



Planning Inspectorate

The Planning Act 2008

Immingham Green Energy Terminal

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

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6 November 2024

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OVERVIEW

File Ref: TR030008

The Application, dated 21 September 2023, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 21 September 2023.

The Applicant is Associated British Ports.

The Application was accepted for Examination on 19 October 2023.

The Examination of the Application began on 20 February 2024 and was completed on 20 August 2024.

The development proposed comprises Immingham Green Energy Terminal (IGET), which consists of:

- A jetty, consisting of an approach trestle, approximately 1.2 kilometres in length, leading to a single berth including a loading platform, topside infrastructure, berthing and mooring dolphins with link walkways, and related landside infrastructure including jetty access ramps.
- Topside infrastructure on the jetty for the handling of liquid bulks, including loading arms and pipelines.
- An access road to the jetty from Laporte Road.

The development proposed also includes infrastructure associated with a Hydrogen Production Facility (HPF), which comprises:

- Two operational sites supporting hydrogen production facilities (referred to as the East Site and West Site).
- Pipes and cables between the jetty and the East Site, between the East and West Sites and between process equipment and buildings on both Sites.
- A large ammonia storage tank (on the East Site).
- Hydrogen production units that convert ammonia to produce green hydrogen (on both East and West Sites).
- Hydrogen liquefier units (on West Site) to liquify the hydrogen for temporary storage (on the West Site).
- Loading bays (on the West Site) to fill road tankers with liquified hydrogen which would then be distributed to hydrogen filling stations located throughout the UK.
- A hydrogen refuelling station and bulk hydrogen trailer filling station (on the West Site).
- Ancillary buildings and works.
- Process packages to provide utilities such as nitrogen, steam and cooling water.
- Access from the public highway to the two hydrogen production sites.
- Temporary construction areas.
- Various works (connections or diversions) to utilities including on highways land.

Summary of Recommendation:

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

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1. THE PROPOSED DEVELOPMENT AND THE EXAMINATION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. An application (the Application) for the Immingham Green Energy Terminal (IGET), Planning Inspectorate (the Inspectorate) reference TR030008, was submitted by Associated British Ports Limited (the Applicant) to the Inspectorate on 21 September 2023 under section s37(2) of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 19 October 2023 [[PD-002](#)]. This Report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Transport (SoS).
- 1.1.2. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for the Department for Levelling Up, Housing and Communities (DLUHC) in its decision to accept the Application for Examination in accordance with s55 of the PA2008 [[PD-002](#)]. During the course of the Examination, this matter was considered further by the ExA, and the outcome of these considerations can be found in Section 1.4.
- 1.1.3. IGET comprises the construction of harbour facilities, with the jetty proposed to have a handling capacity of more than 5 million tonnes per annum. It therefore falls within s24(2) of the PA2008 and meets the definition of an NSIP set out in s14(1) of the PA2008. As such, the IGET requires development consent in accordance with s31 of the PA2008.
- 1.1.4. Alongside the IGET, the Applicant proposes the erection of a Hydrogen Production Facility (HPF), which is considered by the Applicant to be associated development. Details of both elements and how the ExA has differentiated between the two, can be found in the below sections.
- 1.1.5. The Examination Library (EL) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number e.g. APP-001. The reference numbers are used throughout this Report and hyperlinks are included to allow the reader to access them directly.
- 1.1.6. This Report does not contain extensive summaries of all documents and representations received, although full regard has been had to them, along with all important and relevant matters. Key written sources are set out further below.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

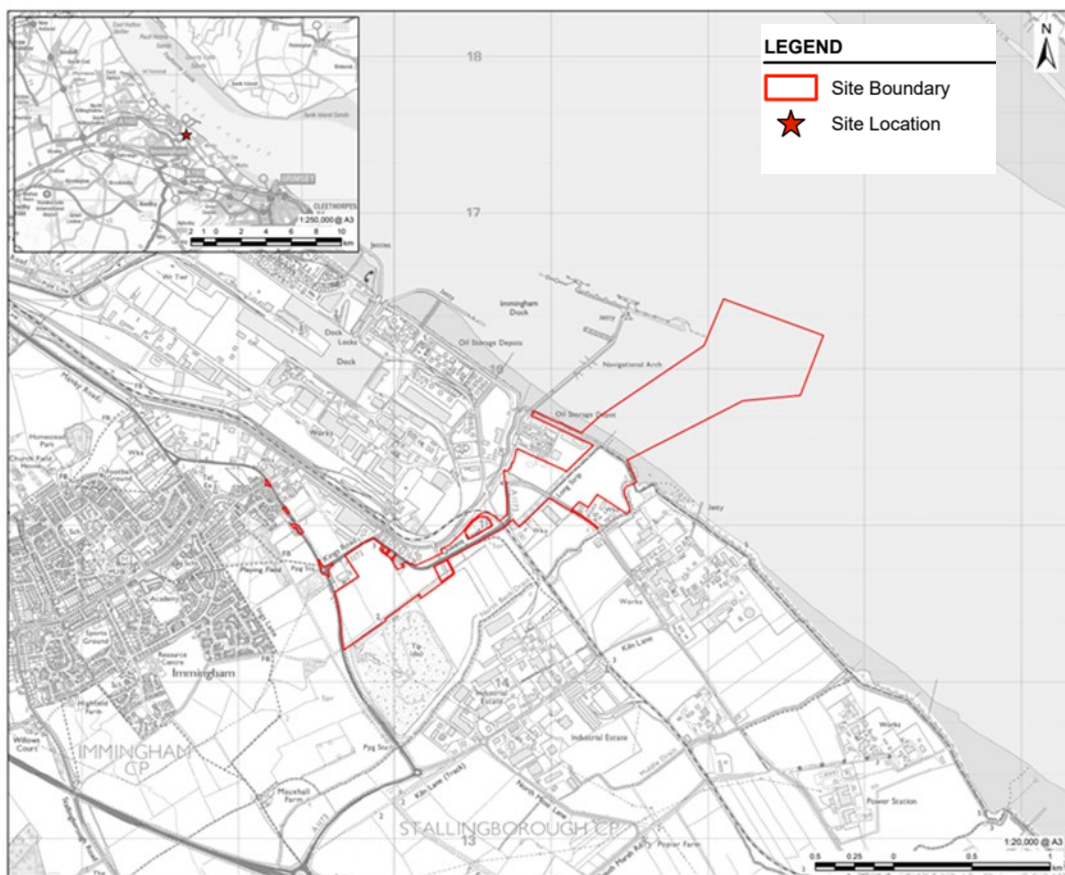
- 1.2.1. On 31 October 2023, Menaka Sahai (Lead Panel Member), Adrian Hunter, Liam Page, Katharine Metcalfe and Mukhtar Shaikh were appointed as the ExA for the Application under s61 and s65 of PA2008 [[PD-004](#)].
- 1.2.2. On 11 March 2024, the constitution of the ExA was changed [[PD-009](#)]. Menaka Sahai resigned from the ExA under s66(3) of the PA2008. Karin Taylor was appointed to the ExA as a replacement Panel Member, with Adrian Hunter taking on the role of Lead Panel Member.

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

- 1.3.1. The location of the Proposed Development is shown in the Location Plan [\[REP3-082\]](#) (see Figure 1 below).
- 1.3.2. The land-side works fall within North East Lincolnshire Council (NELC) administrative area. The marine-side works, that extend seaward and fall outside of the local authority's boundary, would take place on the bed of the Humber estuary, which is owned by the Crown Estate, over which the Applicant has the benefit of a long lease.
- 1.3.3. Both land-side and marine-side works are located wholly within England.

Figure 1 Site Location Plan [\[AS-073\]](#)



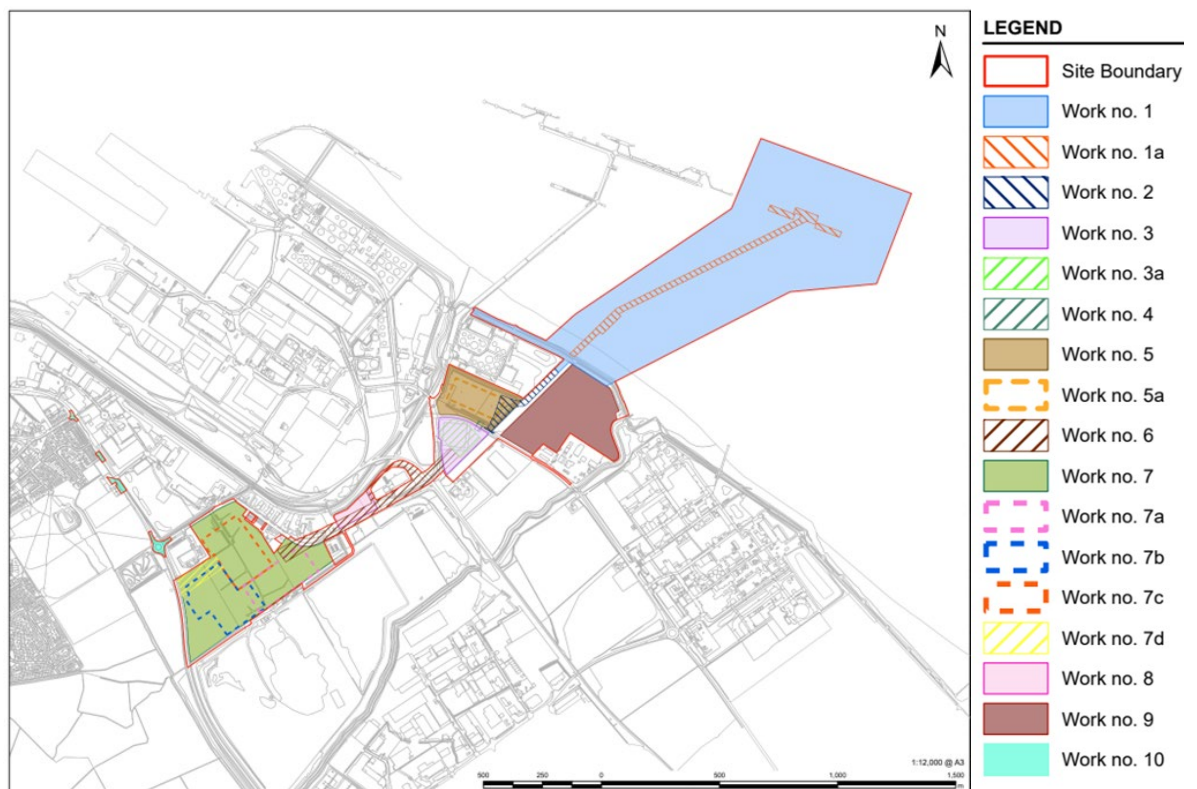
- 1.3.4. Chapter 2 of the Environmental Statement (ES) [\[APP-044\]](#) provides a detailed description of the surrounding area. In summary, the site is located to the east of the existing Port of Immingham and falls predominately outside of the Port operational area.
- 1.3.5. The surrounding area is mainly industrial in nature, dominated by chemical manufacturing, oil processing and power generation facilities. Along Queens Road, which borders the West Site, is a row of residential and commercial properties. Beyond this, the wider area is largely agricultural. The nearest large residential area is the eastern edge of Immingham, approximately 460m from the western edge of the Order limits.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

Overview

- 1.3.6. The Proposed Development comprises the construction, operation and maintenance of a multi-user green energy terminal, to facilitate the import and export of liquid bulks associated with the energy sector. It would also include the erection and operation of an HPF.
- 1.3.7. The Proposed Development works comprise:
- | | |
|------------|---|
| Work No.1 | Immingham Green Energy Terminal; |
| Work No.2 | Infrastructure to support the import of ammonia; |
| Work No.3 | Ammonia storage tanks and related infrastructure and buildings; |
| Work No.4 | Culvert under Laporte Road for pipelines, pipes and cables; |
| Work No.5 | East Site - Works to create three hydrogen production units; |
| Work No.6 | Underground pipework to link East and West Site; |
| Work No.7 | West Site - Works to create three hydrogen production units, storage tanks, hydrogen vehicle and trailer filling stations, and additional buildings including control buildings, security and visitor building; |
| Work No.8 | Temporary construction and laydown areas on Queens Road; |
| Work No.9 | Creation of Temporary construction compound off Laporte Road; and |
| Work No.10 | Temporary modification of overhead cables/ lines, temporary removal of highway signage, lamp posts and other street furniture. |

Figure 2 Overview of Proposed Development Layout [AS-076]

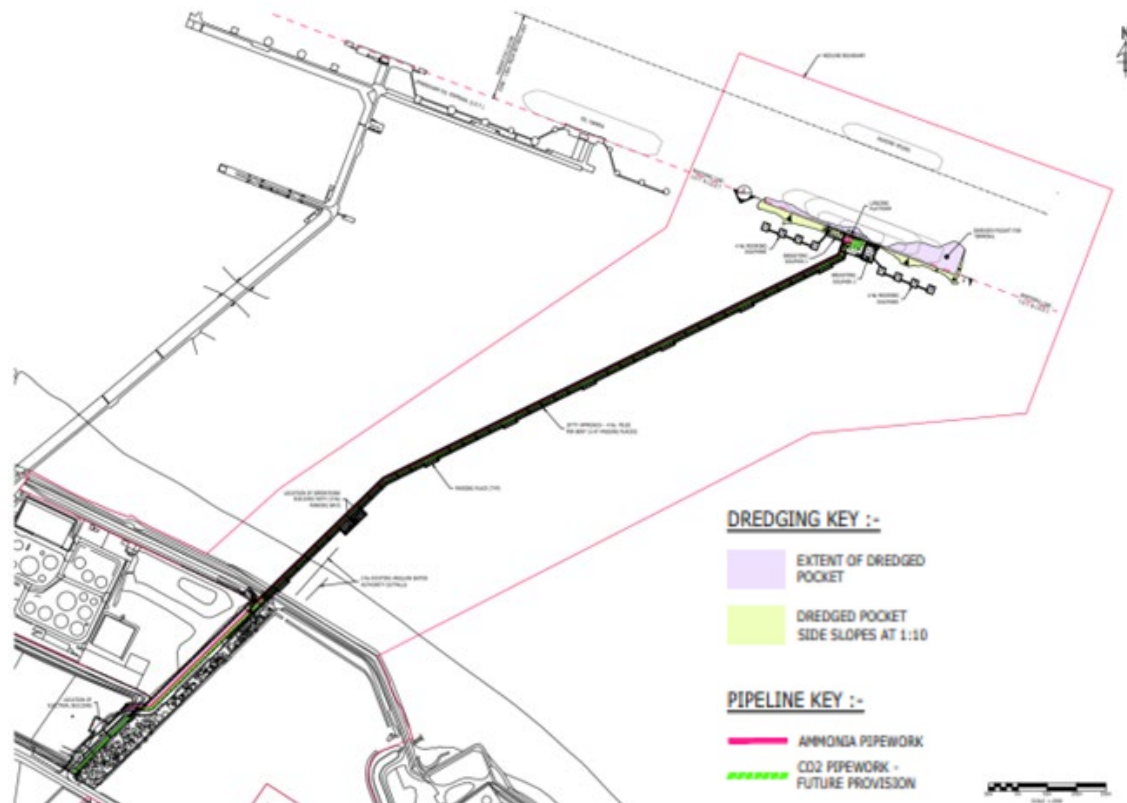


Immingham Green Energy Terminal (IGET)

- 1.3.8. The IGET would comprise:

- a jetty (Work No. 1a), loading platform, associated dolphins, fenders and walkways,
- topside infrastructure including control rooms, marine loading arms, pipe-racks, pipelines and other infrastructure;
- a single berth, with a berthing pocket with a depth of up to 14.5m below chart datum; and
- related landside infrastructure including a jetty access ramp, a flood defence access ramp and works to raise the seawall locally under the jetty access ramp.

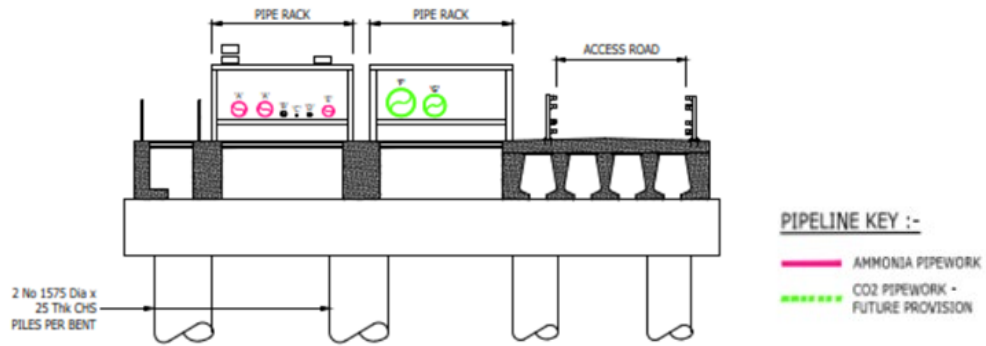
Figure 3 Illustrative layout of IGET [Extract from Planning Statement [APP-226]



- 1.3.9. The Applicant considers IGET to be capable of handling up to 292 vessels per annum, with 12 of those anticipated to be for the delivery of ammonia. The single berth is expected to have a total capacity of 11million tonnes per annum. Vessels would moor at IGET and offload the liquid bulks which would then be transported to the landside infrastructure via the pipelines on the Terminal.
- 1.3.10. Air Products are intended to be the first user of IGET. In their case, ammonia would be piped to the ammonia storage tank and onwards to the HPF via pipelines.
- 1.3.11. The Applicant anticipates other uses for IGET will come forward in due course, with separate applications for landside works for transfer and/ or storage of other liquid bulks being submitted as required, most likely via the Town and Country Planning Act approval process. It is anticipated that one future use of IGET would be the import and export of liquefied carbon dioxide to connect to adjacent carbon transport and storage networks for sequestration in the North Sea.

1.3.12. IGET would operate 24 hours a day, seven days a week and 365 days a year. Operational staff numbers for the Terminal are likely to be up to 14 people with at least some staff working in shifts.

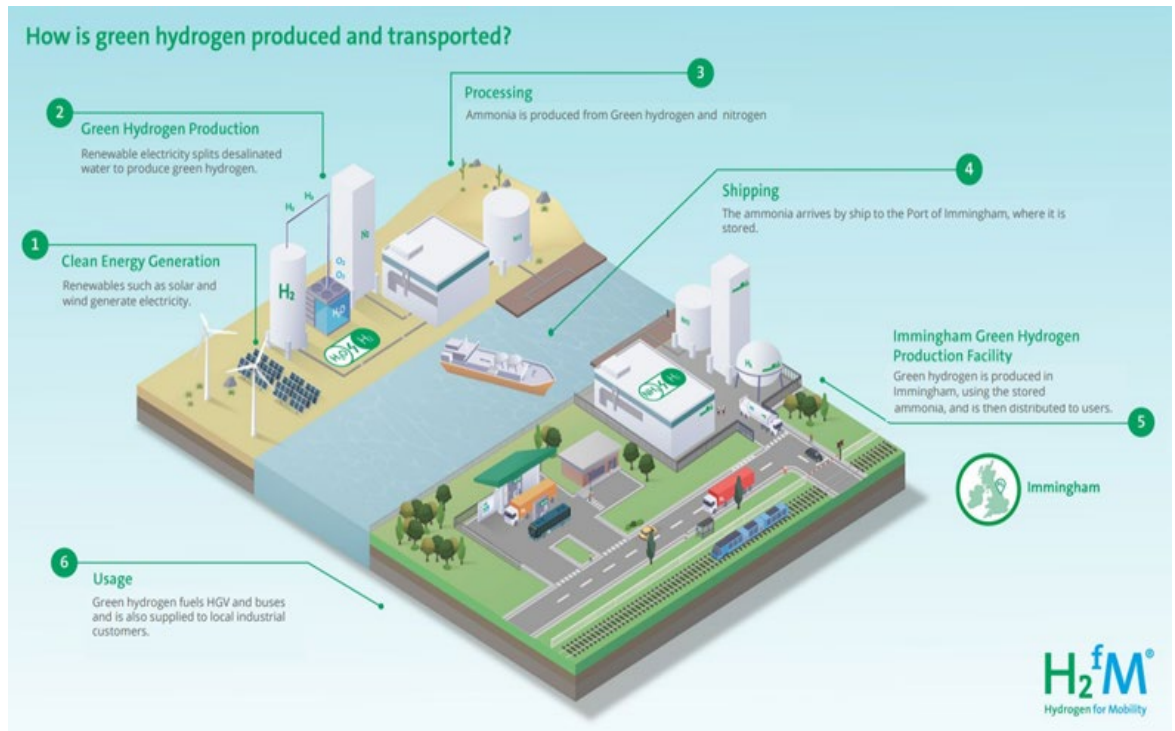
Figure 4 Jetty detail [REP3-014]



Hydrogen Production Facility (HPF)

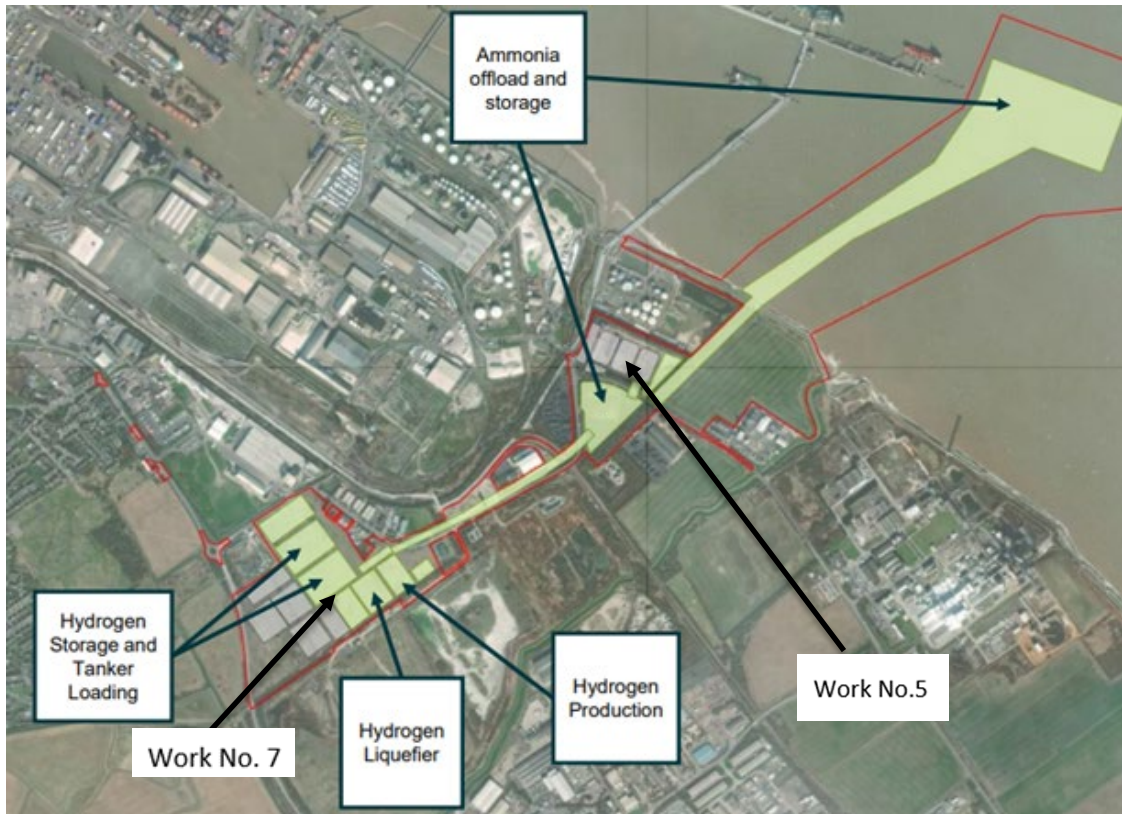
1.3.13. IGET would initially be used for the import and export of green ammonia to be converted into green hydrogen. Figure 5 provides more detail on the overall process.

