proximity of the Northern Compound to the SRN, the Applicant notes that there is a farm access track between the boundary of the Order Limits and the carriageway of the A160. The distance between the two is 15 m at its closest point. Boundary treatments have not been designed at this stage and details cannot therefore be provided but the Applicant can confirm that they will be designed to ensure that there will be no potential for any structure to topple onto the A160, or to undermine its geotechnical integrity.</p>

Ref	Topic	Interested Party Comment	Applicant's Response
		<p>with the outline construction traffic management plan, has been submitted to and approved by the relevant planning authority following consultation with the relevant highway authority and National Highways (on matters related to its functions).</p> <p>16. (1) The undertaker must, no later than six months prior to the planned permanent cessation of operation of the authorised development, submit to the relevant planning authorities and National Highways (on matters related to its functions) for approval a DEMP.</p> <p>3.10 It is noted that Part 2 of Schedule 2 does anticipate that some requirements will be submitted to multiple discharging authorities and so National Highways' request is consistent with the draft DCO in that regard.</p> <p>3.11 National Highways also has unaddressed concerns with regards to the boundary treatment relating to the proposed Northern Compound.</p> <p>3.12 The Northern Compound is located adjacent to the A160; its northern boundary adjoins the SRN boundary. Due its proximity to the SRN, evidence must be provided to demonstrate to National Highways that there are no drainage, structural, boundary treatments or other constructions that would have an impact on the safe operation of the SRN. To date this information has not been forthcoming nor is National Highways aware of anything in the draft DCO that requires the Applicant to provide this information or that enables National Highways to raise concerns over any such proposals.</p> <p>3.13 It should be noted, for example, that the structural stability of the SRN should not be undermined by third party development, and that surface water should not drain towards or into the highway. As stated within paragraph 57 of Department for Transport Circular 01/2022, for reasons of safety, liability and maintenance: "...structures should be sited sufficiently far from the highway boundary of the SRN so that they cannot topple on to the SRN or undermine its geotechnical integrity. Alternatively, an appropriate structural assessment that accords with the DMRB must be provided. A Road Restraints Risk Assessment must also be carried out where any furniture, structures or other features would be sited adjacent to the SRN."</p> <p>3.14 Furthermore, to ensure the integrity of the highway drainage systems, paragraph 59 states: "...no new connections into those systems from third party development and proposed drainage schemes will be accepted. Where there is already an existing informal or formal connection into the highway drainage system from a proposed development site, the right for a connection may be allowed to continue provided that the flow, rate and quality of the discharge into the highway drainage system remains unaltered or results in a betterment. The company may require a drainage management and maintenance agreement to be entered into to secure this requirement in perpetuity."</p> <p>3.15 National Highways does not have enough information at this stage to form a view on these matters. National Highways respectfully asks therefore that further information must be provided with regards to the proposed boundary treatment between the A160 and the Northern Compound. If this is not possible before the close of examination then National Highways requests an additional requirement is included at Schedule 2 that obliges the Applicant to provide this information for subsequent approval.</p>	

Table 2-14: Natural England: Cover letter and Annex A - Summary of Natural England's updated advice and Table of updated advice for each Written Representation issue [REP4-093]

Only matters marked 'Amber' in [REP4-093] have been included in this document as other matters are agreed and do not therefore require a response.