Figure 5 Green Hydrogen Production [AS-018]



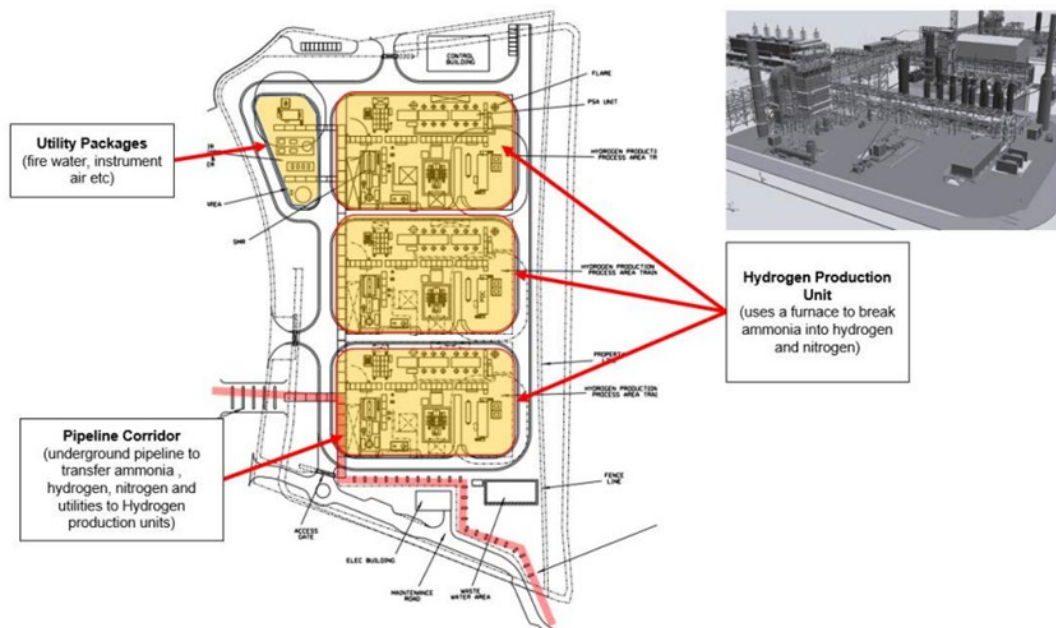
1.3.14. To facilitate this, a HPF, comprising ammonia handling equipment, storage and processing units would be constructed as part of the Proposed Development.

Figure 6 Process layout [AS-018]



1.3.15. The HPF is intended to be a continuous operation, although this would be dependent upon shipping frequency. The intention is therefore that the facility will operate 24 hours a day, seven days a week and 365 days a year.

Figure 7 Illustrative layout of East Site (Work No.5) [Extract from Planning Statement APP-226]



1.3.16. Further details were also provided in the Planning Statement [APP-226].

Figure 8 Illustrative layout of West Site (Work No.7) [Extract from Planning Statement APP-226]

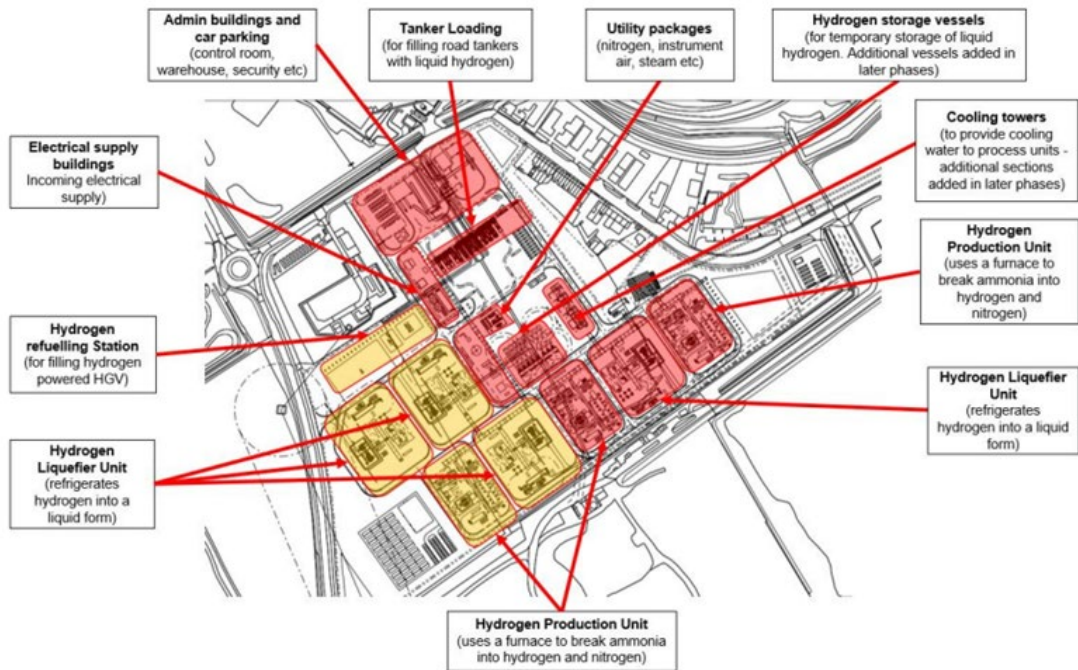
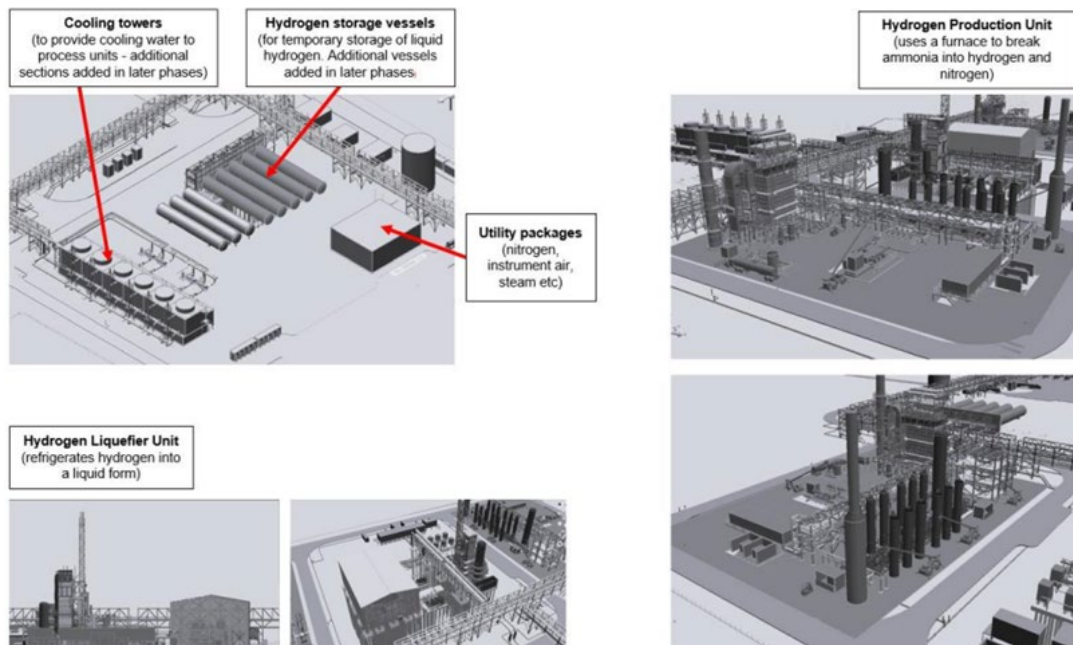


Figure 9 Typical structures on West Site (Work No.7) [Extract from Planning Statement APP-226]



1.3.17. It is proposed that the green hydrogen would support the decarbonisation of industrial activities, along with use as a fuel for heavy transport, such as Heavy Good Vehicles (HGVs) and buses.

- 1.3.18. It is anticipated that once fully operational, a fleet of up to 50 tanker trailers and tractor units would operate in distributing the green hydrogen throughout the UK, to hydrogen refuelling stations and directly to industry.

1.4. THE NSIP

- 1.4.1. In the submitted Application, the NSIP was described as Work No.1, that being the construction of IGET. All other elements of the Proposed Development were described as associated or ancillary development. Throughout the Examination, the ExA asked a number of questions about the components of the Application and exactly what would constitute the NSIP and associated development. In particular, the ExA sought clarification in relation to the threshold capacity of IGET, what additional materials could be imported, and what the potential implications were for additional land-side infrastructure.
- 1.4.2. The Applicant provided a detailed response at Deadline 3 [\[REP3-072\]](#). In summary, the Applicant's position was that the PA2008 is concerned with the capacity of the "harbour facilities" that are constructed or altered, i.e. in this case the capacity of the jetty.
- 1.4.3. PA2008 sets a threshold that where harbour facilities are constructed or altered such that they would be expected to increase, by at least the relevant quantity per year, the amount of material the embarkation or disembarkation the harbour facilities are capable of handling, then an application for the approval of such development must be made under the PA2008.
- 1.4.4. Section 24(1) of the PA2008 provides that the construction of harbour facilities may constitute an NSIP, provided they are expected to be capable of handling the embarkation or disembarkation of at least the "relevant quantity" of material per year set out in s24(3), which for cargo ships is 5 million tonnes. The capacity of the jetty is in the order of 11 million tonnes of liquid bulk cargo [\[REP3-072\]](#), and therefore, in the Applicant's view, well in excess of the relevant quantity.
- 1.4.5. In this respect, the ExA note that the initial use of IGET would be for the import of ammonia by Air Products (BR) Ltd and that the amount of liquid to be imported by them would fall below the relevant quantity. However, having considered the additional evidence and further justification submitted by the Applicant [\[REP3-072\]](#), the ExA is satisfied that, IGET would have a capacity to handle in excess of the relevant quantity, as required in the PA2008 to be an NSIP and, as such, falls to be considered under the NSIP regime.

ASSOCIATED DEVELOPMENT

- 1.4.6. S115(1) PA2008 provides that, in addition to the development for which consent is required under Part 3 PA2008 (the principal development), consent may also be granted for associated development. "Planning Act 2008: Guidance on associated development" defines associated development as development which is associated with the principal development and requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development or help address its impacts.
- 1.4.7. The main elements of associated development in this case comprise the Jetty Access Road connecting the Jetty to the public highway, and the HPF including the pipelines, pipes and other utilities which will connect the NSIP to that facility.

1.4.8. During the course of the Examination, the Applicant provided further clarity [[REP3-066](#)] on the associated development. Having considered the Applicant's submissions, the ExA are satisfied that all of the proposed works are capable of forming either part of the NSIP or being associated development as they are associated with, or have a direct relationship with, the principal development and, as such, support the operation of the principal development.

1.5. RELEVANT PLANNING HISTORY

1.5.1. The Applicant completed a review of the planning history associated with all land within the Order limits [[APP-226](#)] and identified a number of planning permissions. These permissions were considered to be important as they fell within the Order limits.

1.5.2. Following the development of an access road, land at Kings Road has an extant planning permission for its development for employment use. The red-line boundary associated with this permission aligns closely with the Order limits around Work No.7. The outline permission permits up to 74,320m² of employment floorspace with no restriction on the quantum or split between general industrial, storage and distribution, research and development, light industrial use and 'minor' office development.

1.5.3. There are a number of other port and energy NSIP schemes in close proximity to the Proposed Development.

1.5.4. The proposed Immingham Eastern Ro-Ro Terminal (IERRT) Development Consent Order (DCO) scheme is located to the west of the IGET. It is located within the operational port area at the Port of Immingham and is also promoted by Associated British Ports (ABP). ABP is seeking to construct and operate a new roll-on/ roll-off facility within the Port of Immingham. The DCO was made by the SoS on 4 October 2024.

1.5.5. The Viking Carbon Capture Scheme (CCS) Pipeline DCO (PINS Application Reference EN070008) proposes a pipeline for the transportation and storage of CO₂ from Immingham to the Theddlethorpe Offshore Pipeline Tie-In and Outlet point, connecting the new pipeline to an offshore depleted reservoir. The Examination into the Viking CCS Pipeline was completed on the 26 September 2024.

1.5.6. The East Site (Work No. 9) is allocated for retained long-term business use (Local Plan Policy Map Ref ELR025a) in the North East Lincolnshire Local Plan 2018 (NELLP). This is supported by Policy 7: Employment Allocations, which are identified on the NELLP Policy Map as land which is allocated for employment development, use classes B1 (Business) (now use class E(g)), B2 (General Industrial) and B8 (Storage and Distribution). These areas are identified in order to meet the needs of Policy 1: Employment land supply.

1.5.7. The majority of the West Site (Work No 7) is allocated for proposed employment use in the NELLP (ELR Ref ELR001 – Kings Road). A small strip of land within the eastern extent of the West Site sits within another allocated site for proposed employment use in the Local Plan (ELR Ref: ELR027) (Land east of Queens Road). Both of these areas are identified as strategic sites which are large-scale, estuary wide sites which have been selected to meet demands arising from large-scale operations and major investment opportunities.

1.6. THE EXAMINATION

START OF THE EXAMINATION

- 1.6.1. The Preliminary Meeting (PM) took place on 20 February 2024 [EV2-001]. The ExA's Procedural Decisions (PD) and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter dated 28 February 2024 [PD-007].
- 1.6.2. The Examination began on 20 February 2024 and concluded on 20 August 2024. The principal components of and events around the Examination can be seen in the Examination Timetable [PD-007] and are summarised below.

PROCEDURAL DECISIONS

- 1.6.3. The PDs set out in the Rule 8 Letter [PD-007] related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant Interested Parties (IPs).

SITE INSPECTIONS

- 1.6.4. On the 23 February 2024, the ExA undertook a Familiarisation Site Inspection [EV1-002].
- 1.6.5. The ExA carried out an Unaccompanied Site Inspection (USI) on 6 and 7 December 2023 [EV1-001] and an Accompanied Site Inspection (ASI) on 17 April 2024 [EV1-003].
- 1.6.6. Following a request from the ExA [PD-005], the Applicant submitted aerial drone footage [PDA-011] showing the land within the Order limits, along with its immediate surroundings.
- 1.6.7. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant sections of this Report.

HEARINGS

- 1.6.8. Hearings were held under s91 PA2008 into specific issues and under s92 PA2008 into the compulsory acquisition of land and rights.
- 1.6.9. The following Issue Specific Hearings (ISH) were held:
- ISH1 [EV3-002, EV3-005];
 - ISH2 [EV4-002, EV4-004, EV4-006, EV4-008, EV4-010];
 - ISH3 [EV5-002, EV5-004, EV5-006, EV5-008, EV5-010];
 - ISH4 [EV6-002, EV6-004, EV6-006];
 - ISH5 [EV7-002, EV7-004, EV7-006, EV7-008];
 - ISH6 [EV9-002, EV9-004, EV9-006];
 - ISH7 [EV10-002, EV10-004] and
 - ISH8 [EV11-002, EV11-004, EV11-006].
- 1.6.10. The following Compulsory Acquisition Hearing (CAH) was held:
- CAH1 [EV8-002, EV8-004].

1.6.11. No requests for Open Floor Hearings (OFH) were received and as a result, none were held.

WRITTEN QUESTIONS

1.6.12. The ExA issued three rounds of written questions:

- First Written Questions (ExQ1) [[PD-008](#)] were issued in draft on 28 January 2024 and then re-issued on 28 February 2024 alongside the Rule 8 letter.
- Second Written Questions (ExQ2) [[PD-014](#)] were issued on 17 May 2024.
- Third Written Questions (ExQ3) [[PD-017](#)] were issued on 17 July 2024.

1.6.13. All responses to the ExA's written questions have been considered and reported on in all relevant Chapters of this Report.

STATEMENTS OF COMMON GROUND

1.6.14. By the close of the Examination, the following IPs had signed final Statements of Common Ground (SoCG) with the Applicant:

- Anglian Water Services Limited [[REP7-045](#)];
- Cadent Gas Limited [[REP8-008](#)];
- Corporation of Trinity House of Deptford Strond (Trinity House) [[REP7-041](#)];
- Environment Agency [[REP8-006](#)];
- Harbour Master Humber [[REP7-037](#)];
- Health and Safety Executive [[REP7-029](#)];
- Historic England [[REP7-039](#)];
- Immingham Oil Terminal Operators [[REP6-016](#)];
- Marine Management Organisation [[REP7-031](#)];
- Maritime and Coastguard Agency [[REP7-053](#)];
- National Highways [[REP7-027](#)];
- Natural England [[REP7-033](#)];
- Network Rail Infrastructure Limited [[REP7-043](#)];
- Northern Powergrid [[REP7-049](#)];
- North East Lincolnshire Council [[REP7-023](#)]; and
- North East Lindsey Drainage Board [[REP7-035](#)].

1.6.15. The SoCGs have been taken fully into account by the ExA in all relevant Chapters of this Report.

1.7. CHANGES TO THE APPLICATION

1.7.1. Changes to the key Application documents, including the wording of the draft Development Consent Order (dDCO), were submitted during the Examination. The changes sought to address points raised by IPs and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.

1.7.2. The Applicant's changes to the Application documents, together with any additional information submitted, are detailed in the Application Guide submitted at Deadline (D) 8 [[REP8-002](#)]. This provides a guide to all documents submitted as part of the Application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination.

APPLICANT'S CHANGE REQUEST

- 1.7.3. The Applicant submitted a formal change request on 3 May 2024 [\[REP3-081\]](#). Table A1 in Appendix A of this Report sets out the relevant documents. The Proposed Change Application Report [\[REP3-079\]](#) detailed the proposed changes. In summary the proposed changes were:
- Change One: Change to the number of monopiles forming part of the IGET jetty berth from two to four monopiles;
 - Change Two: Change to the diameter of the piles supporting the jetty from 1.2m to 1.575m; increase in the distance between the piles; and an increase to the width of the approach jetty from 14m to 16m;
 - Change Three: Amendment to site boundary at the eastern edge of Work No. 7 to include additional land for temporary construction purposes and minor changes to the northern access from the A1173 to Work No. 7; and
 - Change Four: addition of visual detail to show walkways linking the jetty head to the mooring dolphins.
- 1.7.4. Prior to the submission of the Change Application, the Applicant undertook consultation with Interested and Statutory Parties between 26 March 2024 and 24 April 2024. Details of the consultation process, along with the responses received were submitted alongside the Applicant's Change Application in their Consultation Report Addendum [\[REP3-080\]](#). The matter was also discussed at ISH4 [\[EV6-002\]](#).
- 1.7.5. Having reviewed the submitted details, the ExA concluded that the Proposed Changes, either individually or cumulatively, were not so substantial that they would constitute a materially different project and they were not considered to lead to the project being different in nature or substance to that which was originally applied for. The ExA also agreed with the Applicant that the Proposed Change Application [\[REP3-079\]](#) did not result in any change, or any new significant effects for any topics assessed in the ES.
- 1.7.6. Whilst Change Three involved a change to the Order limits, the ExA were satisfied that, as the additional land would only be required on a temporary basis to accommodate the laydown of the pipelines, pipeline sleeves and cables ahead of their installation as part of Work No. 6, the Compulsory Acquisition Regulations were not triggered by this change.
- 1.7.7. The ExA therefore issued a PD [\[PD-013\]](#) to accept the changes into the Examination.

APPLICANT'S FURTHER CHANGE REQUEST

- 1.7.8. The Applicant submitted a further formal change request on 26 June 2024 [\[AS-047\]](#). Table A1 in Appendix A of this report sets out the relevant documents. The Further Changes Application Report [\[AS-144\]](#) detailed these proposed changes, which in summary were:
- Proposed Further Change 5a: minor adjustment to the accesses from the A1173 to Work No. 7;
 - Proposed Further Change 5b: minor reduction in the area of public highway proposed to be permanently stopped up to the south of Laporte Road and associated minor reduction in Work No. 3;
 - Proposed Further Change 5c: adjustments to the speed limit change proposed along Laporte Road to introduce a new section with a 40mph speed limit and reduce the section proposed to be subject to a 30mph speed limit;

- Proposed Further Change 6: new area of permanent stopping up in the vicinity of an access from Kings Road to Work No. 7;
- Proposed Further Change 7: reduction in the area of Work No. 9;
- Proposed Further Change 8: change to the ground protection methodology for Work No.9 to allow the installation of a geotextile layer and a layer of compacted fill material instead of the installation of ground matting; and
- Proposed Further Change 9: change to the terrestrial piling methodology to include the potential use of driven piling in Work Nos. 3, 5 and 7.

1.7.9. Prior to the submission of the Change Application, the Applicant undertook consultation with Interested and Statutory Parties between 21 May 2024 and 16 June 2024. Details of the consultation process, along with the responses received were submitted alongside the Applicant's Further Consultation Report Addendum [\[AS-143\]](#). The matter was also discussed at ISH8 [\[EV11-002\]](#).

1.7.10. Having reviewed the submitted details, the ExA concluded that the Proposed Further Changes, either individually or cumulatively, were not so substantial that they would constitute a materially different project and the Proposed Further Changes were not considered to lead to the project being different in nature or substance to that which was originally applied for. The ExA were also satisfied that the Proposed Further Changes did not require any new powers of compulsory acquisition. The ExA also agreed with the Applicant that the Proposed Further Change [\[AS-144\]](#) did not result in any change, or any new significant effects for any topics assessed in the ES.

1.7.11. The ExA therefore issued a PD [\[PD-016\]](#) to accept the changes into the Examination.

1.8. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.8.1. By the end of the Examination, the following parties had entered into formal undertakings, obligations and / or agreements with the Applicant that are important and relevant considerations for the SoS:

- Section 106 Agreement for Payment of Contribution towards Woodland Compensation [\[REP8-011\]](#); and
- Section 106 Unilateral Undertaking relating to habitat compensation at Skeffling [\[REP8-013\]](#).

1.8.2. These undertakings, obligations and / or agreements have been taken fully into account by the ExA in all relevant chapters of this Report.

1.9. OTHER CONSENTS

1.9.1. In addition to the consents required under the PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. This is set out by the Applicant in the Consents and Agreements Position Statement [\[APP-236\]](#), subsequently updated at D1 [\[REP1-010\]](#).

1.10. STRUCTURE OF THIS REPORT

1.10.1. The structure of the remainder of this Report is as follows:

- Chapter 2 identifies the planning issues and summarises the key legislation and policy context.
- Chapter 3 sets out the findings and conclusions in relation to the planning issues that arose from the Application and during the Examination.

- Chapter 4 provides a summary of the Habitats Regulations Assessment (HRA).
- Chapter 5 sets out the balance of planning considerations arising from Chapters 3 and 4 in the light of important and relevant factual, legal and policy considerations.
- Chapter 6 sets out the ExA's examination of land rights and related matters.
- Chapter 7 considers the implications of the matters arising from the preceding chapters for the DCO.
- Chapter 8 summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.10.2. This Report is supported by the following appendices:

- Appendix A – Reference Tables.
- Appendix B – List of Abbreviations.
- Appendix C – Habitats Regulations Assessment.
- Appendix D – The Recommended DCO.

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This Chapter identifies the key legislation, policy, Local Impact Report (LIR), Relevant Representations (RRs) and Written Representations (WRs) that the Examining Authority (ExA) recommendations are made against.

2.1.2. In Annex C of its Rule 6 letter [[PD-005](#)], the ExA set out its Initial Assessment of Principal Issues (IAP) as required under section 88(1) of the Planning Act 2008 (PA2008). In making its Recommendation the ExA has taken into account all written and oral submissions that have been received during the course of the Examination.

2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the Secretary of State for Transport (SoS). All applicable legislation has been considered by the ExA as required and the findings and recommendations in this Report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

PLANNING ACT 2008

2.2.2. The PA2008 is the principal legislation governing the examination of an application for a Nationally Significant Infrastructure Project (NSIP) and the decision whether or not to grant development consent. The proposed Immingham Green Energy Terminal (IGET) Application qualifies as a NSIP as the volumes of import/ export of goods exceed the thresholds stated in s24 PA2008 for throughput per annum. The IGET elements of the Proposed Development constitute a NSIP for the purposes of s14(1)(j) (the construction or alteration of harbour facilities) and s24 PA2008.