Ref	Topic	Interested Party Comment	Applicant's Response
2.14.1	<p>NE16</p> <p>International designated sites</p> <ul style="list-style-type: none"> • Humber Estuary SPA • Humber Estuary Ramsar <p>HRA – Noise and visual disturbance to non-breeding birds within functionally linked land (C) Appropriate Assessment - pipeline route and temporary compounds</p>	<p>We welcome the further information on noise fencing provided in Appendix I and paragraphs 7.3.29 - 7.3.35 of the updated HRA. However, we advise clarity is still required on the suite of mitigation measures proposed, and triggers for implementation.</p> <p>Further information required.</p>	<p>Further to a meeting held on 25 July the Applicant provided more detail regarding how locations for acoustic fencing would be determined. This revised text has been largely agreed by Natural England and it is anticipated that the next iteration will fully resolve this matter.</p>
2.14.2	<p>NE30</p> <p>Internationally designated Sites</p> <ul style="list-style-type: none"> • Humber Estuary Ramsa <p>Natterjack Toad presence in proximity to the Dune Valve Station</p>	<p>Natural England have been made aware since this response that Natterjack Toad have been identified within 'Viking Fields', in proximity to the Dune Valve Station.</p> <p>We have raised this with the applicant and highlighted the need for reconsideration within the HRA. We await further information from the applicant on this matter.</p> <p>Whilst additional mitigation measures may be required, Natural England consider this mitigation should be achievable. It should also be noted that a mitigation licence⁶ may be required where work will impact on natterjack toads.</p> <p>Updated assessment of impacts to Natterjack Toads in proximity to the Dune Valve Station.</p>	<p>Further information has been provided to Natural England and the Report to Inform Habitat Regulations [EN070008/APP/6.5] has subsequently been updated to include additional mitigation relating to works in the 'Viking Fields'. A copy of the updated Report to Inform Habitat Regulations [EN070008/APP/6.5] has been submitted at Deadline 5. The draft CEMP [EN070008/APP/6.4.3.1] has also been updated to include the additional measure B40 which secures this mitigation.</p>
2.14.3	<p>NE26c</p> <p>Soils and Best and Most Versatile Land</p> <p>Outline Soil Management Plan – (C and O) Reinstatement of agricultural land</p>	<p>Natural England acknowledge the information provided in REP2-029, ref 2.17.29, and welcome the commitment to restore all BMV agricultural land to it's former quality following construction. (REP3-012, mitigation measure F14).</p> <p>NE welcome clarity regarding the use of ALC survey information & soil profiles to inform restoration. We advise that this should be noted within the oSMP for clarity.</p> <p>The intention to ensure all BMV agricultural land restored upon decommissioning is returned to it's original ALC grade is also welcomed; the approach to adopt the same mitigation measures set out in the SMP within the Decommissioning Plan is noted. Nonetheless, for clarity, NE recommend that this should be specifically included within the Outline Decommissioning strategy (APP-072), i.e. in the 'reinstatement of land' sections.</p> <p>All relevant mitigation measures must be suitably secured in the DCO.</p>	<p>The Outline Decommissioning Strategy [APP-072] has been updated to specifically include the same mitigation in relation to the restoration of ALC grade as set out in the oSMP [EN070008/APP/6.4.10.1]. A copy of this updated document has been submitted at Deadline 5.</p>
2.14.4	<p>NE26d</p> <p>Soils and Best and Most Versatile Land</p> <p>Outline Soil Management Plan – (C and O) Soil handling in wet conditions</p>	<p>Natural England welcome the clarity provided in REP2-029, ref 2.17.30. Nonetheless, Natural England's position remains that soils should only be handled when dry and friable. The inclusion of the soil tests set out in oSMP Tables 2 and 3 are welcomed, however, we have concerns regarding works going ahead when these tests are failed. It is unclear what the consented time framed works include (i.e. that may require wet handling of soils), what impact this could have on ALC and whether it will have an effect on the potential to restore. We also have concerns regarding the term 'extenuating circumstances' as there is currently no definition of what this may include. Natural England have discussed these concerns with the applicant, and await further clarifications on these points, including definition of 'extenuating circumstances' which may necessitate handling soils in a wet</p>	<p>The Applicant has provided examples of 'extenuating circumstances' that may necessitate handling soils in wet conditions. These are included in the updated version of the oSMP [EN070008/APP/6.4.10.1] submitted at Deadline 5.</p>

Ref	Topic	Interested Party Comment	Applicant's Response
		<p>condition.</p> <p>Further clarification required regarding the need to handle soils in a wet condition.</p>	