2.2.3. As there is the National Policy Statement for Ports (NPSfP) designated on 26 January 2012, the Application falls to be decided under s104 (Decisions in cases where national policy statement has effect) PA2008, in which circumstance the matters that the SoS must have regard to are:

- any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”);
- the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;
- any local impact report (within the meaning given by s60(3) PA2008) submitted to the SoS before the specified deadline for submission;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the decision.

2.2.4. Section 104(3) of the PA2008 requires the SoS to decide the Application in accordance with any relevant National Policy Statement (NPS) that has effect in relation to this Application, subject to the exceptions in s104(4) to (8) as follows:

- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations;

- where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment;
- where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- where the adverse impact of the Proposed Development would outweigh its benefits; and/ or
- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.5. This Report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

EQUALITY ACT 2010

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

HUMAN RIGHTS ACT 1998

2.2.7. The compulsory acquisition of land and rights can engage various Articles under the Human Rights Act 1998. This has been considered throughout the Examination and the implications of this for persons with an interest in the land are considered in Chapter 6 of this Report.

CLIMATE CHANGE ACT 2008 (as amended)

2.2.8. The Climate Change Act 2008, as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019, established a legally binding framework to tackle the dangers of climate change. It sets statutory climate change projections and includes the setting of legally binding targets for greenhouse gas emission reductions in the United Kingdom of at least 100% by 2050 (Net Zero).

2.2.9. The Act also created the Committee on Climate Change which has responsibility for setting five-year Carbon Budgets covering successive periods of emissions reduction to 2050.

2.2.10. PA2008 requires the Secretary of State to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. The ExA has had regard to these objectives throughout this Report.

NATIONAL POLICY STATEMENTS

2.2.11. NPSs set out Government policy on different types of national infrastructure development. With regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that NPSfP and Overarching NPS for Energy (NPS EN-1) are relevant to the Application.

2.2.12. The NPSs formed the primary policy context for the Examination. This Report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008. The purpose and broad content of these NPSs is summarised below. Table A2 in Appendix A provides further detail on the NPSs of relevance to the Proposed Development.

National Policy Statement for Ports (NPSfP)

- 2.2.13. NPSfP (January 2012) details assessment criteria specific to ports development (NSIP development pursuant to PA2008 s24 – harbour facilities). It refers to the need for, location and flexible future development of ports and to the landside needs and effects of ports in relation to access, traffic and transportation.

Overarching National Policy Statement for Energy (NPS-EN1)

- 2.2.14. In January 2024 the Department for Energy Security and Net Zero (DESNZ) designated a NPS in relation to energy (NPS EN-1 to NPS EN-5 (inclusive)). NPS EN-1 sets out the Government's policy for the delivery of major energy infrastructure. It provides general principles and generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit under the policy framework set out in this NPS.
- 2.2.15. As this development is not an energy NSIP development per se, NPS EN-1 does not have direct statutory effect under PA2008 s104(2)(a) for the purposes of the decision by the SoS. That being said, the HPF clearly comprises an energy project. As such, the ExA has considered NPS EN-1 as giving rise to important and relevant considerations to the SoS decision under PA2008 s104(2)(d).

MARINE AND COASTAL ACCESS ACT 2009

- 2.2.16. As an element of the Proposed Development affects tidal waters, it is subject to the Marine and Coastal Access Act 2009 (MCAA2009).
- 2.2.17. The appropriate marine policy documents for the purposes of s104(2)(aa) are the UK Marine Policy Statement (MPS) (March 2011) and the East Inshore Marine Plan (EIMP).
- 2.2.18. The MPS provides the framework for preparing Marine Plans and taking decisions affecting the marine environment. The MPS sets out a series of high-level marine objectives in order to achieve clean, healthy, safe, productive and biologically diverse oceans and seas. Chapter 3 of the MPS sets out the policy objectives for the key activities that take place in the marine environment.
- 2.2.19. The EIMP sets out, and is underpinned by, a number of strategic objectives and includes policies that guide the regulation, management, use and protection of the marine plan areas.
- 2.2.20. The draft DCO (dDCO) submitted as part of the Application also contains at Schedule 3 a deemed Marine Licence (DML) under part 4 of the MCAA2009.

OTHER RELEVANT NATIONAL POLICIES

- 2.2.21. Other relevant national policies have been taken into account by the ExA, including the following:
- The National Planning Policy Framework.
 - Net Zero: The UK's Contribution to Stopping Global Warming Emissions.
 - Ten Point Plan for a Green Industrial Revolution.
 - Energy White Paper: Powering our Net Zero Future.
 - UK Hydrogen Strategy (HM Government 2021).
 - Industrial Decarbonisation Strategy (HM Government, 2021).
 - Net Zero Strategy: Build Back Greener (HM Government 2021).

- British Energy Security Strategy (HM Government 2022).
- Powering up Britain (DESNZ, 2023).
- Carbon capture, usage and storage net zero investment roadmap (HM Government 2023).

2.2.22. Table A3 in Appendix A provides further detail on the relevance of each of the above policies to the Proposed Development. These policies are also discussed in more detail in Chapter 3 within 'The Principle of Development'.

2.3. LOCAL IMPACT REPORT

2.3.1. A draft Local Impact Report (LIR) [REP1-070] was submitted into the Examination by North East Lincolnshire Council (NELC) at Deadline (D)1. It was initially submitted as a draft as Planning Officers were unable to obtain authorisation to submit a final version by D1. A subsequent final version was submitted shortly after D1 [AS-146] and was accepted by the ExA as an Additional Submission into the Examination.

2.3.2. The LIR stated that local planning policies support the Proposed Development in principle and covered the following issues:

- Planning Policy.
- Principle of Development.
- Noise and Vibration.
- Landscape.
- Ecology and Biodiversity.
- Built Heritage.
- Archaeology.
- Highways and Transportation.
- Public Rights of Way.
- Air Quality and Emissions.
- Hydrology and Flood Risk.
- Mineral and Waste Planning.
- Ground Conditions.
- Adequacy of the draft Development Consent Order (dDCO).

2.3.3. The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this Report. Table A5 in Appendix A sets out the individual local policies that are relevant to the Proposed Development.

2.4. ENVIRONMENTAL IMPACT ASSESSMENT

2.4.1. The Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the Proposed Development was EIA development.

2.4.2. On 30 August 2022, the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [APP-167].

2.4.3. On 10 October 2022 the Planning Inspectorate provided a Scoping Opinion [APP-168].

2.4.4. For the purposes of the EIA, the Applicant's ES assessed the full capacity of the jetty as up to 292 vessel calls per year [APP-047]. The landside infrastructure required to

transport ammonia from the jetty, store and convert it into green hydrogen was also assessed in the ES, along with decommissioning.

- 2.4.5. At ExQ1 [PD-008], the ExA questioned the Applicant's approach towards the assessment of decommissioning in the ES, along with requesting clarification on the overall temporal scope of the various assessments. The Applicant confirmed [REP1-036] that in relation to decommissioning it had been assumed that IGET would not be decommissioned, with the HPF assumed to be decommissioned after 25 years from commencement of operation, although in reality, the Applicant accepted that, with maintenance it would likely extend beyond this. Additional detail was submitted on the overall operational life of the Proposed Development [REP1-036].
- 2.4.6. Overall, the ExA considers that the ES, as supplemented with additional clarifications received during the Examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.
- 2.4.7. The ExA considered that changes to the documentation, comprising the ES during the Examination, together with the change requests (see section 1.7 of this Report) did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 of this Report will summarise the environmental effects under each topic section.

2.5. HABITATS REGULATIONS ASSESSMENT

- 2.5.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.5.2. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Appendix C of this Report, a summary of which can be found in Chapter 4.

2.6. WATER FRAMEWORK DIRECTIVE ASSESSMENT

- 2.6.1. Directive 2000/60/EC (the Water Framework Directive or WFD) sets objectives to prevent and reduce pollution, improve aquatic ecosystems and mitigate the effects of floods. It provides for the production of River Basin Management Plans for the sustainable management of rivers. The Directive is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- 2.6.2. The Applicant submitted a Water Framework Directive (WFD) Compliance Assessment [APP-208]. The Proposed Development was assessed to have no effects that would be likely to cause deterioration in WFD status or prevent identified waterbodies from achieving their WFD objectives, provided that best practice and established guidance are adhered to, in accordance with the embedded measures identified in ES Chapter 17 [APP-059] and 18 [APP-060].

2.7. TRANSBOUNDARY EFFECTS

- 2.7.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 2 March 2023 following the Applicant's request for an EIA Scoping Opinion.
- 2.7.2. The Planning Inspectorate concluded that the Project is likely to have a significant effect on the environment in a European Economic Area ("EEA") state, and subsequently Denmark and Iceland were notified of the Project. The reason for notification related to the potential impacts on bird populations of conservation importance.
- 2.7.3. A second screening was published on 1 February 2024. It concluded that no new EEA states had been identified as being likely to have significant effects on their environment. On a precautionary basis, Iceland was notified of the Project and Denmark was consulted as they had requested to be involved in the transboundary consultation.
- 2.7.4. In response to the consultation, the Danish EPA replied [\[OD-007\]](#) questioning whether the imported ammonium was to be treated as waste during the transboundary shipment. If so, then Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste (the WSR) would apply. If not, other relevant legislation and the consequences thereof should be considered. No response was received from Iceland.

3. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This Chapter sets out the Examining Authority’s (ExA) findings and conclusions on the planning issues. The Chapter is structured to firstly examine the matters of principle, including need and alternatives, followed by generic topic headings. The order in which all these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the ExA will identify the policy background, followed by a summary of the Application as made, then report on the main issues for each topic. Findings and conclusions will then be drawn for each topic.

3.1.3. To aid the Secretary of State for Transport (SoS) in their consideration of the various matters, in our conclusions, the ExA has come to a view, using professional judgement, as to whether the effect of those matters weigh for or against the making of the Development Consent Order (DCO). To ensure a consistency of approach, we have used the following terminology:

- has negative weighting against making the Order; or
- has positive weighting in favour of making the Order; or
- weighs neither for nor against making the Order.

3.1.4. Having identified whether the effect of that matter weighs in favour or against the making of the Order, the ExA have then considered what weighting should be attributed to that conclusion in the overall planning balance. To ensure a consistent approach, the ExA has adopted the following terminology:

- a little weight; or
- moderate weight; or
- great weight.

DEFINITION OF TERMS

3.1.5. For ease of reference the following terms and their definitions have been used when referring to the specific elements of the Application:

Immingham Green Energy Terminal (IGET)	Refers to the jetty (Work No. 1a), loading platform, associated dolphins, fenders and walkways; topside infrastructure including control rooms, marine loading arms, pipe-racks, pipelines and other infrastructure; a single berth, with a berthing pocket with a depth of up to 14.5m below chart datum; and related landside infrastructure including a jetty access ramp, a flood defence access ramp and works to raise the seawall locally under the jetty access ramp.
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Hydrogen Production Facility (HPF)	Refers to all the jetty access roads connecting the jetty to the public highway, and the hydrogen production facility (both East and West Sites) including the pipelines, pipes and other utilities which will connect the IGET to that facility.
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Proposed Development	Refers to the IGET and HPF together.
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3.2. INITIAL ASSESSMENT OF PRINCIPAL ISSUES

- 3.2.1. As required by s88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA made an Initial Assessment of Principal Issues (IAPI) arising from the Application in advance of the Preliminary Meeting (PM). This formed an initial assessment of the issues based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the Proposed Development. The IAPI was raised at the PM and no other key topics were identified during the Examination. The IAPI can be found in Annex C of the Rule 6 letter [[PD-005](#)].
- 3.2.2. The ExA considers that the issues raised by Interested Parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the Examination. The ExA has nevertheless had regard to all submissions from IPs and has reported on these, if required, within each topic below.

3.3. PRINCIPLE OF DEVELOPMENT

BACKGROUND AND POLICY CONTEXT

- 3.3.1. This Section of the Report deals with the principle of development, covering the need for additional port capacity, including in relation to energy, and alternatives.
- 3.3.2. It does not deal with whether relevant parts of the Proposed Development are a Nationally Significant Infrastructure Project (NSIP), or whether relevant parts of the Proposed Development are associated development. These issues are dealt with in Section 1 of the Report.
- 3.3.3. Whilst this section in part deals with energy, it is in the context of need and strategic policy objectives. It does not deal with greenhouse gas emissions and savings. These are dealt with in Section 3.4 of the Report.

National Policy Statements

- 3.3.4. Paragraph 3.1.4 of the National Policy Statement for Ports (NPSfP) states the UK has limited alternatives available to that of sea transport for the movement of bulk commodities. Furthermore, that the provision of sufficient port capacity is essential for the sustainable growth of the UK economy.
- 3.3.5. Paragraph 3.4.1 of the NPSfP sets out there is a need to retain flexibility in port capacity so that it can be located where required, and to ensure effective competition and resilience in port operations.
- 3.3.6. Paragraphs 3.4.11 and 3.4.12 of the NPSfP make clear that it is not possible to anticipate future commercial opportunities and changes in the market are difficult to predict. Furthermore, that capacity needs to be provided at a wide range of facilities and locations, to provide the flexibility to match the changing demands of the market.
- 3.3.7. Paragraph 3.4.16 of the NPSfP establishes that there is a compelling need for substantial additional port capacity over the next 20 to 30 years. To exclude the possibility of providing additional capacity would be to accept limits on economic growth and this would be strongly against the public interest.
- 3.3.8. Section 3.5 of the NPSfP states that there should be a presumption in favour of granting consent for applications involving port development, given the level and urgency of need for such infrastructure to increase capacity.

- 3.3.9. Paragraph 4.1.1 of the NPSfP states that the applicant's assessment of the development should follow key considerations such as maintaining consistency with statutory requirements under relevant legislation promoting economic growth, and supporting the infrastructure needed for green technologies.
- 3.3.10. Paragraph 4.9.1 of the NPSfP sets out that it does not contain any general requirement to consider alternatives or to establish whether the development represents the best option. However, Paragraph 4.9.2 of the NPSfP states the applicant's Environmental Statement (ES) should provide information about the main alternatives studied and consider the environmental, social, and economic effects.
- 3.3.11. The Overarching National Policy Statement for Energy (NPS EN-1) deals with hydrogen production and carbon capture storage (CCS) and is therefore important and relevant to the decision.
- 3.3.12. Section 4.2 of NPS EN-1 makes clear that there is a critical national priority (CNP) for low carbon infrastructure and the strategy for delivery is dependent on deployment of hydrogen and CCS, among other things.

Other Legislation, Policy and Guidance

- 3.3.13. An account of important and relevant legislation, policy and guidance in relation to this section of the Report can principally be found in Chapters 2, 5.2, 5.3, 5.4 and 5.5 of the Planning Statement [[APP-226](#)], Appendix E of the Planning Statement [[APP-231](#)], Chapter 3 of the ES [[APP-045](#)] and Chapter 4 of the ES [[APP-046](#)].
- 3.3.14. Appendix A of this Report includes a table listing all the legislation, policy, and guidance relevant to the whole application.

THE APPLICATION

Environmental Statement

- 3.3.15. Chapter 3 of the ES [[APP-045](#)] included an assessment of the Proposed Development in relation to need and alternatives. It was supported by the Planning Statement [[APP-226](#)].
- 3.3.16. Appendix F of the Planning Statement [[APP-232](#)] included a Harbour Improvement Statement in accordance with Regulation 6(3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations).
- 3.3.17. The ES [[APP-045](#)] does not cover scope and methodology in the same format as other technical chapters of the ES or corresponding sections of this Report. Instead, it deals directly with need and alternatives in the context of relevant policy and project objectives. This section of the Report has been structured accordingly.

Applicant's Assessment

Need

- 3.3.18. The ES [[APP-045](#)] dealt with need in the context of five interrelated factors. These were the:
- national need to provide port capacity;
 - need for port capacity to serve the energy sector in the Humber;
 - need to achieve energy security through a diversity of technologies;

- urgent need to scale up hydrogen production capability; and
- urgent need for CCS technologies.

- 3.3.19. The Applicant set out that the national need for port capacity exists because ports play an essential role in the growth of the UK economy and long-term growth forecasts show sufficient demand. Consequently, a commercial decision was made by the Applicant to respond to market demand and increase capacity at the Port of Immingham.
- 3.3.20. There is an imperative need for port capacity to serve the energy sector in the Humber Industrial Cluster. This is because the Applicant found it would help deliver continued economic growth but also enable alternative sources of clean energy and contribute to decarbonising the cluster and achieving net zero.
- 3.3.21. The UK is vulnerable to international energy prices and dependent on imported oil and gas. As such, the Applicant's view was that there is an urgent need to achieve energy security through a diversity of technologies, fuels, and supply routes. This would also contribute towards achieving net zero.
- 3.3.22. The Applicant stated low carbon hydrogen is an established alternative clean energy source particularly for the industrial and heavy transportation sectors. Furthermore, low carbon hydrogen could only be considered as a decarbonisation option if it was readily available. Consequently, there is an urgent need to scale up low carbon hydrogen production.
- 3.3.23. CCS technology captures carbon dioxide from power generation. Therefore, the Applicant stated CCS could play an important role in supporting the decarbonisation of industrial sectors. Accordingly, the Applicant said there is an urgent need for CCS technologies in the Humber Industrial Cluster.
- 3.3.24. Paragraph 3.3.1 of the ES [\[APP-045\]](#) set out the Proposed Development is designed to address these needs by achieving a series of objectives. The objectives relevant to this section are objectives (a) and (b).
- Objective (a) to provide essential port infrastructure, capacity, and resilience to support the growth and changing strategic needs of the energy sector to support decarbonisation within the Humber Industrial Cluster and the Humber Enterprise Zone.
 - Objective (b) to provide capacity to support the import and export of a range of liquid bulk energy products including (i) ammonia to produce low carbon hydrogen to support the decarbonisation of industrial activities and in particular the heavy transport sector and (ii) carbon dioxide, to facilitate CCS.
- 3.3.25. To meet these objectives, the ES [\[APP-045\]](#) with reference to [APP-043](#), [APP-044](#) sets out that the Proposed Development would have the infrastructure capacity to receive approximately 11 million tonnes of liquid bulk cargo across a maximum of 292 vessel calls per annum, comprising 660,000 tonnes of ammonia across 12 vessel calls, and 9,800,000 tonnes of carbon dioxide across 280 vessel calls.
- 3.3.26. The ammonia being imported would help feed the Hydrogen Production Facility (HPF) that is part of the Proposed Development, which in turn would produce up to 300MW of low carbon hydrogen per annum. The Applicant considered that this would potentially equate to around 3% of the UK's 10GW target of low carbon hydrogen production capacity by 2030. This would help diversify the UK's energy sources, contributing to energy security and decarbonisation of key sectors in pursuit of net zero.

3.3.27. The Applicant found that the carbon dioxide element of the Proposed Development could potentially link with Viking CCS depending on future consents. The imported carbon dioxide would be transported from sites up to 500 nautical miles away and could potentially come from dispersed industries along the coast which do not have direct access to Viking CCS, thereby helping decarbonise the region and contribute to achieving net zero.

Alternatives

3.3.28. The ES [APP-045] dealt with alternatives in the context of three steps. The first step considered three broad options. The first option, do nothing, was not considered to be appropriate because of an established national need. The second option, development outside the Humber Estuary, was not considered to be appropriate because of an established regional need. The third option, alternative technologies for hydrogen production without using ammonia, was not considered to be appropriate because of limited renewable energy infrastructure, amongst other things.

3.3.29. The second step of the Applicant's alternatives assessment considered other port locations in the Humber Estuary. The ports of Hull, Grimsby and Killingholme were considered as alternative locations, however for reasons relating to insufficient water depths, estuary frontage constraints, and landside space constraints, these were discounted in favour of the site at the Port of Immingham.

3.3.30. The third step of the Applicant's alternatives assessment considered other locations in the Port of Immingham. Alternative jetty locations were discounted because they would require more significant jetty infrastructure and result in greater loss of intertidal habitat. The Proposed Development's ammonia storage and hydrogen production locations were preferred because of the availability of previously developed land and proximity to the jetty infrastructure.

3.3.31. The fourth and final step of the Applicant's alternatives assessment considered design refinement including alternative layouts for the various components of the Proposed Development. Some of the refinements taken forward involved reducing the number of berths required from two to one, along with arriving at a piling and deck span solution that was consistent with construction best practices whilst minimising loss of intertidal habitat.

LOCAL IMPACT REPORT

3.3.32. The Local Impact Report (LIR) from North East Lincolnshire Council (NELC) [AS-146] made reference to Policies 1, 7 and 8 of the North East Lincolnshire Local Plan 2018 (NELLP) and the Port of Immingham's role in supporting the local economy. The LIR identified the Proposed Development as a significant investment opportunity for growth in accordance with the NELLP.

THE EXAMINATION

3.3.33. The main issues considered during the Examination were:

- Status of Other Persons in the Examination;
- Location of the Proposed Development;
- Need for Liquid Bulk Port Capacity and the Weight of Benefits;
- Securing Low Carbon Energy Capacity and Contributions to Net Zero; and
- Alternatives Assessment.

Status of Other Persons in the Examination

- 3.3.34. Ms Ewa Grzybowska was invited to the Preliminary Meeting (PM) as an Other Person (OP) because they potentially had knowledge about the technology associated with the Proposed Development and could potentially contribute to the Examination.
- 3.3.35. During the PM, they were invited to make Written Representations (WR's) at Deadline (D)1 for the ExA's consideration. Ms Ewa Grzybowska subsequently submitted a WR [REP1-095] which among other things stated the Applicant needed to submit further information about the readiness of the ammonia dissociation technology for commercial use.
- 3.3.36. The Applicant responded [REP2-001] and among other things stated that the WR should not be accepted because the content of it did not help address the relevant criteria in the PA2008 or policies within the NPSfP. Consequently, the WR did not help inform the Report to the SoS or the decision whether to grant or refuse consent. If the WR was to be accepted, the Applicant stated [REP2-001] that the matters were addressed in the original Application and submissions at D1.

ExA's Considerations

- 3.3.37. The ExA has considered the merits of the WR submitted by Ms Ewa Grzybowska. There are at least some important and relevant matters raised relating to carbon intensity and hazards during operation. Consequently, the ExA does not consider it is reasonable to completely disregard the WR despite the Applicant's contentions. Nevertheless, the ExA are satisfied that any important and relevant matters that have been raised in the WR have been adequately addressed by the Applicant.
- 3.3.38. Overall, the ExA is satisfied that this matter has been brought to an acceptable conclusion by the Applicant. As such, this issue is neutral and therefore weighs neither for nor against the Proposed Development.

Location of the Proposed Development

- 3.3.39. In their Relevant Representation (RR) the Davey Family objected to the Proposed Development [RR-007] and amongst other things stated that it is not the right development for the area. The Applicant responded [REP1-021] that Paragraph 5.4.8 of the Planning Statement [APP-226] explained that the Proposed Development would provide additional port capacity in the right place.

ExA's Considerations

- 3.3.40. The ExA has considered the merits of the RR submitted by the Davey Family and is satisfied with the Applicant's response. Furthermore, the need for the Proposed Development including its location and possible alternatives has been robustly assessed in the original Application and during Examination and addressed later in this Report.
- 3.3.41. Overall, the ExA is satisfied that this matter has been brought to an acceptable conclusion by the Applicant. As such, this issue is neutral therefore weighs neither for nor against the Proposed Development.

Need for Liquid Bulk Port Capacity and the Weight of Benefits

- 3.3.42. Given the nature of the Proposed Development and some of the novel technologies involved in it, the ExA requested that the Applicant submit a presentation [[AS-018](#)] providing an overview of the Proposed Development during ISH1 [[EV3-001](#), [EV3-002](#) and [EV3-004](#)]. This helped the ExA establish a baseline understanding of the nature of the Proposed Development.
- 3.3.43. During ExA First Written Questions (ExQ1) the ExA asked several questions [[PD-008](#)] relating to the need for additional capacity in the context of market demand. This included, among other things, how market demand could change in the future and what proportion of the NPSfP demand forecast for liquid bulk handling would be met by the Proposed Development. Follow up questions were asked during ISH6 [[EV9-001](#) and [EV9-002](#)].
- 3.3.44. The questions were designed to assess whether the scale of the Proposed Development's contribution to meeting demand should proportionally affect the amount of weight given to the benefits in the planning balance. For example, if the Proposed Development met a larger proportion of the NPSfP demand forecast should more positive weight be attributed to the benefits in the planning balance.
- 3.3.45. By way of clarification, the Applicant provided considerable detail at various stages throughout the Examination [[REP1-023](#), [REP3-066](#) and [REP3-072](#)].
- 3.3.46. The Applicant's position was that any changes in forecasts have not promoted any changes in policy within the NPSfP. The need established within the NPSfP when it was first designated remains and should not be questioned.
- 3.3.47. The Applicant said that the NPSfP does not contain policy requiring a proportionate assessment of the Proposed Development's contribution to meeting the established need. Furthermore, even where such policy exists, in accordance with R (ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy [2021] EWCA Civ 43 (ClientEarth case law), the decision maker would not be compelled to conduct such a quantitative assessment. In addition, NPS EN-1 states that decision makers are not required to consider separately the specific contribution individual developments make to satisfying need.
- 3.3.48. As such, the Applicant said the weight of benefits under the NPSfP should not be proportionate to the extent of the contribution. This was further underlined by the Applicant when considering that the Proposed Development meets capacity thresholds which have been deemed nationally significant. Consequently, any contribution it makes would be nationally significant and should benefit from the presumption in favour of consent under the NPSfP.
- 3.3.49. The Applicant addressed R (on the application of Scarisbrick) v Secretary of State for Communities and Local Government [2017] EWCA Civ 787 (Scarisbrick case law) where it was found that a development subject to a policy presumption could benefit from considerable weight in the planning balance.
- 3.3.50. The Applicant also considered the Proposed Development's separate contribution to meeting the need for liquid bulks in the context of low carbon infrastructure under NPS EN-1 and that such development is urgent and regarded to be of CNP. This they said generated benefits additional to the presumption under the NPSfP and should carry separate substantial weight in favour of the Proposed Development.

ExA's Considerations

- 3.3.51. The NPSfP states there is a need for additional port capacity in general terms. Furthermore, NPS EN-1 states that there is also a need for low carbon infrastructure. The ExA is clear that these needs should not be questioned.
- 3.3.52. Whether the weight of benefits afforded by the NPSfP should be proportionate to the scale of the Proposed Development's contribution was questioned at length. Despite the Applicant's representations that weight should not be related to scale, the ExA considers that there are aspects of the case law which could support using a proportionate approach. For example, ClientEarth case law gives discretion to decision makers in how evaluative judgements are made.
- 3.3.53. There is however no clear policy within the NPSfP that explicitly requires a proportionate approach to be taken. In addition, NPS EN-1, which is important and relevant and postdates the case law, is clear that decision makers are not required to consider separately the specific contribution individual developments make to satisfying need.
- 3.3.54. The ExA is of the view that because NPS EN-1 is the most recent expression of Government policy on how this issue should be dealt with, it should tip the balance in favour of the Applicant in this instance.
- 3.3.55. Consequently, the ExA concludes that the weight of benefits does not need to be proportionate to the scale of the contribution from the Proposed Development. Therefore, any contribution the Proposed Development makes to meeting the need for general port capacity within the NPSfP should benefit from the presumption in favour of granting consent.
- 3.3.56. The ExA also concludes that any contribution the Proposed Development makes to meeting the need for low carbon infrastructure within NPS EN-1 should benefit from policies relating to CNP. This would amount to a separate and additional benefit in favour of the Proposed Development.
- 3.3.57. Overall, the Proposed Development would accord with the NPSfP and benefit from the presumption in favour of granting consent. Scarisbrick case law established the amount of weight that can be attached to a development benefitting from a policy presumption could be considerable. Expressed in terms consistent with the weighting framework of this Report, the ExA attaches great weight in favour of the Proposed Development.
- 3.3.58. The Proposed Development would also accord with NPS EN-1 and benefit from the policy support given to low carbon infrastructure of CNP. NPS EN-1 establishes the weight that can be attached to a Proposed Development in this context would be substantial. Expressed in terms consistent with the weighting framework of this Report, the ExA attaches additional great weight in favour of the Proposed Development.

Securing Low Carbon Energy Capacity and Contributions to Net Zero

- 3.3.59. The ExA asked several questions [\[PD-008\]](#) and [\[PD-017\]](#) relating to how the capacity created by the Proposed Development would be used or secured in the context of UK strategic objectives relating to net zero. Similar questions were also asked during ISH6 [\[EV9-001\]](#) and [\[EV9-002\]](#). The ExA also proposed a change to the dDCO [\[PD-019\]](#) to include a requirement securing low carbon hydrogen certification.

- 3.3.60. The questions were designed to understand whether there needed to be more control and certainty about the potential net zero benefits of the Proposed Development. For example, whether formally securing low carbon hydrogen certification and safeguarding capacity for carbon dioxide imports for CCS were necessary measures to create certainty about net zero contributions. This was in the context of potential changes in market demand that might see the capacity of the Proposed Development used for something else not consistent with net zero, and potential uncertainties in achieving net zero itself.
- 3.3.61. By way of clarification, the Applicant provided considerable detail throughout the Examination [[REP1-023](#)], [[REP3-066](#)], [[REP3-072](#)] and [[REP6-022](#)].
- 3.3.62. The Applicant set out that there was no legal requirement that all benefits which are given weight in the planning balance must be formally secured. This was said to be in accordance with R (Substation Action Save East Suffolk Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 3177 (Substation Action case law). Furthermore, the benefits flow from the capacity of the Proposed Development and not the extent to which that capacity would be used at any one point in time.
- 3.3.63. In terms of the types of cargo the Proposed Development is expected to deal with, the Applicant said there is a substantial policy position that promotes activity in the CCS and low carbon hydrogen markets. This includes, among other things, NPS EN-1, the British Energy Security Strategy 2022 and the Net Zero Strategy: Build Back Greener 2021.
- 3.3.64. This substantial policy position would create compelling market conditions incentivising the Applicant to import cargo and produce commodities that are consistent with net zero and comply with any relevant industry standards required for their onward sale and use. For example, low carbon hydrogen certification. Consequently, the Applicant concluded that there would be a strong likelihood of benefits emerging in this context.
- 3.3.65. This strong likelihood would be sufficient to attach appropriate weight to the benefits of the Proposed Development in relation to net zero, including the potential for carbon dioxide imports despite the need for separate consents. Consequently, additional formal controls in the dDCO that might provide certainty as to the cargo being imported were said to be unnecessary.
- 3.3.66. The Applicant also dealt with the layers of control found in the dDCO, and other tests relating to requirements, to further support their position that no additional formal controls would be required.
- Development of alternative liquid bulk cargo capabilities other than ammonia would require additional infrastructure, which in turn would need separate express planning consent. Net zero and other impacts could then be duly considered by the relevant local planning authority.
 - Development under the Town and Country Planning (General Permitted Development) (England) Order 2015, including on operational land, would be limited where Environmental Impact Assessment (EIA) is required.
 - If works fell outside the definition of development and the planning system, Article 41 of the dDCO would only authorise works where the effects would not be materially new or materially different compared to the original EIA.
 - The complexity of industry standards would make it impossible for the relevant local planning authority to monitor and enforce a low carbon hydrogen certification scheme and a requirement of this nature would fail the test of enforceability.

- 3.3.67. The Applicant did not consider that uncertainties associated with achieving net zero set out in the Carbon Budget Delivery Plan and associated legal challenge were sufficient to justify additional formal controls to secure certainty about the Proposed Development's contribution to UK net zero objectives. Furthermore, the Applicant stated that Planning Practice Guidance (PPG) did not support the use of requirements to enhance the Proposed Development's contribution to net zero.
- 3.3.68. The ExA questioned IP's [\[PD-008\]](#) about the potential benefits of the Proposed Development. Chrysaor Production (U.K.) Limited responded [\[REP1-089\]](#) as the applicant for the Viking CCS project. It was clarified that the Proposed Development would supply a proportion of the carbon dioxide needed by Viking CCS and that they were commercially engaged to develop further enabling infrastructure in this context.

ExA's Considerations

- 3.3.69. The ExA considers that there is uncertainty in market conditions in relation to energy and emerging low carbon technologies that will continue to evolve in pursuit of net zero. Furthermore, there is uncertainty in market conditions generally in relation to supply and demand for liquid bulks, some of which might not necessarily be consistent with net zero. The uncertainty of market conditions is clear from the text within NPSfP and NPS EN-1. There is also uncertainty in the UK's ability to meet net zero as evidenced by the Carbon Budget Delivery Plan and associated legal challenge.
- 3.3.70. In the context of these uncertainties, the ExA maintains that there is merit in considering whether a requirement should be imposed on the dDCO to ensure more formal controls are in place to create more certainty about the benefits of the Proposed Development and its contribution to net zero objectives.
- 3.3.71. The ExA does not consider that the necessity of a requirement is purely a function of mitigation and whether the Proposed Development would be acceptable without it. Whilst the Applicant has argued in the alternative, a straightforward reading of PPG clearly allows for requirements to enhance a development and not merely mitigate adverse effects.
- 3.3.72. However, there are multiple other factors that have ultimately led the ExA to determine a requirement would not be necessary. Principally, the ExA accepts that there is a substantial policy position creating compelling market conditions incentivising the Applicant to import and produce commodities that are consistent with net zero and comply with any relevant industry standards. As such, there is a strong likelihood of the benefits emerging.
- 3.3.73. Furthermore, the ExA notes that despite uncertainty, and even if market conditions did change and there was incentive for the Applicant to import or produce commodities that were not necessarily consistent with net zero objectives, then there would be sufficient additional layers of control in the planning system and in the dDCO to prevent this from happening without due consideration.
- 3.3.74. For example, among other things described by the Applicant during Examination, Article 41 of the dDCO would not authorise works to retrofit the Proposed Development if there would be materially new or materially different effects than those assessed in the original ES. Consequently, consent would be required and any implications for net zero that may emerge could then be considered by the relevant local planning authority.

- 3.3.75. Overall, it would not be necessary to impose a requirement on the dDCO to create certainty about the net zero benefits of the Proposed Development.

Alternatives Assessment

- 3.3.76. The ExA questioned the Applicant [PD-008] about alternatives considered in the ES [APP-045] and whether they explored opportunities to segregate parts of the Proposed Development to manage environmental impacts.
- 3.3.77. This was asked in the context of Paragraph 5.2.20 of the NPSfP, which although principally related to flood risk, establishes the principle that associated development does not need to be located on the port estate.
- 3.3.78. Consequently, the ExA wanted to know whether there were alternative locations for the HPF to avoid sensitive receptors on Queens Road. The Applicant clarified [REP1-023] that there were safety reasons for locating each component of the Proposed Development relatively close together.
- 3.3.79. For example, the need to minimise onshore transport distances for ammonia, in the interests of safety. Furthermore, the ES [APP-064] assessed major accidents and hazards and found that ammonia pipelines should be kept as short as possible to minimise risks of leakage.

ExA's Considerations

- 3.3.80. The ExA is satisfied with how the Applicant has assessed alternatives and that opportunities to develop the HPF at a different location would be restricted due to the safety concerns relating to longer ammonia pipelines, among other things. It is clear there are no reasonable alternatives for the Proposed Development.
- 3.3.81. Overall, the Proposed Development would accord with Paragraph 4.9.2 and Paragraph 4.9.3 of the NPSfP.

CONCLUSIONS

- 3.3.82. Based on the evidence submitted as part of the original Application and during the Examination, the ExA is satisfied that the Applicant has adequately assessed the principle of development and issues relating to the need for liquid bulk port capacity and the weight of benefits, securing low carbon energy capacity and contributions to net zero, and alternatives.
- 3.3.83. Furthermore, the ExA is satisfied that the Applicant has dealt with issues arising from OP's and IP's relating to operational carbon intensity and hazards associated with the Proposed Development, and whether it is in the right location.
- 3.3.84. Overall, the Proposed Development would accord with the NPSfP and benefit from the presumption in favour of granting consent. Scarisbrick case law established the amount of weight that can be attached to a Proposed Development benefitting from a policy presumption could be considerable. Expressed in terms consistent with the weighting framework of this Report, the ExA attaches great weight in favour of the Proposed Development.
- 3.3.85. The Proposed Development would also accord with NPS EN-1 and benefit from the policy support given to low carbon infrastructure of CNP. NPS EN-1 establishes the weight that can be attached to a Proposed Development in this context would be

substantial. Expressed in terms consistent with the weighting framework of this Report, the ExA attaches great weight in favour of the Proposed Development.

- 3.3.86. The Proposed Development would also accord with Paragraph 4.9.2 and Paragraph 4.9.3 of the NPSfP relating to alternatives.

3.4. CLIMATE CHANGE

BACKGROUND AND POLICY CONTEXT

- 3.4.1. This section of the Report deals with climate change and covers greenhouse gas emissions and savings.

National Policy Statements

- 3.4.2. Paragraph 4.12.1 of the NPSfP sets out that port developments may influence greenhouse gas emissions, particularly in relation to sea and road transport, which may be positive.
- 3.4.3. Paragraph 4.12.2 of the NPSfP states the applicant's assessment of climate change should be made in the knowledge that estimating greenhouse gas emissions from ships in transit would be difficult. Furthermore, that measures to address these greenhouse gas emissions are being taken forward on an international basis.
- 3.4.4. Paragraphs 4.12.3 and 4.12.4 of the NPSfP state decision makers do not need to consider the impact of port development on greenhouse gas emissions from ships in transit. Whilst greenhouse gas emissions from ships in port are unlikely to be significant, decision makers should ensure local effects of greenhouse gas emissions are minimised.
- 3.4.5. Paragraph 4.12.6 of the NPSfP states that decision makers should attach limited weight to the net greenhouse gas emissions performance of port developments. However, requirements might be appropriate in minimising greenhouse gas emissions in operation.
- 3.4.6. Paragraph 4.12.8 of the NPSfP states that decision makers should consider the extent to which the applicant has explored the use of renewable energy. Where the use of renewable energy is not planned, decision makers should scrutinise the reasons for this.
- 3.4.7. NPS EN-1 deals with hydrogen production and CCS and is therefore important and relevant in this case.
- 3.4.8. Section 5.3 of NPS EN-1 deals with greenhouse gas emissions and sets out that all proposals for energy infrastructure projects should include greenhouse gas emissions assessments as part of their ES.
- 3.4.9. Paragraph 5.3.5 of NPS EN-1 sets out that applicants should use these assessments to drive down greenhouse gas emissions at every stage of the process, in the context of energy security, reliability, and affordability during the transition towards net zero.
- 3.4.10. Paragraph 5.3.8 of NPS EN-1 states that decision makers must be satisfied that the applicant has, as far as possible, assessed the greenhouse gas emissions arising from all stages.

Other Legislation, Policy, and Guidance

- 3.4.11. A full account of important and relevant legislation, policy, and guidance can be found in Sections 2 and 7.3 of the Planning Statement [[APP-226](#)], Appendix E of the Planning Statement [[APP-231](#)] and Section 19.3 of the ES [[APP-061](#)].
- 3.4.12. Appendix A of this Report includes a table listing all the legislation, policy, and guidance important and relevant to the whole application.
- 3.4.13. Section 104(3) of the PA2008 sets out that the SoS must decide the application in accordance with any relevant National Policy Statement (NPS), except to the extent that one or more of subsections (4) to (8) applies.
- 3.4.14. Section 104(4) of the PA2008 sets out that the subsection applies if the SoS is satisfied that deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations.
- 3.4.15. The UK's international climate change obligations are established by the Paris Agreement, the Climate Change Act 2008 (CCA2008), the Climate Change Act (2050 Target Amendment) Order 2019 (CCO2019), and associated Government policies and strategies. These are also important and relevant to the SoS decision in accordance with s104(2)(d) of the PA2008.

THE APPLICATION

Environmental Statement

- 3.4.16. Chapter 19 of the ES [[APP-061](#)] included an assessment of the Proposed Development in relation to climate change. The assessment was supported by the following figures and appendices:
- Appendix 19.A: Greenhouse Gas Assessment [[APP-212](#)];
 - Appendix 19.B: Climate Change Resilience (CCR) Assessment [[APP-213](#)]; and
 - Appendix 19.C: In-Combination Climate Change Impact (ICCI) Assessment [[APP-214](#)].

Scope and Methodology

- 3.4.17. Chapter 19 of the ES [[APP-061](#)] used an assessment method for the greenhouse gas assessment based on the sensitivity of the climate as the receptor and the magnitude of impact associated with the Proposed Development. These were used to derive the significance of effect.
- 3.4.18. Activities associated with the Proposed Development and their greenhouse gas emissions sources were identified to inform the assessment. This data was presented in Table 19-3 of the ES [[APP-061](#)]. This included greenhouse gas emissions from shipping associated with the Proposed Development, which were reduced in line with national and international decarbonisation trajectories for the shipping sector.
- 3.4.19. The resultant greenhouse gas emissions were then compared to the existing baseline conditions to help inform the magnitude of impact. The criteria for determining the overall significance of effect was set out in Table 19-4 of the ES [[APP-061](#)] and uses the different significance levels in the latest version of the Institute of Environmental Management and Assessment (IEMA) guidance.
- 3.4.20. The study area was not geographically constrained for the greenhouse gas assessment because local greenhouse gas emissions have a global climate impact.

The baseline conditions were established using the greenhouse gas emissions from the existing site operations, the existing carbon stock within the soil and the above- and below-ground vegetation.

- 3.4.21. The baseline conditions also accounted for 300MW of diesel usage in the Heavy Goods Vehicle (HGV) transport sector to enable an assessment of greenhouse gas emissions that would be displaced by the low carbon hydrogen produced by the Proposed Development.

Applicant's Assessment of Effects and Proposed Mitigation

- 3.4.22. Chapter 19 of the ES [APP-061] stated that the Proposed Development was designed to avoid and minimise impacts on climate change through design development. For example, by embedding mitigation measures into the design, such as using best available techniques for energy management. These techniques would include plant advanced control and optimisation, use of insulation and superinsulation to minimise heat leak into the system and predictive maintenance systems to ensure optimal compressor and equipment running.
- 3.4.23. In terms of construction, Chapter 19 of the ES [APP-061] assessed the Proposed Development's construction programme in accordance with the details in Chapter 2 of the ES [APP-044] and calculated the greenhouse gas emissions to be 830,306 tCO₂e over the 11 year construction period. Averaged annual greenhouse gas emissions were estimated to be 67,442 tCO₂e for terrestrial construction and 29,480 tCO₂e for marine construction.
- 3.4.24. The estimated volume of construction greenhouse gas emissions associated with the Proposed Development was set out in Table 19-18 of the ES [APP-061]. Table 19-19 of the of the ES [APP-061] shows that the greenhouse gas emissions from the Proposed Development during construction would equate to less than 0.02% of the UK's fourth, fifth and sixth carbon budgets.
- 3.4.25. The Applicant assessed these findings against the criteria in Table 19-4 of the ES [APP-061] and found that the greenhouse gas emissions from the construction of the Proposed Development would result in effects that would not be significant.
- 3.4.26. In terms of operation, Chapter 19 of the ES [APP-061] assessed the Proposed Development's overall greenhouse gas emissions, including energy consumption, port transport, commuting, and shipping including imports and exports. Greenhouse gas emissions were calculated as 4,141,333 tCO₂e over a 25-year period.
- 3.4.27. Chapter 19 of the ES [APP-061] stated that replacing 300MW of diesel usage in the HGV transport sector with 300MW of low carbon hydrogen produced by the Proposed Development would create greenhouse gas emission savings of 21,757,414 tCO₂e over a 25-year period.
- 3.4.28. The Applicant stated that whilst the Proposed Development would have the capacity for 9,800,000 tonnes of carbon dioxide imports, the greenhouse gas savings associated with these imports were not quantified. However, there would be a substantial qualitative benefit associated with capturing carbon dioxide from domestic industries and storing them to avoid greenhouse gas emissions.
- 3.4.29. The estimated volume of operational greenhouse gas emissions associated with the Proposed Development were set out in Table 19-20 of the ES [APP-061]. Table 19-21 of the of the ES [APP-061] shows that the greenhouse gas emissions from the Proposed Development during operation would equate to less than 0.5% of

the UK's sixth, seventh and eighth carbon budgets. However, greenhouse gas emissions would equate to 2.24% of the forecasted ninth carbon budget and this would be significant in and of itself.

- 3.4.30. Altogether, the Applicant considered that the greenhouse gas emissions savings derived from replacing 300MW of diesel with low carbon hydrogen in conjunction with the qualitative benefits associated with importing carbon dioxide for CCS would offset the greenhouse gas emissions costs during operation. Table 19-20 of the ES [\[APP-061\]](#) shows net emissions savings would amount to 17,615,842 tCO₂e.
- 3.4.31. Consequently, the Applicant considered that the balance of greenhouse gas emissions costs and savings associated with the operation of the Proposed Development when considered against the criteria in Table 19-4 of the ES [\[APP-061\]](#) would result in beneficial effects that would be significant.

LOCAL IMPACT REPORT

- 3.4.32. There were no substantive comments relating to climate change in the LIR from NELC [\[AS-146\]](#).

THE EXAMINATION

- 3.4.33. The main issues considered during the Examination were:

- Legislation and Policy Framework;
- Greenhouse Gas Emissions within the Supply Chain;
- Low Carbon Hydrogen within the Supply Chain;
- Downstream Effects and Upstream Effects;
- Compliance with Low Carbon Hydrogen Standards and Certification;
- The Science of Climate Change.

Legislation and Policy Framework

- 3.4.34. During ExQ1 [\[PD-008\]](#) the ExA asked the Applicant how the Application dealt with policies in the NPSfP which do not require shipping related greenhouse gas emissions to be taken into account. This questioning was in the context of UK international obligations on climate change and net zero and to help the ExA understand the legislative and policy framework for examining the Application.
- 3.4.35. The Applicant responded [\[REP1-024\]](#) clarifying that whilst the NPSfP states that the decision maker does not need to take shipping related greenhouse gas emissions into account, it does not preclude the Applicant from making such an assessment in line with UK international obligations on climate change. The Applicant included shipping related greenhouse gas emissions in their assessment accordingly.

ExA's Considerations

- 3.4.36. The ExA notes that the NPSfP does not require shipping related greenhouse gas emissions to be considered and gives limited weight to greenhouse gas emissions from port developments. However, the ExA is also mindful of UK international obligations on climate change because the sixth carbon budget includes shipping related greenhouse gas emissions within its calculations.
- 3.4.37. Consequently, assessing shipping related greenhouse gas emissions is necessary to comply with the sixth carbon budget, achieve net zero and deliver on the UK's international obligations under the Paris Agreement. On this basis, the ExA finds that

the Applicant has been correct to include shipping related greenhouse gas emissions within their ES [APP-061] notwithstanding policy within the NPSfP.

- 3.4.38. Overall, the ExA recommends that when deciding the Application, the SoS should have regard to current UK climate change legislation, policy, and guidance, which include shipping related greenhouse gas emissions in pursuit of net zero and are important and relevant in accordance with s104(2)(d) of the PA2008.