2.14.5	<p>NE29b</p> <p>Protected Landscapes</p> <p>Lincolnshire Wolds National Landscape - Assessment of special qualities</p>	<p>'EN070008_EXAM_9.28_National Landscape_Technical_Note Rev B' includes a table setting out each of the special qualities of the National Landscape. Natural England welcome the additional information and assessment provided & concur with the conclusions drawn in section 3 of this document. Natural England agree with the Applicant that the construction phase is the most impactful part of the scheme. The Applicant's conclusion on impact is dependent on a series of key embedded mitigation measures, including the following, which must be secured:</p> <ul style="list-style-type: none"> • Hedgerow Reinstatement Specification and Management Plan: OLEMP para 1.1.6 secures the detailed establishment and management plan for hedgerows for the initial 5 year period, which is welcomed. However, whilst oLEMP para 1.1.8 notes some long term management measures, as this is key embedded mitigation, NE advise that the Hedgerow establishment and management plan should also include details of the monitoring and remedial action to be taken where reinstatement is unsuccessful, including beyond the initial 5 year period. Chapter 7, para 7.8.90 states that only 'by year 15 it is reasonable to assume that the perception of a continuous hedgerow would be re-established'. Reference should be made to this within the oLEMP to ensure it is secured through the DCO. • Protection of sensitive underlying hydrology: Where underlying hydrology is affected via HDD or auger drilling, this may affect reinstatement. CEMP mitigation measure E28 includes the need for ground investigation, assessment and the implementation of appropriate mitigation measures. NE advise that clarity should be provided regarding whether these investigations will be undertaken at the Chalk Stream Crossing Points. • Road verge restoration: The reinstatement of a road verge within the National Landscape is key embedded mitigation; as such, NE advise this should be included in the LEMP. Reference should be made to this within the oLEMP to ensure it is secured through the DCO. • Short works and reinstatement period: See NE29c below for further comment on this. <p>In addition, although no specific areas have been identified, NE would like to welcome para 3.3.11 regarding possible hedgerow reinstatement, gap filling and hedgerow tree planting in areas not affected by the project, to enhance this landscape features are contribute towards furthering the purposes of the designated landscape.</p> <p>All relevant mitigation measures and management plans must be suitably secured in the DCO.</p>	<p>An additional commitment has been added to section 3.2 of the oLEMP [EN070008/APP/6.8] to confirm that the detailed plan for the establishment and management of new hedgerows will also include details of the monitoring and remedial action to be taken where reinstatement is unsuccessful, including beyond the initial 5 year period. Reference has also been included to the text from ES Chapter 7 Landscape and Visual [APP-049]. A copy of the updated oLEMP [EN070008/APP/6.8] has been provided at Deadline 5.</p> <p>Measure E28 in the CEMP [EN070008/APP/6.4.3.1] has been updated to confirm that ground investigation will be undertaken at all HDD chalk stream crossings.</p> <p>The Applicant has added the following measure to the CEMP [EN070008/APP/6.4.3.1]:</p> <p>C10 All road verges within the Lincolnshire Wolds National Landscape that are temporarily impacted by the works, such as to create access points, will be sensitively restored to ensure they return to their original condition post construction. In order to ensure this, pre-construction habitat/condition surveys will be undertaken to provide a reference for reinstatement.</p> <hr/> <p>The Applicant has added the following measure to the CEMP [EN070008/APP/6.4.3.1]</p> <p>C11 The Undertaker will work with landowners to identify other existing gaps in affected hedgerows that could be filled whilst hedgerow reinstatement works are being undertaken. Opportunities to plant additional hedgerow trees will also be pursued. This approach will be taken not only within the LWNL, but also within the setting of the LWNL.</p>
2.14.6	<p>NE29c</p> <p>Protected Landscapes</p> <p>Lincolnshire Wolds National Landscape - Extent & Duration of impacts to the protected landscape</p>	<p>Natural England welcome the further commentary provided with regard to this issue in 'EN070008_EXAM_9.53 Response to Natural England's Recommendations relating to the LWNL'.</p> <p>We have no further comment on these matters aside from the below:</p> <p>We do not have any further comment on the comparisons drawn with the Navitus Bay DCO regarding consideration of the small geographical extent of impacts. Discussions on this matter have concluded & this will be reflected in the SoCG. (Yellow)</p> <p>The LVIA concludes significant adverse landscape and visual effects associated with the construction period. A short works and reinstatement period are thus key embedded mitigation measures relied upon within the LVIA & the magnitude of landscape effects (as</p>	<p>The Applicant notes Natural England's response in relation to the Navitus Bay DCO.</p> <p>The Applicant provided information regarding the reversibility of works in the Applicant's Comments on Written Representations [REP2- 029] submitted at Deadline 2.</p> <p>The Applicant provided further information regarding the duration of works of works in its Response to Natural England's Recommendations relating to the Lincolnshire Wolds National Landscape (LWNL) [REP4-019] submitted at Deadline 4.</p>