Greenhouse Gas Emissions within the Supply Chain

- 3.4.39. During ExQ1 the ExA asked several questions [PD-008] about greenhouse gas emissions within the supply chain. Some of these related to the Applicant's reasonable worst case scenario for shipping related greenhouse gas emissions, the future of low carbon imports and displacement with high carbon imports, whether renewable energy sources had been considered to reduce operational greenhouse gas emissions in accordance with the NPSfP and whether the Applicant planned on reducing operational greenhouse gas emissions in the future.
- 3.4.40. The Applicant responded [REP1-024] clarifying that the methodology for the assessment, including available data for estimating shipping distances and greenhouse gas emissions, was in line with IEMA guidance and would represent the reasonable worst case scenario.
- 3.4.41. Furthermore, because the Proposed Development would not be capable of handling liquid bulks other than ammonia and would require additional consents to do so, the potential for different liquid bulks to increase shipping distances and greenhouse gas emissions was not included within the reasonable worst case scenario.
- 3.4.42. Whilst additional landside consents would also be needed to fully receive carbon dioxide, the Applicant identified [REP1-024] a substantial policy position that would create compelling market conditions incentivising the domestic import of carbon dioxide for CCS. As such, the assumptions relating to carbon dioxide shipping distances and greenhouse gas emissions would also represent the reasonable worst-case scenario.
- 3.4.43. The Applicant clarified [REP1-024] that in their assessment greenhouse gas emissions from shipping were reduced in line with committed trajectories. However, even in a scenario where committed trajectories were missed, greenhouse gas emissions from shipping would still not result in a material change in the conclusions of the ES [APP-061].
- 3.4.44. The future of low carbon imports and the potential for them falling away and being displaced with high carbon imports and changing the conclusions of the ES [APP-061] was considered by the Applicant [REP1-024]. However, the Applicant deemed this scenario would be unlikely due to the substantial policy position on low carbon liquid bulks. This would create compelling market conditions incentivising the continued import of low carbon liquid bulks into the future and any change would require additional consents.
- 3.4.45. The ExA asked follow up questions of a similar nature during ISH6 [EV9-001 and EV9-002] including whether the potential for other types of liquid bulk cargos would be sufficiently restricted by the need for future consents. For example, whether permitted development rights on operational land and retrofitting works outside the controls of the planning system meant additional controls within the dDCO would be necessary to achieve certainty about the acceptability of environmental effects.

- 3.4.46. The Applicant responded [[REP3-072](#) and [REP3-066](#)] and clarified that any future development or works to the Proposed Development beyond that consented by the dDCO would be subject to appropriate controls, including:
- Development of alternative liquid bulk capabilities other than ammonia would require additional infrastructure, which in turn would need separate express planning consent. Greenhouse gas emissions and climate change impacts could then be considered by the relevant local planning authority.
 - Development under the Town and Country Planning (General Permitted Development) (England) Order 2015, including on operational land, would be limited where Environmental Impact Assessment (EIA) is required.
 - If works fell outside the definition of development, and the planning system, Article 41 of the dDCO would only authorise works where greenhouse gas emissions and climate change impacts would not be materially new or materially different when compared to the original EIA.

- 3.4.47. The Applicant considered Paragraphs 4.12.7 and 4.12.8 of the NPSfP regarding the use of renewable energy sources during operation to cut greenhouse gas emissions. It was clarified [[REP1-024](#)] that the overarching need to stay within carbon intensity thresholds to produce hydrogen that is low carbon would provide a clear incentive for the Proposed Development to operate using renewable energy sources where necessary.

ExA's Considerations

- 3.4.48. The ExA is satisfied that the Applicant has adequately assessed shipping related greenhouse gas emissions and the future of low carbon imports such as carbon dioxide for CCS. The substantial policy position and prevailing market conditions create a strong likelihood that the Proposed Development would result in the import of ammonia to produce low carbon hydrogen, and the import of carbon dioxide for CCS.
- 3.4.49. Consequently, it is unlikely low carbon imports would be displaced by high carbon imports or that greenhouse gas emissions would increase because of this. It follows that the greenhouse gas emissions costs associated with these matters that have been assessed in the ES [[APP-061](#)] are appropriate and represent the reasonable worst case scenario for the Proposed Development.
- 3.4.50. In addition, any changes to the liquid bulk cargos being handled by the Proposed Development would be restricted, for example under permitted development rights or Article 41 of the dDCO. Consequently, in the event the Applicant pursued a change, they would require consent for additional enabling infrastructure. At which point the relevant local planning authority would be able to duly consider shipping distances and greenhouse gas emissions, or any other impacts that materially affect climate change.
- 3.4.51. Turning to whether renewable energy sources were considered to reduce operational greenhouse gas emissions in accordance with the NPSfP. The ExA accepts that the hydrogen produced needs to be low carbon to meet market demands. As such, the whole supply chain, including the operation of the Proposed Development itself must conform to carbon intensity thresholds to comply with low carbon standards like the Renewable Transport Fuel Obligation or Low Carbon Hydrogen Standard.
- 3.4.52. The likelihood of compliance with these standards and the need for low carbon hydrogen certification is dealt with later on in this section of the Report. Ultimately, whilst more detail about how renewable energy might be secured in practice would

have been helpful, the ExA considers that it is not determinative in this case due to the nature of what is being proposed and for all intents and purposes is in accordance with the NPSfP.

- 3.4.53. Overall, the ExA is satisfied that this issue has been brought to an acceptable conclusion by the Applicant and that broadly speaking the assessment of greenhouse gas emissions within the supply chain, in relation to the specific matters dealt with above, is sufficient and in accordance with the NPSfP. Altogether, the ExA considers that this issue is neutral and therefore weighs neither for nor against the Proposed Development.

Low Carbon Hydrogen within the Supply Chain

- 3.4.54. In ExQ1 the ExA asked several questions [PD-008] about low carbon hydrogen within the supply chain. Some of these related to the different standards for low carbon hydrogen, whether greenhouse gas emissions savings would be higher or lower depending on which sector the low carbon hydrogen was deployed in, and whether exporting low carbon hydrogen for use outside the UK would affect greenhouse gas emissions savings and the conclusions in the ES [APP-061].
- 3.4.55. The Applicant responded [REP1-024] clarifying that it was anticipated that customers would require low carbon hydrogen that conforms with one of two key standards, either the Renewable Transport Fuel Obligation or Low Carbon Hydrogen Standard. The latter of these standards would underpin the UK scheme for low carbon hydrogen anticipated to come forward in 2025.
- 3.4.56. It was also clarified that the greenhouse gas emissions savings would change depending on the sector the low carbon hydrogen was deployed in but would not materially change the findings of the ES [APP-061]. For example, there would be substantial benefits irrespective of whether the low carbon hydrogen was deployed in heavy industry or heavy transport. The Applicant also said that exporting low carbon hydrogen was not seen as a risk to greenhouse gas emissions savings because exporting hydrogen by ship would not be cost-effective and, in any event, to do so would require consent for additional infrastructure.

ExA's Considerations

- 3.4.57. The ExA is satisfied with the Applicant's response in relation to the different standards for low carbon hydrogen and that the potential benefits would be broadly the same notwithstanding the sector within which the low carbon hydrogen is ultimately deployed. Furthermore, the ExA is satisfied that the low carbon hydrogen would likely be deployed domestically given the commercial realities associated with exporting liquid hydrogen abroad.
- 3.4.58. Overall, the ExA is satisfied that this matter has been brought to an acceptable conclusion by the Applicant and that the Applicant's assessment of low carbon hydrogen within the supply chain is sufficient. As such, the ExA considers this issue is neutral and therefore weighs neither for nor against the Proposed Development.

Downstream Effects and Upstream Effects

- 3.4.59. During ExQ1 the ExA asked [PD-008] questions intended to understand downstream effects and the implications of R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2022] EWCA Civ 187 (Finch Court of Appeal case law), the relevance to the Proposed

Development and any downstream effects associated with the use of low carbon hydrogen.

- 3.4.60. The Applicant responded [\[REP1-024\]](#) clarifying that the legal question of relevance was whether any such downstream effects from the Proposed Development comprised indirect effects in accordance with the EIA regulations. The essential content and character of the HPF would be to produce low carbon hydrogen that would be used to displace greenhouse gas emissions, which would be an indirect effect of the Proposed Development.
- 3.4.61. Follow up questions of a similar nature were asked during ISH6 [\[EV9-001\]](#) and [\[EV9-002\]](#) and during ExA's Third Written Questions (ExQ3) [\[PD-017\]](#) including whether greenhouse gas emissions associated with ammonia production at the beginning of the supply chain needed to be accounted for as upstream effects. The ExA also asked for an update from the Applicant on these matters in the context of R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] UKSC 20 (Finch Supreme Court case law) which was delivered during the Examination.
- 3.4.62. The Applicant submitted an update [\[REP5-052\]](#) and responded to the ExA's questions [\[REP3-072\]](#) and [\[REP6-022\]](#) concluding that Finch Supreme Court case law did not change their original position in relation to downstream effects, confirming that there would be a sufficient causal connection between the displaced greenhouse gas emissions and the Proposed Development for it to be considered as an indirect effect.
- 3.4.63. The Applicant argued in the alternative when considering whether upstream effects associated with greenhouse gas emissions from ammonia production should be considered an indirect effect of the Proposed Development and assessed within the ES [\[APP-061\]](#). Firstly, because the planned ammonia production facility in Saudi Arabia is clearly a separate project for the purposes of the EIA regulations in accordance with Together Against Sizewell C Limited [2023] EWCA Civ 1517 (Sizewell C Limited case law). Secondly, in the context of causal connection, the Applicant argued that the ammonia production facility in Saudi Arabia would serve several hydrogen production facilities other than the Proposed Development and would not be dependent on the Proposed Development in any way.
- 3.4.64. Consequently, the Applicant said there would not be a causal connection between the Proposed Development and the greenhouse gas emissions associated with the production of ammonia, because such greenhouse gas emissions would be generated irrespective of whether the Proposed Development came forward or not.
- 3.4.65. This is because there would still be demand from other hydrogen production facilities elsewhere. In supporting their position, the Applicant referred to Finch Supreme Court case law, which cited the judgement in An Taisce – The National Trust for Ireland v An Bord Pleanála (Kilkenny Cheese Ltd, notice Party) [2022] IESC 8; [2022] 2 IR 173 (Kilkenny Cheese case law), including among other things the 'but for' test of causation.

ExA's Considerations

- 3.4.66. The ExA accepts the Applicant's analysis of Finch Court of Appeal and Supreme Court case law in relation to downstream effects. The ExA considers there would be a causal connection between the low carbon hydrogen produced by the Proposed

Development and the greenhouse gas emissions savings derived from its use as an alternative to high carbon fuels in the HGV transport sector or elsewhere.

- 3.4.67. This is because the essential content and character of the HPF would be to produce low carbon hydrogen, which in turn, given its intrinsic nature and inevitable end use, would displace greenhouse gas emissions associated with higher carbon fuels. Furthermore, as is clear from the Application, the displacement of 300MW of diesel and resultant downstream effects have been capable of meaningful assessment within the ES [[APP-061](#)].
- 3.4.68. Regarding upstream effects, the ExA accepts the Applicant's analysis of Sizewell C Limited case law and that the Proposed Development and the facility in Saudi Arabia are separate projects for the purposes of the EIA regulations. However, it is not clear to the ExA why this should preclude analysis of a causal connection between the Proposed Development and upstream greenhouse gas emissions derived from the production of ammonia in accordance with the principles set out in Finch Supreme Court case law.
- 3.4.69. The Applicant's analysis is that upstream greenhouse gas emissions would happen anyway irrespective of the Proposed Development due to the presence of other hydrogen production facilities in the region and their demand for ammonia. However, the full details of these other hydrogen production facilities have not been provided.
- 3.4.70. Consequently, it is not clear either individually or collectively whether they would have sufficient spare capacity, whether in the context of physically available operational throughput or limitations associated with the terms of their respective consents. Therefore, it is not clear that they would be able to accept all of the ammonia originally destined for the Proposed Development.
- 3.4.71. As such, it is a speculative scenario and does not properly demonstrate that ammonia production at the Saudi Arabia facility would continue at 100% in the absence of the Proposed Development. Therefore, the ExA cannot determine that the greenhouse gas emissions would likely occur without the Proposed Development or that the outcome of the 'but for' test falls in the Applicant's favour. There is no evidence that the stricter tests of causation outlined in Finch Supreme Court case law must be applied to the Proposed Development.
- 3.4.72. Kilkenny Cheese case law, as addressed by Finch Supreme Court case law, is clear that an increase in demand could in principle lead to an increase in supply, which in turn could lead to an increase in greenhouse gas emissions associated with production. This principle on its own may not be sufficient to demonstrate a causal connection to trigger the EIA regulations in respect of indirect effects, mainly because it is perhaps too general and contingent on many variables that might lead to overly speculative analysis.
- 3.4.73. However, the ExA's view is that the Proposed Development would have a defined relationship with the facility in Saudi Arabia and there would be commercial agreements for the production and supply of ammonia. This is a more specific and formalised demand and supply relationship than the one described in Kilkenny Cheese case law, and therefore it is a relevant distinction between the cases.
- 3.4.74. Altogether, the ExA considers it follows that if the Proposed Development goes ahead, it will create specific demand that would cause the facilities in Saudi Arabia to produce ammonia for its supply, and this would generate greenhouse gas emissions. As such, there would be sufficient causal connection between the Proposed

Development and these greenhouse gas emissions for them to be treated as an indirect effect.

- 3.4.75. Finch Supreme Court case law states that only effects for which evidence shows are likely to occur and which are capable of meaningful assessment must be assessed. The ExA considers that the criterion of likely occurrence is met based on the foregoing reasons relating to causal connection and the 'but for' test.
- 3.4.76. Insofar as the criterion of meaningful assessment, the greenhouse gas emissions could be calculated so that they were proportionate to the amount of ammonia supplied to the Proposed Development. This data could be incorporated into the ES [APP-061] and meaningfully assessed as part of the existing greenhouse gas assessment to give a balanced picture of both downstream and upstream effects.
- 3.4.77. Altogether, when looking at the issue of upstream effects in and of itself, the ExA's conclusion is that upstream greenhouse gas emissions should be assessed as an indirect effect of the Proposed Development pursuant to the EIA regulations. However, importantly in this case, the lack of such an assessment would not be determinative when considering climate change evidence in the round. The reasons for this are given below.
- 3.4.78. One purpose of the Proposed Development is to produce low carbon hydrogen and to sell it as such the Applicant would need to ensure it is compliant with low carbon hydrogen standards. These standards would ensure that the net carbon intensity of all supply chain processes would fall within certain thresholds to be deemed low carbon. As such, even in the absence of a detailed assessment of upstream greenhouse gas emissions, by virtue of compliance with low carbon hydrogen standards the ExA is satisfied that there would still be a net benefit in terms of greenhouse gas emissions savings generated by the Proposed Development. Consequently, the conclusions of the ES [APP-061] are reliable.
- 3.4.79. As already established elsewhere in this Report, the ExA accepts there is a strong likelihood of low carbon hydrogen standards being complied with. There are also mechanisms within the wider planning system and provisions within the dDCO that would protect against changes to the Proposed Development without due process and consideration by the relevant local planning authority. Consequently, with these factors in mind, the ExA is satisfied that the issue of upstream effects is resolved.
- 3.4.80. Overall, taking the above into account the ExA is satisfied that the lack of upstream greenhouse gas emissions assessment does not compromise the reliability of the conclusions in the ES [APP-061] and should not be an impediment to the Proposed Development due to the nature of what is being proposed. As such, this issue is neutral and therefore weighs neither for nor against the Proposed Development.

Compliance with Low Carbon Hydrogen Standards and Certification

- 3.4.81. The ExA asked questions of the Applicant [PD-008] and NELC [PD-014] intended to understand whether low carbon hydrogen certification was necessary to secure certainty about greenhouse gas emissions savings assessed in the ES [APP-061] and the acceptability of environmental effects. Follow up questions of a similar nature were also asked during ExA's Second Written Questions (ExQ2) [PD-014], ExQ3 [PD-017] and ISH6 [EV9-001 and EV9-002]. The ExA also proposed a change to the dDCO [PD-019] to include a requirement securing low carbon hydrogen certification.

- 3.4.82. In response, the Applicant provided considerable detail throughout the Examination [[REP1-024](#), [REP3-066](#), [REP3-072](#), [REP4-047](#), [REP6-022](#) and [REP6-026](#)]. The Applicant said there is a substantial policy position that promotes activity in the low carbon hydrogen market. This includes, among other things, NPS EN-1, the British Energy Security Strategy 2022 and the Net Zero Strategy: Build Back Greener 2021.
- 3.4.83. This substantial policy position would create compelling market conditions incentivising the Applicant to import cargo and produce commodities that comply with any relevant industry standards required for their onward sale and use. Consequently, the Applicant said there would be a powerful commercial incentive for them to obtain low carbon hydrogen certification, which in turn would ensure greenhouse gas emissions savings associated with the Proposed Development are consistent with those assessed within the ES [[APP-061](#)].
- 3.4.84. In addition, the complexity of industry standards would make it impossible for the relevant local planning authority to monitor and enforce a low carbon certification scheme and a requirement of this nature would fail the test of enforceability. Therefore, additional formal controls in the dDCO relating to certification were said to be unnecessary.

ExA's Considerations

- 3.4.85. The ExA accepts that there is a substantial policy position creating compelling market conditions incentivising the Applicant to comply with relevant industry standards on low carbon hydrogen. Furthermore, as has been established under other issues in this Report, there would be sufficient additional layers of control through mechanisms in the planning system and provisions in the dDCO to ensure material changes to the Proposed Development did not occur without due consideration. For example, Article 41 of the dDCO would not authorise works to retrofit the Proposed Development if there would be materially new or materially different effects than those assessed in the original EIA.
- 3.4.86. The Applicant suggested the complexities of the low carbon certification were such that the relevant local planning authority would find it impossible to monitor or enforce compliance. The ExA considers that this might be the case if the relevant local planning authority were required to monitor each stage of the supply chain and audit greenhouse gas emissions. However, reviewing certification, which is in essence reviewing the conclusion of the auditing process, would be a straightforward exercise by comparison. As such, a requirement securing certification would be enforceable.
- 3.4.87. However, and whilst this is something that did not emerge during the Examination, the ExA is also mindful of powers available to the relevant local planning authority under s167 of the PA2008. This relates to information notices and the power to require information about any operations being carried out in, on, over or under the land, any use of the land and any other activities being carried out in, on, over or under the land.
- 3.4.88. Consequently, the relevant local planning authority would have the power to obtain information from the Applicant about hydrogen production and low carbon hydrogen certification. This would enable them to monitor the operation of the Proposed Development and help determine whether it was operating within the envelope of the environmental effects assessed as part of the Application. The ExA considers this goes to further illustrate that a requirement for certification would be unnecessary.

- 3.4.89. Overall, the ExA considers that a requirement for low carbon hydrogen certification would not be necessary to secure certainty about greenhouse gas emissions savings assessed in the ES [APP-061]. As such, the ExA considers this issue is neutral and weighs neither for nor against the Proposed Development.

The Science of Climate Change

- 3.4.90. In their RR the Davey Family objected to the Proposed Development [RR-007] which included a view that the green agenda was being pursued without the science to support climate change. The Applicant responded [REP1-021] by stating any decision would reflect Government policy on sustainability and climate change.

ExA's Considerations

- 3.4.91. The ExA has considered the merits of the RR submitted by the Davey Family and notes the Applicant's response. The ExA is satisfied that the Proposed Development has been assessed against the correct legislation and policy on climate change. The ExA is satisfied that the main issues relating to climate change have been comprehensively addressed in this section of the Report. Overall, the issue is neutral and therefore weighs neither for nor against the Proposed Development.

CONCLUSIONS

- 3.4.92. Based on the evidence submitted as part of the Application and during the Examination, the ExA is broadly satisfied that the Applicant has adequately assessed the Proposed Development in relation to climate change.
- 3.4.93. The Applicant has addressed shipping related greenhouse gas emissions in accordance with UK international obligations on climate change under the Paris Agreement. The ExA agrees with the Applicant's approach, notwithstanding policies within the NPSfP that do not require shipping related greenhouse gas emissions to be considered. This is because the UK sixth carbon budget includes shipping related greenhouse gas emissions in its calculations and the ExA is clear that the assessment should reflect this in order to meet greenhouse gas emissions reduction targets and net zero.
- 3.4.94. The Applicant has addressed greenhouse gas emissions within the supply chain. The ExA is satisfied that the Applicant has used the reasonable worst-case scenario for shipping greenhouse gas emissions. The ExA is satisfied that the future of low carbon imports and the potential for these to be replaced with high carbon imports is an unlikely scenario because of market conditions and other mechanisms within the planning system and the rDCO. The ExA is satisfied that renewable energy sources have been considered to reduce operational greenhouse gas emissions, but that this is not determinative given the nature of low carbon hydrogen and compliance with relevant standards.
- 3.4.95. The Applicant has addressed low carbon hydrogen within the supply chain. The ExA is satisfied with the Applicant's description of different standards for low carbon hydrogen. The ExA is satisfied that greenhouse gas emissions savings would not be materially different or dependent on deploying the low carbon hydrogen in a specific sector. The ExA is satisfied that exporting low carbon hydrogen for use outside the UK would be an unlikely scenario given the commercial realities of exporting liquid hydrogen and this would not therefore affect the findings of the greenhouse gas assessment.

- 3.4.96. The Applicant has addressed downstream effects and upstream effects. The ExA is satisfied with the Applicant's assessment of downstream effects and that there would be a causal connection between the low carbon hydrogen produced by the Proposed Development and the greenhouse gas emissions savings derived from its use as an alternative to high carbon fuels in the HGV transport sector or elsewhere. Furthermore, as is clear from the Application, the displacement of 300MW of diesel and resultant downstream effects are capable of meaningful assessment.
- 3.4.97. However, the ExA is not satisfied with the Applicant's position on upstream effects. If the Proposed Development goes ahead, it will cause the facilities in Saudi Arabia to produce ammonia for its supply, and this would generate greenhouse gas emissions. The ExA concludes that there would be sufficient causal connection between the Proposed Development and these upstream greenhouse gas emissions to justify assessing them as indirect effects under the EIA regulations. However, the ExA also concludes that the lack of an assessment is not an impediment to the Proposed Development. This is because by virtue of compliance with low carbon hydrogen standards there would still be a net benefit in terms of greenhouse gas emissions savings generated by the Proposed Development.
- 3.4.98. The Applicant has addressed compliance with low carbon hydrogen standards and certification. The ExA is satisfied that there is a substantial policy position creating compelling market conditions incentivising the Applicant to comply with relevant industry standards on low carbon hydrogen. Furthermore, there would be sufficient additional layers of control through mechanisms in the planning system and provisions in the rDCO to ensure material changes to the Proposed Development did not occur without due consideration. Consequently, when all these factors are considered together, the ExA is satisfied that a requirement for low carbon hydrogen certification is not necessary.
- 3.4.99. Overall, the ExA is satisfied that the Proposed Development would accord with the NPSfP in relation to climate change. Furthermore, with the Proposed Development having addressed shipping related greenhouse gas emissions, the ExA is satisfied that deciding the Application in accordance with the NPSfP would not breach the UK's international climate change obligations under the Paris Agreement. The ExA agrees that the Applicant's assessment demonstrates the scale of greenhouse gas emissions savings would result in significant beneficial effects on the environment. Given climate change legislation and policy, the ExA attaches great weight in favour of the Proposed Development.

3.5. DESIGN

BACKGROUND AND POLICY CONTEXT

- 3.5.1. This section considers the effects of the Proposed Development in relation to the matters of design.

National Policy Statement

- 3.5.2. The NPSfP sets out the criteria for good design for ports in section 4.10.
- 3.5.3. Paragraph 4.10.1 explains that high quality and inclusive design goes beyond aesthetic considerations and that the functionality of an object, including fitness for purpose and sustainability, is equally important. Paragraph 4.10.2 states that good design is a means by which many policy objectives in the NPS can be met, for example good design and use of appropriate technologies can help to mitigate adverse impacts such as noise.

- 3.5.4. Paragraph 4.10.4 notes that applicants should be able to show how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, applicants should set out the reasons why the favoured choice has been selected.
- 3.5.5. Paragraph 4.10.3 indicates that the SoS needs to be satisfied that port infrastructure developments are sustainably designed and, having regard to regulatory and other constraints, are as attractive, durable and adaptable as they can be. In so doing, the SoS should satisfy themselves that the applicant has taken into account both functionality and aesthetics as far as possible.
- 3.5.6. Paragraph 4.10.5 notes that at an early stage, applicants and the decision-maker should consider seeking professional and independent advice on what constitutes 'good design' of a proposal.

The National Planning Policy Framework

- 3.5.7. Chapter 12 of the National Planning Policy Framework (NPPF) deals with achieving well-designed and beautiful places. Paragraph 131 states that good design is a key aspect of sustainable development, it creates better places in which to live and work and helps make development acceptable to communities.
- 3.5.8. Paragraph 135 states policies and decisions should ensure that developments will function well and add to the overall quality of the area and that they are sympathetic to the local character including the surrounding built environment and landscape setting, while not discouraging innovation or change.

THE APPLICATION

- 3.5.9. The design approach taken by the Applicant was provided in the Planning Statement, Appendix G; Design Evolution [[APP-233](#)].
- 3.5.10. This document provided an overview of the existing and surrounding structures and considered constraints and opportunities that were taken into account during the initial design stages.
- 3.5.11. It provided a narrative on the need of the project to comply with Codes of Practice and British Standards and indicated that there were limited opportunities to influence the visual appearance due to the functional requirements of the Proposed Development.
- 3.5.12. The document indicates that following receipt of the scoping opinion [[APP-168](#)] and other consultations outlined in the Consultation Report [[APP-022](#)], the design of both the Proposed Development evolved prior to submission. In addition to changes to the design, the Order limits were amended prior to submission of the application to better suit the requirements of the Proposed Development.
- 3.5.13. The Applicant concluded that the design of the Proposed Development was compatible with the location within and adjoining the existing Port of Immingham. Furthermore, they stated that good design had been delivered by ensuring that marine and land side infrastructure was functional and fit for purpose, in accordance with the approach to good design set out in the NSPFP.

LOCAL IMPACT REPORT

- 3.5.14. The LIR from NELC [[AS-146](#)] stated that whilst the overall scale of the development is extensive, in coming to any conclusions the context of the Proposed Development is important and that this includes several extant large scale industrial permissions. In addition, they noted that the engineering requirements of the Proposed Development must be fully appreciated.
- 3.5.15. The LIR concludes that the Proposed Development would accord with Policy 22 (Good design in new developments) of the NELLP.

THE EXAMINATION

- 3.5.16. In relation to design, no IPs involved in the Examination raised any issues and consequently, issues arising were derived from the ExA's questioning of the Applicant.
- 3.5.17. The issues that were raised by the ExA and considered further during the Examination related to:
- Lack of design detail; and
 - Future of the properties on Queens Road.

Lack of design detail

- 3.5.18. The ExA had concerns in terms of the detail provided, particularly in relation to the design requirements of the HPF and the lack of evidence of the evolution of the design, how it mitigated for other adverse impacts and how the information submitted met the requirements of the NPSfP. In addition, the ExA had questions on how the design would continue to evolve both through the Examination and post consent, should the DCO be made, and whether the Applicant would engage an external design review.
- 3.5.19. The ExA asked questions at ExQ1 [[PD-008](#)] and in their response, the Applicant provided an in-depth account [[REP1-025](#)] of the evolution of the design and indicated the steps taken to ensure that it would comply with various operational legislative requirements as well as the NPSfP. The Applicant also outlined the use of specific materials on key buildings and how the scale of the HPF would reflect the scale of other nearby developments. The response also confirmed that design work was ongoing, along with how it would be secured by Requirement 4 in the DCO. Furthermore, they indicated that peer design review had been undertaken during the design process and concluded that external design review would not be sought.
- 3.5.20. At ISH 5 [[EV7-002](#)], the ExA explored general design parameters of the West Site HPF such as the scale, security arrangements and other constraints, including the height of planting that would be achievable on the perimeters, This discussion provided useful background information, but the ExA remained of the view that limited detail had been provided in the Application that would secure good design within the dDCO.
- 3.5.21. Therefore, in response to a question at ExQ2 [[PD-014](#)], the Applicant submitted a Hydrogen Production Facility Design Code (HPF Design Code) [[REP4-046](#)] which identified some non-operational buildings across the Proposed Development and the types of finishes that were proposed. It also provided an explanation as to why those finishes were chosen and how they would integrate into the local environment. In their general response to ExQ2 [[REP4-047](#)], the Applicant confirmed that both

Requirement 4 and Schedule 15 of the dDCO had been amended to include reference to the HPF Design Code.

- 3.5.22. At ISH8 [\[EV11-004\]](#) further discussions were held regarding how the list of buildings to be subject to the HPF Design Code [\[REP4-046\]](#) had been decided upon and why a single colour and material had been chosen for the external elevations.
- 3.5.23. The Applicant responded by clarifying that it was only public-facing buildings, that would be occupied that were included within the HPF Design Code and that other operational buildings placed further into the Work Areas would not be included.
- 3.5.24. In addition, the choice of a single colour and material finish was discussed, particularly in light of the requirements of NELC's "*Design North East Lincolnshire: Places and Spaces Renaissance*" document. This document recommends that although industrial units are usually economical constructions, they should seek to use different materials to better articulate the form of elevations and roof profiles. In response, the Applicant acknowledged that whilst the Design Code indicated a single colour and material to be used, it also allows for further review and discussion to take place with NELC as part of the discharge of Requirement 4.
- 3.5.25. At ISH8 [\[EV11-004\]](#) NELC concurred with the Applicant that discussions relating to the final design of the buildings included within the HPF Design Code would be held at a later stage.

ExA's Considerations

- 3.5.26. The ExA considers that the Applicant provided the minimum level of information to meet the requirements of the NPSfP and could have done more to demonstrate that the DCO would result in good design. Furthermore, the ExA considers that the Applicant is relying heavily on the discharge of Requirement 4 to finalise the design of the control buildings, which have the scope to make a difference to the appearance of the Proposed Development in the wider setting.
- 3.5.27. Notwithstanding the lack of detail on design matters, the ExA acknowledges the existing industrial context in which the Proposed Development would sit and accepts that the large structural elements would not appear out of place in this environment. The ExA also acknowledges that by the end of the Examination, the Applicant had provided the scope for NELC to control the external appearance of the control buildings through the provision of the HPF Design Code and Requirement 4; both secured in the rDCO (Appendix D).

Future of the properties on Queens Road

- 3.5.28. At ISH5 [\[EV7-002\]](#) the ExA asked the Applicant to explain more fully the ownership status of the Queens Road properties and the long-term aspirations for them. In their response [\[REP3-065\]](#) the Applicant outlined that voluntary acquisitions of the properties still outside their ownership were ongoing and they also outlined the short, medium and long term aspirations for the land, should the DCO Application be approved. These included demolition of all the residential properties in the terrace, surfacing the area with hardcore and considering future uses of the site, either by Air Products (BR) Ltd, or through disposal. The Applicant noted that any future use would be likely to require separate permissions, and these would be sought through the local planning regime.
- 3.5.29. In response to further requests by the ExA at ExQ2 [\[PD-014\]](#) to secure the future use of the Queens Road site through the DCO, the Applicant considered that other

permission mechanisms, namely through the Town and Country Planning Act, could be relied upon [REP4-047]. NELC agreed with the approach taken by the Applicant [REP4-049].

- 3.5.30. At ExQ2 [PD-014] the ExA suggested that in accordance with Paragraph 5.1.16 of the NPSfP, biodiversity and landscape enhancements could be made to the cleared site, post demolition of the properties, rather than leaving it as a hardcore area. In their response [REP4-047] the Applicant reiterated the involvement of NELC in any future permissions on the site, further stating that the SoS should assume that any separate process or procedure would operate correctly and effectively and that there is no need for the DCO to replicate these.

ExA's Considerations

- 3.5.31. The ExA considers that following the proposed demolition of the residential buildings, more could be done to secure enhancements that would improve the appearance of the area, in accordance with the principles of good design, set out in NPSfP and NPPF, without interfering with or constraining any future development proposals.
- 3.5.32. However, if the DCO is made, the ExA acknowledges that for commercial reasons the Applicant would not wish to retain the land at Queens Road in the long term and that NELC, as the local planning authority, have the power to deal with any issues arising from the condition of the site as well as any planning applications for future development proposals.

CONCLUSIONS

- 3.5.33. The ExA concludes that through the initial submissions and Examination, the Applicant has demonstrated that their approach to design matters meets the requirements of the NPSfP.
- 3.5.34. The ExA considers that whilst the Applicant could have provided more during the Examination to address the lack of design detail and the future of the Queens Road properties site, should the DCO be made, these matters will continue to be resolved through the local planning process. Requirement 4 of the rDCO (Appendix D) and the HPF Design Code, secured in Schedule 15 of the rDCO, provide the means with which NELC can secure good design.
- 3.5.35. The ExA therefore considers that the design matters are neutral in the planning balance and weigh neither for nor against the making of the Order.

3.6. BIODIVERSITY – TERRESTRIAL AND MARINE

BACKGROUND AND POLICY CONTEXT

- 3.6.1. This section considers the effects of the Proposed Development on biodiversity and ornithology. It includes effects on protected species and consideration of sites of national, local and regional interest. The effects on European sites in the context of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) are considered in Appendix C with a summary at Chapter 4 of this Report.

National Policy Statement

- 3.6.2. Section 5.1 of the NPSfP relates to biodiversity and geological conservation impacts. Paragraph 5.1.3 confirms that construction and operation of port infrastructure can

have an adverse impact on biodiversity and/or geodiversity, including through dredging, cargo handling and storage, discharge of ships' ballast and biosecurity, noise and light. Paragraphs 5.1.10 to 5.1.18 outline the requirements of specific nature designations, including but not limited to international sites, sites of special scientific interest (SSSI), marine conservation zones (MCZ), regional and local sites and ancient woodland and veteran trees.

- 3.6.3. Paragraph 5.1.8 clarifies that development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Where significant harm cannot be avoided, then appropriate compensation measures should be sought.
- 3.6.4. Paragraph 5.1.4 states that where the development is subject to EIA, the applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. Paragraph 5.1.5 indicates that the applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.
- 3.6.5. Paragraph 5.1.9 indicates that the SoS should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.
- 3.6.6. Paragraphs 5.1.19 – 5.1.21 note that the applicant should demonstrate that mitigation measures will be put in place and where these cannot be demonstrated, the SoS should consider what appropriate requirements should be attached to any consent and/or planning obligations entered into. The SoS will need to take account of what mitigation measures may have been agreed between the applicant and the relevant bodies and whether they have granted or refused, or intends to grant or refuse, any relevant licences, including protected species mitigation licences.
- 3.6.7. Paragraphs 5.1.22 to 5.1.25 provide further guidance on dredging, indicating that where required, capital dredging will be subject to a full environmental impact assessment, and maintenance dredging will be subject to the Maintenance Dredging Protocol.

Other Legislation, Policy and Guidance

- 3.6.8. A full account of legislation, policy, and guidance can be found in Sections 2 and 7.5 of the Planning Statement [[APP-226](#)] as well as specific relevant legislation in the ES, Chapter 8 (Nature Conservation – Terrestrial Ecology) [[APP-050](#)]; Chapter 9 (Nature Conservation – Marine Ecology) [[APP-051](#)]; and Chapter 10 (Ornithology) [[APP-052](#)].
- 3.6.9. Appendix A of this Report includes a table listing all the legislation, policy, and guidance relevant to the whole Application.

THE APPLICATION

Environmental Statement

- 3.6.10. Biodiversity was covered by ES Chapters 8 (Nature Conservation – Terrestrial Ecology) [[APP-050](#)], Chapter 9 (Nature Conservation – Marine Ecology) [[APP-051](#)] and Chapter 10 (Ornithology) [[APP-052](#)].

- 3.6.11. ES Chapter 8 (Nature Conservation – Terrestrial Ecology) was supported by the following documents:
- Appendix 8.A: Ecological Impact Assessment Method [\[APP-180\]](#);
 - Appendix 8.B: Preliminary Ecological Appraisal Report [\[APP-181\]](#);
 - Appendix 8.C: Bat Survey Report [\[APP-182\]](#);
 - Appendix 8.D: Otter and Water Vole Survey Report [\[APP-183\]](#);
 - Appendix 8.E: Great Crested Newt Survey Report [\[APP-184\]](#); and
 - Appendix 8.F: Arboricultural Impact Assessment [\[APP-185\]](#).
- 3.6.12. No amendments were made to the above documents during the Examination.
- 3.6.13. ES Chapter 9 (Nature Conservation – Marine Ecology) was supported by the following documents:
- Figure 9.1: Project Subtidal Benthic Sampling Stations [\[APP-085\]](#);
 - Figure 9.2: Internationally and Nationally Designated Conservation Sites [\[APP-086\]](#);
 - Figure 9.3: Spawning and nursery grounds of commercial fish species [\[APP-087\]](#);
 - Figure 9.4: TrAC fish monitoring stations in the vicinity of the Project [\[APP-088\]](#);
 - Figure 9.5: Annual grey seal pup counts at Donna Nook [\[APP-089\]](#);
 - Figure 9.6: Aerial counts of grey seals at Donna Nook [\[APP-090\]](#);
 - Figure 9.7: Harbour porpoise sightings in the Humber Estuary since 2000 [\[APP-091\]](#);
 - Appendix 9.A: Benthic Survey Report [\[APP-186\]](#); and
 - Appendix 9.B: Underwater Noise Assessment [\[APP-187\]](#).
- 3.6.14. At the end of the Examination, the following documents had been updated:
- Figure 9.2: Internationally and Nationally Designated Conservation Sites [\[AS-086\]](#);
 - Figure 9.3: Spawning and nursery grounds of commercial fish species [\[AS-087\]](#); and
 - Figure 9.4: TrAC fish monitoring stations in the vicinity of the Project [\[AS-088\]](#).
- 3.6.15. ES chapter 10 (Ornithology) was supported by the following documents:
- Figure 10.1: Monitoring locations of coastal water-bird surveys in the vicinity of the Project [\[APP-092\]](#);
 - Figure 10.2: Humber Estuary Nature Conservation Designations [\[APP-093\]](#);
 - Figure 10.3: The 5-year mean peak number of birds in Sector C during different months [\[APP-094\]](#);
 - Figure 10.4: The broad distribution of coastal water-birds in Sector C [\[APP-095\]](#);
 - Figure 10.5: Predicted noise levels during marine piling [\[APP-096\]](#);
 - Figure 10.6: Potential disturbance buffer applied to the approach jetty [\[APP-097\]](#); and
 - Appendix 10.A: Baseline Ornithology Data [\[APP-188\]](#).
- 3.6.16. At the end of the Examination, the following documents had been updated:
- Figure 10.1: Monitoring locations of coastal water-bird surveys in the vicinity of the Project [\[AS-089\]](#);
 - Figure 10.2: Humber Estuary Nature Conservation Designations [\[AS-090\]](#);
 - Figure 10.3: The 5-year mean peak number of birds in Sector C during different months [\[AS-091\]](#);

- Figure 10.4: The broad distribution of coastal water-birds in Sector C [\[AS-092\]](#);
and
- Figure 10.5: Predicted noise levels during marine piling [\[AS-093\]](#).

Scope and Methodology

Nature Conservation – Terrestrial Ecology

- 3.6.17. In ES Chapter 8 [\[APP-050\]](#) the Applicant applied a standard assessment methodology that had been developed from a range of sources to gather information on the existing baseline through a desk-based study, a habitat survey and a species survey. The desk-based study area was defined as land within the Order limits and a 2km buffer. The habitat survey area included the land within the Order limits and up to 50m outside this, where the land was accessible or visible. The species survey areas were defined on a case-by-case basis, dependent on the species, and this was outlined, along with the temporal scope, in Table 8-3.

Nature Conservation – Marine Ecology

- 3.6.18. In ES Chapter 9 [\[APP-051\]](#) the Applicant gathered information on the existing baseline through standard assessment methodology developed from a range of sources. The study area for the marine ecology assessment was taken to be the area over which potential direct or indirect effects of the IGET were predicted to occur during the construction and operational periods. Direct effects were taken to be those that would occur within the Order limits and indirect effects were those that may arise outside these limits. It was focused on the Port of Immingham and proposed dredge disposal sites. Data for the wider Humber Estuary region was presented where it was relevant to provide contextual information and to ensure the area of potential effects were fully considered.

Ornithology

- 3.6.19. In ES Chapter 10 [\[APP-052\]](#) the Applicant applied a standard assessment methodology that had been developed from a range of sources. The study areas were taken to be the area over which potential direct or indirect effects of the Proposed Development were predicted to occur during the construction and operational periods. The study area for coastal water birds was focused on the Port of Immingham and proposed dredge disposal sites, as well as any terrestrial habitats close to the estuary that may support the species. For non-SPA/ Ramsar species, the study area comprised terrestrial habitats within the Order limits.

Applicant's Assessment of Effects and Proposed Mitigation

Nature Conservation – Terrestrial Ecology

- 3.6.20. Chapter 8 of the ES [\[APP-050\]](#) identified the likely significant effects of the Proposed Development during construction, operation and decommissioning on terrestrial ecology and the mitigation measures proposed. It identified that the Proposed Development had been designed, as far as possible, to avoid and minimise impacts and effects to terrestrial ecology through the process of design development, and by embedding mitigation measures into the design.
- 3.6.21. A Phase 1 Habitat survey and preliminary ecological appraisal of land within the Order limits was undertaken in 2022 [\[APP-181\]](#). Additional field surveys and Phase 2 ecological surveys were carried out for woodland ground flora [\[APP-181\]](#); badger population and habitats [\[APP-181\]](#); bat foraging, commuting and roosting populations and habitats [\[APP-182\]](#); otter and water vole populations and habitats [\[APP-183\]](#); and

great crested newt populations and habitats [APP-184]. In addition, an Arboricultural assessment [APP-185] was carried out that included the Long Strip woodland, which was covered by a Tree Preservation Order.

- 3.6.22. Using these surveys, the potential impact of construction was assessed. Significant adverse effects were considered likely in relation to the proposed removal of part of the Long Strip woodland; no likely significant effects were assessed for any of the other receptors.
- 3.6.23. In relation to the partial loss of woodland at Long Strip, compensatory woodland was proposed at both on-site (Manby Road) and off-site (Battery Road) locations. However, because this compensatory woodland would take time to mature and because the woodland removal at Long Strip would be permanent and irreversible, the Applicant assessed the residual effects to remain as significant adverse.
- 3.6.24. Operation and decommissioning effects on the scoped-in receptors (lighting impact on foraging bats and noise/visual disturbance to otter and water vole) were assessed as not significant.

Nature Conservation – Marine Ecology

- 3.6.25. Chapter 9 of the ES [APP-051] identified the likely significant effects on marine ecology not included within the Habitat Regulations Assessment (HRA), during construction and operation of the IGET; decommissioning of the marine elements was not considered as part of this Application and as such the potential effects on marine ecology receptors from decommissioning were not considered in this assessment.
- 3.6.26. The ES chapter identified that the Proposed Development had been designed, as far as possible, to avoid and minimise impacts on marine ecology through embedding mitigation measures, such as minimising the dredge requirements as far as possible and optimising lighting design to avoid any unnecessary light-spill on the water or foreshore habitats.
- 3.6.27. The baseline receptors considered during the construction phase were benthic habitats and species; fish; and marine mammals. During the operational phase, these were limited to benthic habitats and species, for which a separate survey was submitted [APP-186].
- 3.6.28. From the assessments made and prior to any mitigation, some significant adverse effects were assessed in relation to migratory fish and marine mammals during the construction phase, due to marine piling operations that would include underwater noise disturbance and vibration. All other receptors for both construction and operation were assessed as not being subject to any significant effect.
- 3.6.29. Mitigation was proposed in relation to the potential effects of marine piling operations through applying soft-start procedures, using vibro marine piling where possible, and implementing seasonal and nighttime marine piling restrictions. The Applicant concluded that the residual effect, following implementation of these measures, would not be significant for migratory fish and marine mammals.

Ornithology

- 3.6.30. Chapter 10 of the ES [APP-052] identified the likely significant effects to ornithology not included within the HRA, during construction and operation of the Proposed Development; decommissioning of the marine elements was not considered as part

of this Application and as such the potential effects on ornithology receptors from decommissioning were not considered in this assessment.

- 3.6.31. The ES identified that the Proposed Development had been designed, as far as possible, to avoid and minimise impacts and effects to ornithology through minimising the footprint of the works as far as possible to reduce the potential loss of intertidal supporting habitat for waterbird species, and to minimise the loss of woodland within Long Strip.
- 3.6.32. The baseline receptors considered during the construction phase were coastal waterbirds and non-SPA/Ramsar breeding birds. During the operational phase the receptor assessed was coastal waterbirds.
- 3.6.33. From the assessments made and prior to mitigation, some significant adverse effects were considered likely to coastal waterbirds during the construction phase due to the abnormal noise and visual disturbance during marine piling. In addition, a significant adverse effect was considered likely to breeding birds due to the permanent loss of woodland habitat within the Long Strip woodland. All other receptors for both construction and operation were assessed as being not significant.
- 3.6.34. In relation to the potential effects of marine piling operations on coastal waterbirds, mitigation was proposed through winter marine construction restrictions for works within 200m of an exposed foreshore; a noise suppression system; the winter application of acoustic barrier/visual screen on approach jetty; soft start procedures; and cold weather construction restrictions. The Applicant concluded that following implementation of these measures the residual effect would not be significant.
- 3.6.35. In relation to the effect on non-SPA/ Ramsar breeding birds, whilst compensatory woodland habitat was proposed as mitigation, because of the length of time this habitat would take to mature, the Applicant assessed the residual effects of the partial loss of the Long Strip woodland would remain as significant adverse.

LOCAL IMPACT REPORT

- 3.6.36. The LIR from NELC [[AS-146](#)] provided commentary on ecology and trees in which they stated that they had no concerns over the survey information or proposed measures through construction. No concerns were raised in relation to the impact on protected species of special habitat within the terrestrial area of the Proposed Development. NELC noted that a Construction Environmental Plan (CEMP) would be required to be agreed with NELC and implemented throughout the construction phase and that this was secured by Requirement 6 of the dDCO.
- 3.6.37. NELC noted the loss of protected woodland within Long Strip but acknowledged that this loss would be required for the construction of the Proposed Development and that alternative had been assessed and dismissed [[APP-045](#)]. They noted that compensatory planting was required and that options for this were being explored.
- 3.6.38. The LIR stated that intertidal and marine aspects of the Proposed Development were more appropriately considered by Natural England (NE) and Marine Management Organisation (MMO). NELC did not make any comments in relation to ornithology.
- 3.6.39. Overall, the LIR concluded that the Proposed Development would accord with Policy 41 (Biodiversity and Geodiversity) of the NELLP.

THE EXAMINATION

3.6.40. The organisations with an interest in all biodiversity matters and who participated in the Examination were NE and the MMO; Environment Agency (EA) considered marine biodiversity only. As was clear from the signed Statement of Common Ground (SoCG) between the Applicant and the MMO [REP7-031], NE [REP7-033] and the EA [REP8-006], these organisations were satisfied with how the Applicant dealt with the scope and methodologies employed.

3.6.41. Therefore, the issues raised by IPs or the ExA that required further consideration through the Examination related to:

- marine piling times, restrictions and cumulative effects;
- partial loss of Long Strip and the compensatory woodland and habitats; and
- biodiversity enhancements.