Ref	Topic	Interested Party Comment	Applicant's Response
		<p>assessed) is dependent on the short duration and reversibility of works. While a Gantt chart of the preliminary construction schedule is provided in Figure 3-29 of the ES, and brief detail of the overall expected timescales per km are provided in 'EN070008_EXAM_9.53 Response to Natural England's Recommendations relating to the LWNL', NE remain unclear on the realistic anticipated overall timeframe for construction and reinstatement (soils and hedgerows) works within the LWNL and its setting. We advise that these details are provided upfront and clearly set out. (Amber).</p> <p>Further clarity should be provided with regard to the timescales associated with construction & reinstatement.</p>	

Table 2-15: North East Lincolnshire - Responses to Issue Specific 2 and Issue Specific 3 action points [REP4-094]

Ref	Topic	Interested Party Comments	Applicant's Response								
2.15.1	Biodiversity Net Gain	<p>Action 8: Action Point 8 following ISH2; To review the Construction Environment Management Plan (CEMP) and the Outline Landscape and Ecology Management Plan (OLEMP), with a view to checking whether such documents do satisfactorily secure biodiversity net gain to the extent that a separate requirement in the DCO is not required.</p> <p>This has been reviewed by the Ecology Officer and the following response has been provided on this matter.</p> <p><i>The CEMP and OLEMP do not show measurable gains although 6.8 Outline Landscape and Ecological Management Plan does show landscape plans with species lists and sets out appropriate management, including methods and timelines, of created habitats, such as the grasslands and hedgerows, and a monitoring programme. It states within the CEMP that a 10% net gain in biodiversity will be achieved which would require numerical values to be applied and that isn't present in these documents or others that I can see. The habitats present along the route have been mapped using Phase One which should be converted to the UKHab mapping system, and the Statutory Metric used to calculate baseline and post-construction biodiversity values as that capability now exists. That would provide the evidence that a gain and a 10% gain had been achieved or not which currently can't be ascertained from these documents. The Plan also states that where habitats are impacted, they will be returned to, at minimum, the same state and condition as they were pre-works. If it stated that an improvement in habitat type or condition would be applied post construction, it would suggest there would likely be a gain in biodiversity but still unmeasured.</i></p>	<p>The Applicant provided numerical values in relation to its proposals for BNG in application document 6.7.1 Initial Biodiversity Net Gain Assessment [APP-125]</p> <p>The oLEMP was updated at Deadline 4 [REP4-021] to provide greater clarity regarding the Applicant's proposals in relation to BNG. These proposals are in accordance with the Applicant's Biodiversity Net Gain Assessment [APP-125] and Biodiversity Net Gain Strategy [APP-126].</p>								
2.15.2	Blow Wells	<p>Action Point 10 following ISH3; A meeting has taken place between the Council's ecologist and the Applicant so providing an update of any outstanding concerns.</p> <p><i>This has been reviewed by the Ecology Officer and the following response has been provided on this matter.</i></p> <p><i>I had concerns that blow wells along the proposed route had not been identified and were at risk of being impacted. Blow wells are a type of natural spring specific to the North and North East Lincolnshire area because of the coastal geology and therefore certainly have local significance and arguable regional and national significance as they don't occur elsewhere.</i></p> <p><i>I accompanied the aquatic ecological consultant on the survey assessment of the identified potential blow wells that could possibly be impacted by the works. The consultant and I both concluded that the water bodies were blow wells, all had different characteristics such as depth, water permanency, vegetation type and coverage, both within and surrounding.</i></p>	<p>The Applicant agrees with this comment.</p>								
2.15.3	Badger Sets	<p><i>The site at TA 18846 09364 also had an active badger set at the time of the visit. I recommended a 10-metre impact buffer zone around each blow well feature and potential improvement works could contribute to biodiversity gain, although the applicant isn't the landowner, and agreements would have to be put in place. The badger sett would need separate mitigation and licence if works were to take place within 30 meters.</i></p>	<p>The Applicant has added measure B39 to the updated CEMP [EN070008/APP/6.4.3.1] submitted at deadline 5, which states: No works will be undertaken within a 10 metre protection buffer around any confirmed blow wells. These include the following blow wells:</p> <table data-bbox="2077 1617 2671 1911"> <thead> <tr> <th data-bbox="2077 1617 2255 1659">Water body</th> <th data-bbox="2255 1617 2641 1701">National Grid Reference (NGR)</th> </tr> </thead> <tbody> <tr> <td data-bbox="2077 1722 2255 1764">Riby Road 1</td> <td data-bbox="2255 1722 2641 1764">TA 19007 09619</td> </tr> <tr> <td data-bbox="2077 1785 2255 1827">Riby Road 2</td> <td data-bbox="2255 1785 2641 1827">TA 18848 09361</td> </tr> <tr> <td data-bbox="2077 1848 2255 1911">Aylesby 1</td> <td data-bbox="2255 1848 2641 1911">TA 19741 08617</td> </tr> </tbody> </table> <p>The Applicant notes the information provided regarding the active</p>	Water body	National Grid Reference (NGR)	Riby Road 1	TA 19007 09619	Riby Road 2	TA 18848 09361	Aylesby 1	TA 19741 08617
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			<p>badger sett and confirms that this location is approximately 125m west of the Order limits. As such it is not anticipated that any effects could occur.</p>
2.15.4	Great Crested Newt	<p><i>I have also been in contact with Natural England over concerns with the great crested newt (GCN) District Level Licensing (DLL) approach having not seen the licence conditions, and supplied them with information regarding GCN surveys, known breeding ponds and mitigation ponds, and my considerations that Ashby-cum-Fenby and surrounding area is significant for populations of GCN.</i></p> <p><i>As we are not currently part of the DLL scheme, I would appreciate knowing where the mitigation ponds will be created and therefore future breeding populations of GCN will be and likely traversing to avoid breaches in legislation, if that information could be submitted to me, please.</i></p>	<p>The Applicant notes this comment, which it understands is directed to Natural England.</p>
2.15.5	Highways / Traffic	<p>Other Matters</p> <p>Some further comments have been made by the Highways Officer following the ISH3 Hearing and reference to the revised Transport Assessment. This comment is as follows.</p> <p><i>Further to the email below I would like to see some further assessment from the revised TA provided. As it stands, during the peak traffic month (June 2026) they are showing an increase as follows:</i></p> <p><i>7-8am 48 two way trips previously and 76 two way from the revision</i></p> <p><i>8-9am 48 two way trips previously and 72 two way from the revision</i></p> <p><i>4-5pm 48 two way trips previously and 68 two way from the revision 5-6pm 48 two way trips previously and 68 two way from the revision</i></p> <p><i>Given these sits within the network peaks I would like to ensure there will be no impact on the surrounding junctions as a result of this. I would therefore request that the applicants look at any junction that will be impacted by more than 30+ two-way trips and assess as appropriate.</i></p> <p><i>I would also highlight that within the change request received there was no mention that the TA had been updated and it was only brought to the attention of the Highway Authority at the hearing last week. I would have expected this to be communicated to us prior to this.</i></p>	<p>It should be emphasised that the maximum peak hour two-way movements forecasted (76 two-way during the 07:00-08:00hrs period) are the total movements across the entirety of the wider road network servicing the 55km pipeline route (shown in Figure 1-1 within the TA) so would not be impacting a single road.</p> <p>Subsequently, the peak hourly impacts at individual junctions have therefore not been assessed in isolation due to the low forecast impacts. However, the daily impacts at specific links have been reviewed and the total vehicles travelling through these locations are shown in Table 6-6 in the Transport Assessment [REP3-013].</p> <p>For context, as shown in Table 6-5 in the Transport Assessment [REP3-013], all worker movements occur outside the network peak hours (between 06:00-07:00hrs and 19:00-20:00hrs), with HGV movements spread out over a 12-hour period across the day between 07.00 and 19.00hrs. The HGV movements are subsequently spread out generally equally across this period, including during the network peak hours.</p> <p>As shown in Table 6-6, the highest number of daily HGV two-way movements occur at Link 2, A1173 near Immingham (304 daily two-way HGV trips) and Link 78, A180 between A1173 and A160 (312 daily two-way HGV trips). When split equally across the 12-hour period, this equates to a maximum of 25 and 26 two-way HGVs respectively, which is lower than the 30 two-way trip threshold stated (a traditional rule of thumb for local authorities to follow based on information contained within the now superseded 'Guidance on Transport Assessment, 2007' document) that would potentially warrant further junction assessment. All other links assessed would experience less than 300 daily two-way HGV trips.</p> <p>It can also be stated that trips around Immingham and on the A180 will be using A roads / strategic links which have relatively high capacities and therefore any increased flow at junctions would be marginal.</p> <p>It should be further emphasised that this volume of construction associated vehicles is only forecast during the peak month of June 2026 and either side of this month vehicles numbers are lower, as</p>