Marine piling times, restrictions and cumulative effects

3.6.42. The ExA were concerned about the potential impact of marine piling, particularly on migratory fish, marine mammals and coastal waterbirds.

3.6.43. At ISH3 [EV3-005] the ExA asked for clarification of the marine piling restrictions that were provided in written form in ES Chapter 9 [APP-051]. In response, the Applicant submitted a table [REP1-026] which better illustrated these.

Figure 10 Marine piling restrictions [REP1-026]

Construction activity	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Jetty head			☉ sunrise to sunset		☉ sunrise to sunset	☉ 07:00 to 19:00	☉ 07:00 to 19:00					☉ 07:00 to 19:00
Approach jetty	Dry only	Dry only	☉ sunrise to sunset		☉ sunrise to sunset	☉ 07:00 to 19:00	☉ 07:00 to 19:00 >200 m	>200 m	>200 m	>200 m	>200 m	☉ 07:00 to 19:00 >200 m
Please note: • This table does not include other proposed mitigation measures that apply year-round (e.g., soft starts, noise suppression system etc.)												
Key	Restriction detail							Receptor (relevant qualifying interest features in brackets)				
	No restrictions – all construction activity allowed							N/A				
☉	Night-time piling restriction – piling not allowed between sunset and sunrise or 19:00 and 07:00							Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)				
	Piling reporting protocol: • Reports detailing the total duration of piling each day are to be submitted to the MMO on a weekly basis and the Applicant will hold fortnightly meetings with the MMO (unless otherwise agreed with the MMO) • A 60-minute contingency period is allowed as well as the 270 minutes per day maximum percussive pile driving scenario • In the event of an abnormal situation arising which triggers the contingency period, an environmental representative for the works will be notified who will agree a plan with the contractor to limit the duration of percussive piling to 330 minutes for that day, as well as measures to prevent a future recurrence • Circumstances that trigger the contingency period will be recorded and explained in the weekly reporting to the MMO – the Applicant proposes to use the fortnightly meeting to discuss and agree further corrective action with the MMO should it be required							Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)				
	Percussive piling not allowed							Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)				
Dry only	Percussive piling not allowed unless on dry intertidal areas outside of the waterbody at periods of low water							Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)				
>200 m	Construction activity (including piling) not allowed within 200 m of exposed mudflat. Note: • Construction can take place on seaward sections of approach jetty when works are >200 m from exposed mudflat • Restriction applies until an acoustic barrier/visual screen has been installed on both sides of the semi-completed structure • With the addition of acoustic barriers, noise levels on the intertidal mudflat will be less than 70 dB(A)							Overwintering birds (including qualifying features of the Humber Estuary SPA and Ramsar site)				

3.6.44. The ExA asked further questions throughout the Examination at ExQ1 [PD-008], ISH4 [EV6-002] and ExQ2 [PD-014]. These included requesting clarification of piling types and procedures, clarity on timings and how these would be interpreted and secured, as well as further detail on the potential cumulative effects, particularly with Immingham East Ro-Ro Terminal (IERRT).

3.6.45. Whilst the overall proposed seasonal and temporal restrictions remained as initially proposed, in response to the questions asked, the Applicant provided clarification on the types of piling to be employed and when each type would be allowed and also provided clarification of the data to be used to identify sunset and sunrise times. A finalised table showing these restrictions was submitted [REP4-047].

Figure 11 Schedule of proposed seasonal restrictions on construction activity [REP4-047].

Schedule of proposed seasonal restrictions on construction activity												
Construction activity	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Jetty head			☉ sunrise to sunset		☉ sunrise to sunset	☉ 07:00 to 19:00	☉ 07:00 to 19:00					☉ 07:00 to 19:00
Approach jetty	Dry only	Dry only	☉ sunrise to sunset		☉ sunrise to sunset	☉ 07:00 to 19:00	☉ 07:00 to 19:00	>200 m	>200 m	>200 m	>200 m	☉ 07:00 to 19:00 >200 m
Please note: <ul style="list-style-type: none"> This table does not include other proposed mitigation measures that apply year-round (e.g., soft starts, noise suppression system, cold weather restriction etc.). 												
Key	Restriction detail											Receptor (relevant qualifying interest features in brackets)
	No restrictions – all construction activity allowed											N/A
☉	Night-time piling restriction – piling (percussive and vibro) not allowed between sunset and sunrise or 19:00 and 07:00 (the time of sunrise and sunset will be set in accordance with HM Nautical Almanac Office data)											Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)
☉	Piling reporting protocol: <ul style="list-style-type: none"> Reports detailing the total duration of piling each day are to be submitted to the MMO on a weekly basis and the Applicant will hold fortnightly meetings with the MMO (unless otherwise agreed with the MMO) A 60-minute contingency period is allowed as well as the 270 minutes per day maximum percussive pile driving scenario In the event of an abnormal situation arising which triggers the contingency period, an environmental representative for the works will be notified who will agree a plan with the contractor to limit the duration of percussive piling to 330 minutes for that day, as well as measures to prevent a future recurrence Circumstances that trigger the contingency period will be recorded and explained in the weekly reporting to the MMO – the Applicant proposes to use the fortnightly meeting to discuss and agree further corrective action with the MMO should it be required 											Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)
	No piling of any kind											Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)
Dry only	No piling of any kind unless on dry intertidal areas outside of the waterbody at periods of low water											Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)
>200 m	Construction activity (including percussive and vibro piling) not allowed on the foreshore or within 200 m of Mean Low Water Springs. Note: <ul style="list-style-type: none"> Construction can take place on seaward sections of approach jetty when works are >200 m from Mean Low Water Springs Restriction applies until an acoustic barrier/visual screen has been installed on both sides of the semi-completed structure With the addition of acoustic barriers, noise levels on the intertidal mudflat will be less than 70 dB(A) 											Overwintering birds (including qualifying features of the Humber Estuary SPA and Ramsar site)

3.6.46. At ExQ2 [PD-014], the ExA asked the Applicant to more fully explain the restrictions relating to the cumulative effects of piling with IERRT. In their response [REP4-047], the Applicant stated that the proposed restrictions for IERRT and IGET in-combination, were expressed over a four-week period given the complexities of monitoring and ensuring compliance, both on-site and from an MMO reporting perspective. They noted that the percussive piling activity for the two projects would be undertaken by different contractors so compliance would require co-ordination between both parties.

3.6.47. Furthermore, they stated that when piling was occurring simultaneously across the two projects, the respective time periods would not be double counted as the temporal exposure to this effect would not be increased. A four-week reporting period was proposed to provide a practical and realistic timeframe for collating and reviewing the piling logs to ensure adherence to the restrictions and would also provide a manageable timeframe in which to co-ordinate the ongoing review of compliance with the MMO at the agreed reporting intervals. The ExA were satisfied with this clarification.

3.6.48. A piling protocol for IGET was agreed between the Applicant and the MMO that included details of the overall time commitments and a reporting schedule. This was

secured in the oCEMP [REP7-011] and Deemed Marine Licence (DML) at Schedule 3 of the dDCO [REP7-004].

ExA's Considerations

- 3.6.49. The ExA acknowledges that through the Examination, the Applicant addressed the concerns raised in relation to clarity and consistency regarding the types of piling and when each method would be used, the seasonal and temporal restrictions and the cumulative effects of marine piling from IGET and IERRT.
- 3.6.50. Whilst mitigation has been agreed and secured within the oCEMP [REP7-011] and DML at Schedule 3 of the dDCO [REP7-004], the ExA considers that this would not completely remove the potential harm that could be caused to migratory fish, marine mammals and coastal birds from marine piling, and that this harm weighs against making the Order. However, given that with the implementation of the proposed mitigation any harm would be reduced, the ExA have attributed this a little weight in the planning balance.

Partial loss of Long Strip and compensatory woodland and habitats

- 3.6.51. Reflecting concerns raised by NELC [RR-022], the ExA asked questions at ISH2 [EV4-006] regarding the suitability of the location of proposed compensatory woodland at Manby Road, shown in the outline Woodland Compensation Strategy (oWCS) [APP-224]. The Applicant's response [REP1-065] made reference to a plan [REP1-068] that showed an alternative site for compensatory woodland was being explored, in consultation with NELC. The additional off-site woodland compensation that was proposed was a site at Battery Road, which was owned by NELC and designated by them for biodiversity enhancement.
- 3.6.52. In response to questions on compensatory woodland at ExQ1 [PD-008], NELC voiced further concerns [REP1-071] about important grassland habitat that had been identified at the Manby Road site, which would reduce the area that could be available for woodland creation.
- 3.6.53. The Applicant subsequently proposed a reduced scheme at Manby Road that protected the important grassland and updated the oWCS to an outline Woodland Compensation Plan (oWCP) [REP1-068]. This provided additional detail on the numbers of trees to be planted, along with the woodland and habitat areas that would be created at both Manby Road and Battery Road, and also indicated areas of important grassland habitat for protection at Manby Road.
- 3.6.54. By the end of the Examination a s106 Agreement dealing with funding and future maintenance of the Battery Road woodland compensation area had been agreed between the Applicant and NELC. This was submitted in counterpart, [REP8-010] and [REP8-011], dated 20 August 2024 and sealed by both parties.
- 3.6.55. In addition to the updated oWCP [REP7-051] and s106 Agreement ([REP8-010] and [REP8-011]), a CEMP was submitted that specifically related to Long Strip [REP6-025]. This set out the works required to fell the trees in Long Strip, along with the mitigation and enhancement measures proposed. This document was provided to minimise any delay to these works being undertaken, rather than being contained within the main oCEMP that requires post-consent agreements. The Applicant considered that this was particularly important given the desire to undertake tree removal works outside of the bird nesting season where possible. This document was secured in Schedule 15 of the dDCO [REP7-004].

- 3.6.56. At the close of the Examination, in addition to the signed s.106 agreement, there was a signed SoCG between the Applicant and NELC [REP7-023] that confirmed that all matters regarding the loss of woodland at Long Strip and the proposed compensatory planting and habitat creation had been agreed.

ExA's Considerations

- 3.6.57. The ExA considers that because of the potential impact on non-SPA/ Ramsar breeding birds and the loss of the protected trees, the permanent and irreplaceable loss of part of the Long Strip woodland would result in significant harm to this feature.
- 3.6.58. The ExA acknowledges that through the Examination, the Applicant has addressed the concerns raised in relation to the suitability of the proposed compensatory planting at Manby Road and, through collaboration with NELC, has provided an additional off-site area at Battery Road.
- 3.6.59. In addition, the Long Strip CEMP [REP6-025] has provided clarity on the works required for tree clearance and woodland enhancement at Long Strip, and this has been secured in Schedule 15 of the dDCO [REP7-004]. Existing important grassland at Manby Road would also be protected and enhanced; secured through the oWCP [REP7-021].
- 3.6.60. However, the ExA remains of the view that the partial loss of Long Strip would result in harm in relation to non-SPA/ Ramsar breeding birds and the general loss of protected trees. This weighs against the making of the Order. Whilst the compensatory measures and controls would offset some of this harm, the partial loss of this woodland is permanent and irreplaceable and as such, the ExA considers this effect to carry moderate weight in the planning balance.

Biodiversity Enhancements

On-site

- 3.6.61. In their RR [RR-019], NE noted that whilst there was no mandatory requirement for Biodiversity Net Gain (BNG), they strongly recommended that BNG provision should be secured. The ExA explored this at ISH2 [EV4-006] requesting further details of how the Applicant sought to secure biodiversity enhancements where possible.
- 3.6.62. In their response [REP1-065], the Applicant explained that Work Nos. 3, 5 and 7 would have substantial operational and security constraints that left limited space or scope for additional planting around the margins. However they had identified opportunities to deliver areas of enhancement to the existing scrub and poor quality land, and these were shown in the outline Landscape and Ecology Management Plan (oLEMP) [APP-225].
- 3.6.63. During the Accompanied Site Inspection (ASI) [EV1-003] the ExA viewed the areas shown in the oLEMP [APP-225], and particularly the areas on or adjacent to Work No.7 in the vicinity of the Queens Road properties. At ExQ2 [PD-014] the ExA asked the Applicant why there were areas within the Order limits that had not been included in the proposed enhancement. In response, the Applicant submitted an updated oLEMP [REP4-012] that showed a slight increase in the area available for the planting of species rich grassland adjacent to Work No.7.

Off-site

- 3.6.64. To address the potential loss of intertidal mudflat habitat, the Applicant submitted a Without Prejudice Report to inform Habitats Regulations Assessment Derogation

(Derogation Report) [APP-235], in which they proposed an area of compensatory habitat at the “Outstrays to Skeffling Managed Realignment Scheme” (OtSMRS). This is a joint initiative between the EA and the Applicant on the north side of the Humber estuary, on land within East Riding of Yorkshire Council (ERYC), to create new habitats that will replace habitats lost to development in other parts of the estuary from development.

- 3.6.65. The ExA sought clarification at ISH4 [EV6-002] on what would happen should the SoS conclude that there was no Adverse Effect on Integrity (AEol). The Applicant responded at [REP3-070], confirming that regardless of the SoS findings in relation to AEol, the allocation of 1ha of intertidal mudflat to the Proposed Development would still be delivered, but as enhancement rather than compensation.
- 3.6.66. Furthermore, the Applicant confirmed [REP3-070] that delivery of this allocation, be it compensation or enhancement, would be secured through a Unilateral Undertaking (UU) and provided a draft of this document at D3 [REP3-078].
- 3.6.67. At the end of the Examination, NE’s position was that they agreed with the Applicant’s finding of no AEol and as such the compensatory measures proposed at OtSMRS would not be required.
- 3.6.68. A completed UU was submitted [REP8-013] to secure the allocation of 1ha intertidal at OtSMRS to the Proposed Development.

ExA’s Considerations

- 3.6.69. The ExA notes that the Applicant has identified limited areas within the Order limits that would be appropriate for biodiversity enhancement, while acknowledging the constraints of the operational and functional requirements of the HPF. The ExA considers that this would result in a limited beneficial effect.
- 3.6.70. If the SoS concludes that there is no AEol, then compensatory measures would not be required. Should this be the case, the Applicant has confirmed that the 1ha of intertidal mudflats at OtSMRS would still be provided as enhancement and the ExA finds that this would add to the biodiversity enhancements relating to the Proposed Development, which would result in a beneficial effect.
- 3.6.71. Should the SoS conclude that there is AEol, then this 1ha of intertidal mudflat would instead be provided as compensation, in accordance with the Derogations Report.
- 3.6.72. However, whilst the ExA considers that biodiversity enhancements provided through the allocation at OtSMRS would represent a beneficial effect, it is understood that OtSMRS will go ahead with or without IGET, and as such, the ExA attributes a little weight to this beneficial effect.
- 3.6.73. The ExA therefore concludes overall that biodiversity enhancement issues provide a little beneficial weight towards the making of the Order in the planning balance.

CONCLUSIONS

- 3.6.74. In relation to non-HRA biodiversity matters, the ExA are satisfied that the effects of the Proposed Development on terrestrial and marine biodiversity, and ornithology, have been adequately assessed and as such, the ExA consider that the Application meets the requirements of NPSfP.

- 3.6.75. Taking into account the embedded mitigation, the ExA consider that the Proposed Development would avoid significant harm to the majority of biodiversity interests, and where possible takes opportunities to conserve and enhance biodiversity.
- 3.6.76. However, the ExA has found moderate weight against making the Order in relation to the partial loss of Long Strip woodland and a little weight against making the Order in relation to marine piling operations.
- 3.6.77. The ExA have found that biodiversity enhancements, in respect of the limited planting within the Order limits and the 1ha intertidal mudflats at the OtSMRS, are found to have a little beneficial weight in favour of making the Order.
- 3.6.78. The ExA acknowledges the mitigation and compensatory measures proposed to address the harm identified, however the ExA considers that these measures would not completely remove the potential harm in relation to biodiversity matters.
- 3.6.79. Overall, the ExA concludes that some harm would remain, particularly in relation to the partial loss of Long Strip and marine piling operations, and attributes a little weight against making the Order.

3.7. LANDSCAPE AND VISUAL EFFECT

BACKGROUND AND POLICY CONTEXT

- 3.7.1. This section considers the effects of the Proposed Development in relation to the landscape and visual impacts. It includes a summary of legislation, policy, and guidance relevant to considering landscape and visual effects.

National Policy Statements

- 3.7.2. The NPSfP addresses landscape and visual impacts in Section 5.11. At Paragraph 5.11.2, the NPSfP points out that port development can sometimes have a negative impact on the characteristics and visual amenity of the landscape, which can be a particular problem where the local area is dependent on an acknowledged tourist activity destination and/or is important for recreation. The impact can be the result of the physical character of the port development as well as the introduction of light pollution and noise to areas that may otherwise have been tranquil.
- 3.7.3. Paragraph 5.11.3 states that the applicant should carry out a landscape and visual assessment and report it in the ES. In accordance with Paragraphs 5.11.4 and 5.11.5, the applicant's assessment should include the effects during construction of the project and the effects of the completed development and its operation on landscape components and character. The applicant's assessment should include the visibility of the project including any light pollution effects on local amenity, rural tranquillity and nature conservation.
- 3.7.4. Paragraph 5.11.6 considers landscape impact and identifies that in judging the impact of a project on landscape, the SoS should consider existing character of the local landscape, its current quality, how highly it is valued and its capacity to accommodate change. The aim should be to minimise harm to the landscape.
- 3.7.5. Paragraph 5.11.12 notes that local policies based on landscape character assessment should be paid particular attention. Paragraph 5.11.13 requires the SoS to consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by reasonable mitigation.

- 3.7.6. In relation to visual impact, Paragraph 5.11.14 states that the SoS will have to judge whether the visual effects on receptors outweigh the benefits of the development. Paragraph 5.11.15 advises that in their supporting evidence, applicants might find it helpful to draw attention to any examples of existing permitted infrastructure they are aware of with a similar magnitude of impact on sensitive receptors.
- 3.7.7. Paragraph 5.11.17 considers mitigation and notes that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design including colours and materials, and landscaping schemes, depending on the size and type of proposed project. It notes that materials and designs of buildings should always be given careful consideration.
- 3.7.8. The policy requirements in NPS-EN1 in relation to Landscape and Visual impacts are largely consistent with those of the NPSfP.

Other Legislation, Policy and Guidance

- 3.7.9. A full account of legislation, policy, and guidance can be found in Sections 2 and 7.13 of the Planning Statement [[APP-226](#)] and Section 13.3 of Chapter 13 of the ES [[APP-055](#)].

THE APPLICATION

Environmental Statement

- 3.7.10. The ES Chapter 13 (Landscape and Visual Impact) [[APP-055](#)] sets out the assessment methodology, study area, baseline conditions and the likely impacts and effects on the landscape and seascape as a result of the construction and operation of the Proposed Development.
- 3.7.11. The ES was supported by the following:
- Figure 13.1: Project Location and Study Area [[APP-108](#)];
 - Figure 13.2: Zone of Theoretical Visibility – Bare Earth [[APP-109](#)];
 - Figure 13.3: Zone of Theoretical Visibility – Visual Screening [[APP-110](#)];
 - Figure 13.4: Landscape Character Areas – National and Regional [[APP-111](#)];
 - Figure 13.5: Landscape Character Areas - Local [[APP-112](#)];
 - Figure 13.6: Designations [[APP-113](#)];
 - Figure 13.7: Viewpoint Locations [[APP-114](#)];
 - Figure 13.8.1 to 13.8.13: Summer Viewpoint Photography [[APP-115](#)];
 - Figure 13.9.1 to 13.9.13: Winter Viewpoint Photography [[APP-116](#)];
 - Figure 13.10.1 to 13.10.6: Photomontages [[APP-117](#)];
 - Appendix 13.A: Landscape and Visual Assessment Methodology [[APP-193](#)]; and
 - Appendix 13.B: Landscape Character Baseline [[APP-194](#)].
- 3.7.12. By the end of the Examination, the following documents had been updated:
- Figure 13.1: Project Location and Study Area [[AS-099](#)];
 - Figure 13.2: Zone of Theoretical Visibility – Bare Earth [[AS-100](#)];
 - Figure 13.3: Zone of Theoretical Visibility – Visual Screening [[AS-101](#)];
 - Figure 13.4: Landscape Character Areas – National and Regional [[AS-102](#)];
 - Figure 13.5: Landscape Character Areas - Local [[AS-103](#)];
 - Figure 13.6: Designations [[AS-104](#)]; and
 - Figure 13.7: Viewpoint Locations [[AS-105](#)].

Scope and Methodology

- 3.7.13. The formal assessment of the landscape and visual impacts was undertaken in Chapter 13 of the ES [APP-055], taking into account the best practice guidance, including amongst others, the Landscape Institute and Institute of Environmental Management and Assessment (2013), Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA3).
- 3.7.14. The Applicant gathered information on the existing baseline through a desk-based study. A Bare Earth Zone of Theoretical Visibility (ZTV) [APP-109] was produced that indicated a 3km study area. This study used vertical parameters of 35m Above Ordnance Datum (AOD) for Work No. 1, 15m AOD for Work Nos. 2, 3 and 5 and 20m AOD for Work No. 7.

Applicant's Assessment of Effects and Proposed Mitigation

- 3.7.15. Chapter 13 of the ES [APP-055] identified that there were no national statutory landscape designations within the study area, although the Lincolnshire Wolds National Landscape is situated approximately 10kms south of the Proposed Development.
- 3.7.16. Parts of the Order limits and study areas fall within The Humber Estuary National Character Area (NCA). The character area is broadly split into two components, the largest being the expanse of water associated with the Humber Estuary. The character area provides a varied landscape, with open and extensive views across remote and rural areas, contrasting with heavy industry associated with towns and ports.
- 3.7.17. The IGET lies within Marine Character Area (MCA) 6: Humber Water, which is the second largest coastal plain estuary in the UK and is bound by intertidal mud and sand flats and saltmarsh. These habitats provide internationally important wildlife corridors. The character area contains the UK's largest port complex, and views are dominated with an extensive and complex mix of industrial, commercial, agricultural, residential and tourism land uses.
- 3.7.18. The HPF is located within Regional Character Area (RCA) 3: The Northern Marshes, which is defined by the industrial features along the coast clustered around the deep-water Port of Immingham. The RCA is visually dominated by large and tall structures that are linked with the Port and other heavy industry.
- 3.7.19. The HPF is also within Local Landscape Character Area (LCA) A – Humber Estuary, as defined by the NELC Landscape Character Assessment.
- 3.7.20. All of the above landscape and seascape character areas were assessed as having a low sensitivity rating to future change. Information provided from the online Light Pollution and Dark Skies interactive map showed existing light pollution levels in the vicinity of the Proposed Development to be high.
- 3.7.21. The baseline receptors used for the assessment of likely effects were noted as the identified seascape and landscape character areas, users of the spaces and surroundings (such as occupiers of dwellings, users of recreational areas and footpaths and community facilities etc), and elements within the environment, such as the Long Strip woodland and the seascape of the Humber estuary.
- 3.7.22. The Applicant identified likely effects from the Proposed Development that primarily related to the visibility of both temporary and permanent proposed structures,

including how this might affect the perceptual qualities and tranquillity of a character area and the direct loss of landscape features within the Order limits. They stated that the Proposed Development had been designed, as far as possible, to avoid and minimise effects on landscape, seascape, and visual receptors through the process of design development, and by embedding mitigation measures into the design.