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			<p>shown in Table 6-3 of the submitted Transport Assessment. The Applicant has undertaken very much a "worst case assessment".</p> <p>The Applicant submitted an updated version of the Transport Assessment [REP3-013] at deadline three (11 June 2024).</p>
2.15.6	Highways / Traffic	<p><i>In terms of the removal of a couple of the proposed accesses, the Highway Authority welcomes this. In regard to the Highway Authorities outstanding concerns on some of the access points proposed, we have been informed by the applicants that revised plans, road safety audits and traffic management proposals will be submitted to us within the next two weeks. I must stress that the Highway Authority still have significant concerns with these at this time.</i></p>	<p>The Applicant has provided plans and a Stage 1 Road Safety Audit (RSA) to NELC, though this was only issued on 30 August.</p> <p>The RSA identified several recommendations which the Applicant will incorporate into the detailed design of the junctions. The Applicant has requested a further meeting with NELC to discuss the findings of the Stage 1 RSA.</p>
2.15.7	General	<p>In conclusion, North East Lincolnshire Council can confirm that these specific matters are still outstanding and welcome further liaison with the applicant to resolve these issues.</p>	<p>The Applicant notes this comment and will continue to liaise with NELC with a view to closing out these remaining issues.</p>

Table 2-16: Phillips 66 Limited Deadline 4 Submission - Written summary of oral submissions made at Compulsory Acquisition Hearing 2, responses to action points and update on negotiations [REP4-061]

Ref	Topic	Interested Party Comments	Applicant's Response
2.16.1	General	<p>1. Introduction</p> <p>1.1 We are instructed by Phillips 66 Limited (“P66”) in respect of the application (“the Application1 ”) made by Chrysaor Production (UK) Limited (“the Applicant”) for The Viking CCC Carbon Dioxide Pipeline Development Consent Order (“the Proposed Order”) to authorise the construction, operation and decommissioning of a pipeline that will transport captured carbon dioxide from Immingham to the Theddlethorpe Facility, together with associated development (“the Scheme”).</p> <p>1.2 The Application for the Proposed Order was submitted and is being promoted by the Applicant and has been allocated Planning Inspectorate reference EN070008.</p> <p>1.3 This Deadline 4 submission should be read together with and alongside: (a) P66’s Relevant Representations (“RRs”) dated 15th January 2024; (b) P66s Written Representations (“WRs”) dated 25th April 2024; and (c) Comments made by P66 at ISH 1, CAH 1, and CAH 2.</p> <p>1.4 This Deadline 4 submission: (a) Provides a written summary of the oral submissions made at CAH 2 on 25th June; (b) Responds to the relevant action points from CAH 2; and (c) Updates on negotiations with the Applicant. 1.5 Each of the above points are considered below in turn for ease of reference.</p>	<p>The Applicant and P66 have now entered into legally binding agreements to acquire the necessary rights in land over plots owned by P66, as well as agreeing the terms of Protective Provisions.</p> <p>The Applicant has therefore not responded to these points any further, as they are considered to be addressed by the terms of that agreement.</p>
2.16.2	Negotiations	<p>2. Summary of oral submissions made at CAH 2 on 25 June 2024</p> <p>2.1 P66 owns and operates the Humber Refinery. Its operations are highly complex, heavily regulated, and extremely sensitive to disruption and interference. P66 is a major employer in the area and is key to the local industry and economy. P66 supports the principle of the Scheme and remains committed to assist in its implementation. The reason for P66s original objection to the Application related to the proposed details of the Scheme and how, in particular they impacted or may impact on P66s operations and interests. As set out in its RRs and WRs, there were essentially 5 grounds to P66s original objection. First, the Applicant was seeking compulsory acquisition and/or temporary possession powers in the Proposed Order as originally submitted over excessive amounts of P66’s interests and landholdings, greater than was necessary for the purposes of the Scheme and which would adversely impact upon P66’s operations. Secondly, the Proposed Order did not include appropriate Protective Provisions (‘PPs’) in relation to P66s assets, landholdings and operations. Thirdly, one of the two alternative options included in the Proposed Order as originally submitted for section 1 of the pipeline from the Immingham Facility to the A180, went through the Humber Refinery site which was highly detrimental to P66s interests and operations. Fourthly, P66 were concerned as to the construction and operational impacts of the Scheme and its interrelationship with P66s operations and interests. Fifthly, P66 were concerned as to the absence of detailed review and assessment of any impact on the COMAH risk scenarios, mitigation measures and emergency response measures.</p> <p>2.2 As to the first ground of objection, P66 welcomes Change Request 1 which removed from the Proposed Order the pipeline route option proposing to go through the Humber Refinery. As to the second ground of objection, draft protective provisions have been prepared by the Applicant and have been the subject of a number of iterative drafts between the parties. A broad consensus of agreement has now been reached on those detailed terms and it is envisaged agreement being reached on a set of protective provisions during the examination period. Accompanying the protective provisions are negotiations on a lease to enable the Applicant to voluntarily acquire the rights and interests required for the Immingham Facility component of the Scheme, the terms of which are also substantially agreed. The third element of the suite of voluntary agreements is an overarching agreement between the parties which broadly regulates: (a) the exercise of powers; (b) the proposed withdrawal of the objection; and (c) the request for protective provisions to be added to the Proposed Order.</p> <p>2.3 All of the above documents are at an advanced stage of negotiation and it is envisaged that they will be settled shortly. Thereafter, it is a process of P66 getting the necessary internal approvals to enter into the</p>	

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		<p>agreements which can take between 4-6 weeks to put in place.</p> <p>2.4 In terms of residual points, whilst it is ultimately a matter for the Secretary of State to determine when considering whether or not to make the Proposed Order, in circumstances when the Applicant will have acquired the necessary rights and interests by voluntary agreement with P66, P66 would query whether the conditions in section 122 of the Planning Act 2008 for which compulsory purchase and temporary possession powers may be authorised are met namely:</p> <p>(a) Whether compulsory acquisition and temporary possession powers are required as a fallback for this section of the Scheme when the Applicant will have acquired through the suite of voluntary agreements with P66 the necessary rights and interests to carry out the works to construct this part of the Scheme; and/or</p> <p>(b) Whether there is a compelling case in the public interest for the compulsory acquisition and temporary possession powers sought in these circumstances.</p> <p>2.5 As to the fourth ground of objection, the overarching agreement proposed to be entered into between the parties proposes to constitute and operate a working group between the Applicant and P66 to act as a current and future forum to enable discussions to take place on construction and operational impacts and the interface between the Scheme and P66s interests and operations.</p> <p>2.6 As to the fifth ground of objection, we are instructed that the Applicant is now satisfactorily engaging with P66 on COMAH related matters.</p> <p>2.7 Overall, therefore, good progress has been made with the Applicant on agreeing the terms of the suite of voluntary agreements but unless and until these agreements have been settled, internally authorised, and completed, P66 intends to maintain its objection to the Application on a protective basis.</p>	
2.16.3	Compulsory Acquisition	<p>3. CAH 2 Actions</p> <p>3.1 The Examining Authority ("ExA") have asked P66 to clarify whether and if so what interest (if any) it has in Proposed Order Plots 36/9 to 36/11 in the Book of Reference which list P66 as having such an interest.</p> <p>3.2 Having considered this point with P66, we can confirm that P66 does not have any interest in these Order Plots and we would ask that the Application material is therefore amended accordingly to remove such references.</p>	
2.16.4	Negotiations	<p>4. Update on negotiations with the Applicant</p> <p>4.1 Further to the oral submissions at CAH 2, which are summarised above, we are pleased to be able to confirm that the terms of the suite of voluntary agreements have now been agreed with the Applicant and P66s internal approvals process has also now been completed. Save for ironing out some pre completion details around the relevant plans to be appended to the suite of agreements, it is anticipated that the agreements will shortly be in a position to be legally completed whereupon it would be the intention of P66 to proceed to write to the ExA to withdraw its objection to the Application.</p> <p>4.2 The ExA will appreciate that unless and until these agreements have been legally completed that P66 wishes to maintain its objection to the Application on a protective basis.</p> <p>4.3 P66 will keep the ExA updated as to the position on the suite of voluntary agreements and it is very much the hope and intention of the parties to complete the suite of voluntary agreements during the currency of the examination.</p>	