- 3.7.23. The receptors for both the construction and operation phases included the identified character areas, the Order limits and immediate setting, and the viewpoints shown in Viewpoint Locations [\[APP-114\]](#). Partial loss of woodland in Long Strip was also considered in the assessment. The likely effects were considered in relation to construction, with decommissioning of the HPF included within this section due to the similar magnitude of impact, and operation.
- 3.7.24. The Applicant concluded that during the construction phase, there would be a significant adverse effect on the site and its immediate setting and from Viewpoints 2 and 3 (Public Right of Way (PRoW) and proposed England Coast Path) as a result of the construction activity, use of farmland for temporary laydown and the removal of vegetation. Viewpoint 11 (residential receptors on Queens Road) was also assessed as being subject to significant adverse effects due to the current openness of the West Site and the proximity of the dwellings.
- 3.7.25. Once the structures were erected and during the operational phase, the Applicant concluded that overall, the aesthetic and perceptual qualities of the area would remain largely similar to the present, with large-scale static structures visible within the wider landscape. However, the Applicant assessed that significant adverse effects would remain for Viewpoints 2, 3 and 11 due to the permanent change that would be experienced through the presence of buildings in areas where there are currently none.
- 3.7.26. The impact during both construction and operation on the identified seascape and landscape character areas was assessed as not significant due to the existing context, i.e. the heavily industrialised Port infrastructure.
- 3.7.27. The Applicant considered that the partial loss of woodland at Long Strip was also not significant in landscape terms due to the scale and nature of the industrial context, meaning that the loss of trees would not materially change the nature of existing landscape. Moreover, the trees to be removed were located on the northwest side of Long Strip, meaning that from the coastal path (Viewpoints 2 and 3), a band of trees would still be visible in the view, which would help screen the pipeline corridor (Work No. 2).
- 3.7.28. The Applicant stated that mitigation opportunities in relation to both IGET and the HPF from Viewpoints 2 and 3 were limited due to the size and scale of the Proposed Development. Furthermore, the Applicant considered that the addition of landscape features or tree planting would not be effective in reducing these effects on visual amenity.
- 3.7.29. The Applicant stated that Viewpoint 11 included the residential properties on the west side of Queens Road, which gave rise to the significant adverse effect assessed due to the potential impact on residents. However, the Applicant also stated that they were in discussions with the landowners and occupiers of these properties to negotiate their acquisition and that if it were not possible to acquire the properties through negotiation, compulsory acquisition powers for these properties would be sought through the DCO.

- 3.7.30. The Applicant concluded that the receptors at Viewpoints 2, 3 and 11 would be likely to experience significant adverse impacts during the construction phase. The Applicant considered that these would remain during operation for receptors at Viewpoints 2 and 3 due to the sensitivity of these receptors (recreational) and the close distance of these receptors to the Proposed Development.
- 3.7.31. In relation to Viewpoint 11, no assessment was provided for operation due to the ongoing voluntary acquisition of the properties. This acquisition was not completed at the time of submission of the Application, but no other mitigation measures were proposed.
- 3.7.32. Due to the impact on the identified seascape and landscape character areas during both construction and operation being assessed as not significant, these receptors were not considered any further.

LOCAL IMPACT REPORT

- 3.7.33. The LIR from NELC [[AS-146](#)] stated that the Proposed Development would be clearly visible in the immediate and wider landscape. It identified the wider landscape as including large scale industrial port infrastructure and noted that views of the development would be gained from both near and far, including from the highway network, residential properties in Immingham and the local footpath network. However, it concluded that whilst visible in the landscape, the Proposed Development would not stand alone but would be part of the existing industrial context.
- 3.7.34. NELC continued by stating that whilst the overall scale of the development would be extensive, the context of the Proposed Development includes both the existing structures and extant permissions for additional industrial facilities that have not yet been constructed. This existing and future context is important in considerations.
- 3.7.35. Overall, the LIR concludes that the proposed development would accord with Policy 42 (Landscape) of the NELLP.

THE EXAMINATION

- 3.7.36. In relation to the landscape and visual impacts, other than NELC, no IPs involved in the Examination raised any substantial issues and consequently, issues arising were mainly derived from the ExA's questioning of the Applicant.
- 3.7.37. NELC [[AS-146](#)] requested consideration of views from the Lincolnshire Wolds National Landscape. The Applicant provided these [[REP4-038](#)] and concluded that they demonstrated that the Proposed Development would have negligible additional impact on views from the protected landscape. NELC made no further comments on this issue. By the end of the Examination, the signed SoCG between the Applicant and NELC [[REP7-023](#)] indicated that all matters relating to landscape and visual impacts had been agreed.
- 3.7.38. The ExA had concerns regarding the Applicant's assessment of no significant effect on Viewpoint 4 due to the existing open views that would be changed dramatically by the construction of the HPF on the West Site. Additional photomontages from key Viewpoints (3, 4 and 11) were requested by the ExA at ExQ1 [[PD-008](#)]. The Applicant provided these [[AS-037](#)] which clearly indicated the scale of the HPF and jetty access road that the ExA considered could be harmful in near views for pedestrians on Kings Road and users of the PRow.

- 3.7.39. The Applicant considered [APP-055] that the partial loss of woodland at Long Strip was not significant in landscape terms and that the trees proposed for removal were located on the northwest side of Long Strip, thereby retaining a band of trees that would help screen the pipeline corridor in views from the estuary. However, the ExA were concerned that this was a narrow analysis and that views from the PRoW that runs through Long Strip would be severely affected by the woodland removal. Acknowledging that alternative locations had been considered and rejected the ExA did not query this during the Examination.
- 3.7.40. At ISH5 [EV7-002] the ExA requested that the Applicant produce a document that outlined all the nearby existing and consented development in order to understand the context. The Applicant provided this at [REP3-065] in tabular form and also provided plans and long sections to better understand the contextual setting of the HPF. This information was updated in [REP4-047] to include an additional long section, requested by the ExA at ExQ2 [PD-014].
- 3.7.41. At ISH8 [EV11-002] the ExA asked about the relative scales of the buildings shown. The Applicant confirmed that these “long sections” were better referred to as “elevations along a plane” as they did not provide perspective views of the other developments in relation to the Proposed Development, only a snapshot of relative heights. The Applicant clarified the wording of these diagrams [REP5-050].

CONCLUSIONS

- 3.7.42. The ExA are satisfied that the effects of the Proposed Development on landscape, seascape and visual receptors have been adequately assessed and as such, the ExA consider that the Application meets the requirements of the NPSfP.
- 3.7.43. The ExA finds that the Proposed Development would avoid significant harm to the Lincolnshire Wolds National Landscape as well as local landscape and seascape character areas.
- 3.7.44. By the end of the Examination, the residential properties on Queens Road had all been acquired voluntarily and so potential harm to residents had been removed.
- 3.7.45. However, the Proposed Development would introduce substantial structures into areas where medium and long-range views are currently available. As a result, the ExA finds a great adverse effect on views along the estuary, on the PRoW running through Long Strip and across the West Site.
- 3.7.46. The ExA acknowledges the Applicant’s position that due to operational and security constraints, opportunities for effective mitigation are limited and that the Applicant has sought to reduce the impact through embedded mitigation, consistent with the requirements of the NPSfP.
- 3.7.47. On balance, the ExA considers that the harm to the landscape weighs against making the Order. However, the ExA acknowledges the existing heavily industrialised context, along with several extant permissions for additional large scale industrial structures and developments nearby. Given this context, along with the mitigation that would be delivered through the rDCO (Appendix D), the ExA have attributed this moderate weight against making the Order in the planning balance.

3.8. FLOOD RISK AND COASTAL CHANGE

BACKGROUND AND POLICY CONTEXT

3.8.1. This section of the Report deals with flood risk and coastal change. It covers the following main issues:

- Physical processes;
- Flood risk, drainage, and coastal protection; and
- Climate change adaptation.

3.8.2. Climate change adaptation has close interrelationships with flood risk and coastal change. Therefore, it has been addressed within this section of the Report rather than Section 3.4 on climate change.

3.8.3. This Report uses terms consistent with the NPSfP. As such, it uses the term climate change adaptation rather than the Applicant's term climate change resilience.

3.8.4. This section of the Report does not deal with the quality of the water environment, or the Water Framework Directive. Instead, these issues are dealt with in Section 3.9 on water quality and resources.

National Policy Statements

3.8.5. Paragraph 5.2.1 of the NPSfP states flood risk is the result of natural processes that play an important role in shaping the natural environment.

3.8.6. Paragraphs 5.2.3 to 5.2.5 of the NPSfP set out that the applicant's assessment of flood risk should be conducted in the context that port development is compatible with high flood risk areas. However, all projects in Flood Zone 3 must be supported by a Flood Risk Assessment (FRA).

3.8.7. Paragraphs 5.2.9 to 5.2.15 of the NPSfP state that decision makers should be satisfied that the Proposed Development is supported by an appropriate FRA, subjected to the sequential test and exception test where necessary, is in line with national and local flood risk management strategies and has prioritised sustainable drainage to minimise flood risk elsewhere.

3.8.8. Paragraph 4.13.2 of the NPSfP states that climate change adaptation is a necessary measure in response to global greenhouse gas emissions that have committed us to some degree of continued climate change in the short term.

3.8.9. Paragraphs 4.13.6 and 4.13.7 of the NPSfP set out that the applicant's assessment of climate change adaptation should be made in the context of new port infrastructure remaining in operation over many decades, in the face of a changing climate. Any assessment must consider climate change and should use the latest projections and Environment Agency (EA) Flood Maps.

3.8.10. Paragraph 4.13.11 of the NPSfP sets out that decision makers should be looking beyond the latest set of UK climate projections, to assess whether critical features of the design of new port infrastructure would be seriously affected by more radical changes to the climate than the current projections predict.

3.8.11. Paragraphs 5.3.1 to 5.3.3 of the NPSfP set out that coastal change means physical change to the shoreline, including dredging, dredge spoil deposition, marine landing

facility construction and flood and coastal protection measures, which could result in direct effects on the coastline and seabed.

- 3.8.12. Paragraph 5.3.5 of the NPSfP states that the applicant's assessment of coastal change should include, among other things, the impact of the proposed development on coastal processes and geomorphology, including by taking account of potential impacts from climate change.
- 3.8.13. Paragraphs 5.3.8 and 5.3.9 of the NPSfP states that decision makers should be satisfied that new development is resilient to coastal change and consent should not normally be granted in areas of dynamic shorelines where inhibiting sediment flows could impact coastal processes at other locations.
- 3.8.14. NPS EN-1 deals with hydrogen production and carbon capture storage and is therefore important and relevant in this case. NPS EN-1 is broadly consistent with the policy objectives of the NPSfP in relation to flood risk and coastal change.

Other Legislation, Policy and Guidance

- 3.8.15. An account of important and relevant legislation, policy, and guidance can be found in Sections 2, 7.3, 7.6 and 7.7 of the Planning Statement [[APP-226](#)], Section 16.3 of the ES [[APP-058](#)], Section 18.3 of the ES [[APP-060](#)], Section 3 of the FRA [[AS-134](#)] and Section 19.3 of the ES [[APP-061](#)].
- 3.8.16. Appendix A of this Report includes a table listing the legislation, policy, and guidance relevant to the whole Application.

The National Planning Policy Framework

- 3.8.17. The NPPF is important and relevant in respect of flood risk and coastal change, including Chapter 14, which among other things covers the sequential test and exception test in relation to flood risk.

North East Lincolnshire Local Plan

- 3.8.18. The NELLP establishes the land use strategy and development management policies for the area to ensure that growth is planned for and managed in accordance with sustainable development objectives. The NELLP includes policies on flood risk, sequential testing, and sustainable drainage.

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Environmental Statement

- 3.8.19. Chapter 16: Physical Processes of the ES [[APP-058](#)] included an assessment of the Proposed Development in relation to marine physical processes. The assessment was supported by the following figures and appendices:

- Figure 16.1: Regional setting within wider Humber [[APP-126](#)];
- Figure 16.2: Bathymetric data across project site [[APP-127](#)];
- Figure 16.3: Current and wave rose for the site from the Project survey data [[APP-128](#)];
- Figure 16.4: Particle Size Distribution (PSD) across Project site and disposal grounds [[APP-129](#)];
- Figure 16.5: Project scheme elements [[APP-130](#)];
- Figure 16.6: Maximum excess SSC (top) and sedimentation (bottom) resulting from the full proposed capital dredge works [[APP-131](#)];

- Figure 16.7: Excess SSC (top) and sedimentation (bottom) at locations up- (left) and down-estuary (right); tide for context [[APP-132](#)];
- Figure 16.8: Instantaneous excess SSC (top) and sedimentation (bottom) following discrete disposal events [[APP-133](#)];
- Figure 16.9: Baseline (top) and predicted change (bottom) in peak ebb (left) and flood (right) spring tide [[APP-134](#)];
- Figure 16.10: Timeseries of predicted change to current speed, direction and bed shear stress for points P1, P2, P3 and P4 [[APP-135](#)];
- Figure 16.11: Timeseries of predicted change to current speed, direction and bed shear stress for points P5, P7, P8 and P9 [[APP-136](#)];
- Figure 16.12: Timeseries of predicted change to current speed, direction and bed shear stress for points P6, P10, P11 and P12 [[APP-137](#)];
- Figure 16.13: Baseline (top) and predicted change (bottom) in peak ebb (left) and flood (right) spring tide with vessel on-berth [[APP-138](#)];
- Figure 16.14: Predicted difference (to baseline) in bed thickness change over a mean spring neap cycle [[APP-139](#)];
- Figure 16.15: Predicted change to 0.5-yr Hs from northeast (top) and east (bottom) [[APP-140](#)];
- Figure 16.16: Predicted change to 0.5-yr Hs from southeast (top) and to 50-year Hs from northeast (bottom) [[APP-141](#)];
- Figure 16.17: Predicted change to 50-yr Hs for 50-yr wave event from east (top) and southeast (bottom) [[APP-142](#)];
- Appendix 16.A: Numerical Model Calibration [[APP-205](#)];
- Appendix 16.B: Geophysical Survey Report [[APP-206](#)]; and
- Appendix 16.C: AWAC Deployment: Hydrodynamic Study [[APP-207](#)].

3.8.20. Chapter 18: Water Use, Water Quality, Coastal Protection, Flood Risk and Drainage of the ES [[APP-060](#)] included an assessment of the Proposed Development in relation to flood risk, drainage and coastal protection. The assessment was supported by the following figures and appendices:

- Figure 18.1: Site Location Plan [[APP-146](#)];
- Figure 18.2: Environment Agency Flood Map for Planning [[APP-147](#)];
- Figure 18.3: Environment Agency Surface Water Flooding [[APP-148](#)];
- Appendix 18.A: Flood Risk Assessment [[APP-209](#)]; and
- Appendix 18.B: Drainage Strategy [[APP-210](#)].

3.8.21. During the Examination the Applicant provided updated versions of some figures and appendices and the final versions of these are listed below:

- Figure 18.1: Site Location Plan [[AS-116](#)];
- Figure 18.2: Environment Agency Flood Map for Planning [[AS-117](#)];
- Figure 18.3: Environment Agency Surface Water Flooding [[AS-118](#)]; and
- Appendix 18.A: Flood Risk Assessment [[AS-134](#)].

3.8.22. Chapter 19: Climate Change of the ES [[APP-061](#)] included an assessment of the Proposed Development in relation to climate change adaptation. The assessment was supported by the following figures and appendices:

- Appendix 19.A: Greenhouse Gas Assessment [[APP-212](#)];
- Appendix 19.B: Climate Change Resilience (CCR) Assessment [[APP-213](#)]; and
- Appendix 19.C: In-Combinations Climate Change Impact (ICCI) Assessment [[APP-214](#)].

Scope and Methodology

Physical Processes

- 3.8.23. Chapter 16 of the ES [\[APP-058\]](#) used an assessment method where the effect was expressed in terms of “exposure to change”. However, in most cases, the resultant effects on environmental receptors were assessed in their own respective technical chapter of the ES. For example, impacts on the existing sedimentation process and effects on the structure and function of marine habitats and their associated species were assessed in Chapter 8 of the ES [\[APP-051\]](#) and not Chapter 16 of the ES [\[APP-058\]](#).
- 3.8.24. Consequently, Chapter 16 of the ES [\[APP-058\]](#) was limited to assessing the impact on physical processes in and of themselves and some environmental receptors not covered by other technical chapters of the ES. Such as impacts on the existing sedimentation process and effects on the structure of existing flood defences.
- 3.8.25. The study area was described in Paragraph 16.5.4 of the ES [\[APP-058\]](#) and included the site, the adjacent Immingham coastline and existing jetties across the nearfield and the central part of the Humber Estuary. It also included the farfield region of the Humber Estuary upstream to Hull Bend. This area was illustrated in Figure 16.1 of the ES [\[APP-126\]](#).
- 3.8.26. The baseline conditions were established by analysing several sources of information. These were described in Paragraph 16.4.4 of the ES [\[APP-058\]](#), which among other things included bathymetric survey data, site-specific marine sediment samples and historic marine surface sediment samples.

Flood Risk, Drainage and Coastal Protection

- 3.8.27. Chapter 18 of the ES [\[APP-060\]](#) used an assessment method based on the importance of each flood risk, drainage and coastal protection receptor and the magnitude of impact associated with the Proposed Development. These were used to derive the significance of effect.
- 3.8.28. The assessment method criterion was informed by Highways England: Design Manual for Roads and Bridges Sustainability & Environment Appraisal LA 113 Road Drainage and the Water Environment (2020). And the Department for Transport: Transport Analysis Guidance Unit A3 Environmental Impact Appraisal (2022).
- 3.8.29. The study area used a 1km radius around the Proposed Development defined on the Site Location Plan [\[APP-146\]](#). This provided a starting point and was expanded on a professional judgement basis. It included the Humber Estuary, Stallingborough North Beck Drain, Habrough Marsh Drain, Immingham Pump Drain, other minor land drainage ditches and flood defences.
- 3.8.30. The baseline conditions were established by analysing several sources of information. These were described in Paragraph 18.6.1 of the ES [\[APP-060\]](#), which among other things included the Humber Flood Risk Management Strategy (2008) and the Environment Agency Flood Maps for Planning (2022).

Climate Change Adaptation

- 3.8.31. Chapter 19 of the ES [\[APP-061\]](#) used an assessment method based on the likelihood of a climate change impact occurring and the consequences for the Proposed Development which, as a single entity, was identified as the sole receptor for assessing climate change adaptation.

3.8.32. The study area for climate change adaptation was limited to Proposed Development as defined by the Site Location Plan [\[APP-069\]](#).

3.8.33. The baseline conditions were established by analysing several sources of information, including the Met Office Historic Climate Data (2020) and Met Office UK Climate Projections (UKCP) (2018). This was set out in Paragraphs 19.4.26 and 19.4.27 of the ES [\[APP-061\]](#).

Applicant's Assessment of Effects and Proposed Mitigation

Physical Processes

3.8.34. Chapter 16 of the ES [\[APP-058\]](#) stated that the Proposed Development was designed to avoid and minimise impacts on physical process receptors through design development. For example, by embedding mitigation measures into the design, such as minimising the capital dredge requirements in the context of the existing bathymetry.

3.8.35. In terms of construction, the ES [\[APP-058\]](#) assessed the potential impact of marine piling, capital dredge and disposal, and construction vessel movements on bathymetry and hydrodynamics. In terms of operation, the ES [\[APP-058\]](#) assessed the potential impact of the Proposed Development's marine infrastructure on bathymetry and hydrodynamics.

3.8.36. Given the existing baseline, and the considerable existing maintenance dredging associated with other operations within the study area, the Applicant found the Proposed Development's impact on physical processes were either negligible or low in 'exposure to change' as illustrated by Table 16-9 of the ES [\[APP-058\]](#). Overall, residual effects on physical processes receptors were assessed as not significant.

Flood Risk, Drainage and Coastal Protection

3.8.37. Chapter 18 of the ES [\[APP-060\]](#) stated that the Proposed Development was designed to avoid and minimise impacts on flood risk, drainage and coastal protection receptors through the process of design development, and by embedding mitigation measures into the design. For example, by raising finished floor levels and attenuating drainage to protect against flooding.

3.8.38. The full list of receptors and associated descriptions of importance can be found in Table 18-11 of the ES [\[APP-060\]](#).

3.8.39. In terms of construction, the ES [\[APP-060\]](#) assessed floodplain inundation from flooding sources, changes to flow regimes and/or water levels, changes to surface water runoff rates and volumes, and exposure to flood water.

3.8.40. The oCEMP [\[APP-221\]](#) set out a framework of embedded measures to avoid and mitigate coastal protection, flooding and drainage impacts during construction. Full details were secured by Requirement 6 of the dDCO [\[APP-006\]](#).

3.8.41. Overall, Table 18-12 of the ES [\[APP-060\]](#) summarised the impacts, mitigation and residual effects during construction. If the identified avoidance and mitigation measures were implemented during construction, then whatever the magnitude of construction impact or importance of the receptor, the residual effects would not be significant.

- 3.8.42. In terms of operation, the ES [\[APP-060\]](#) again assessed floodplain inundation from flooding sources, changes to flow regimes and/or water levels, changes to surface water runoff rates and volumes, and exposure to flood water.
- 3.8.43. When considering tidal flooding, the Proposed Development is in Flood Zone 3a. This is defined as land that has a high probability of flooding, with 1 in 200 or greater annual probability of flooding from the sea (>0.5%).
- 3.8.44. The Applicant found that despite flood defences there would still be a residual risk of flooding. It was found that by the year 2115 this would create a 'danger to all' hazard because of flood depths 6m Above the Ordnance Datum (AOD) during a 0.1% Annual Exceedance Probability (AEP) event. However, by implementing embedded and standard mitigation measures such as site operation and shutdown procedures and adoption of Flood Emergency Response Plans, the residual effects would not be significant.
- 3.8.45. When considering fluvial flooding, most of the Proposed Development is in Flood Zone 1. This is defined as land that has a low probability of flooding (less than 1 in 1,000 annual probability of river flooding).
- 3.8.46. The ES [\[APP-060\]](#) found that modelled water levels for the main river of Stallingborough North Beck Drain indicate that flood water levels for the 0.5% AEP flood event stay within the channel and would not impact the site. Ordinary watercourse flood risk was also low.
- 3.8.47. However, the Applicant stated impermeable surfacing across the site would increase because of the Proposed Development. Therefore, it is likely that the rates of surface water run-off would increase above those of the baseline scenario.
- 3.8.48. This would increase flows into the Habrough Marsh Drain, Immingham Pump Drain and local land drains. The magnitude of impact on flows was found to be such that the effect would be significant.
- 3.8.49. The Drainage Strategy [\[APP-210\]](#) set out the land raising and surface water drainage measures required to mitigate surface water and fluvial flood risk. With mitigation in place the Applicant found a reduction in flows to the extent that the magnitude of impact was lessened, and the residual effect would not be significant.
- 3.8.50. In terms of the Proposed Development's impact on flood risk elsewhere, neighbouring sites range from low importance to very high importance. The Applicant found that land raising associated with the Drainage Strategy [\[APP-210\]](#) would result in lost floodplain storage and increase the risk of tidal flooding off site.
- 3.8.51. However, the Applicant also found that even taking account of the significant extent and depth of tidal flooding that would occur from overtopping and breaching events, the relative loss of floodplain storage would mean the effect on neighbouring sites would not be significant.
- 3.8.52. Overall, Table 18-13 of the ES [\[APP-060\]](#) summarised the impacts, mitigation and residual effects during operation and stated that if the identified mitigation measures were implemented during operation, then whatever the magnitude of impact or importance of the receptor, the residual effects would not be significant.
- 3.8.53. In terms of addressing principal policy tests within the NPSfP, the Flood Risk Assessment [\[APP-209\]](#) provided a summary of the sequential test and the exception

test. This was supported by further information in Chapter 3 of the ES [\[APP-045\]](#) and the Planning Statement [\[APP-226\]](#).

- 3.8.54. The sequential test was passed on the basis that the search area should be restricted to the Humber to meet key objectives. Consequently, only two sites of a suitable size were identified as being at lower risk from flooding within the search area but were not reasonably available.
- 3.8.55. The exception test was passed on the basis that the Proposed Development would provide wider sustainability benefits, like net zero contributions that outweigh flood risk, and will predominantly occupy previously developed land with no reasonable alternatives for parts of the site that are greenfield.
- 3.8.56. The Applicant considered there would not be the potential for cumulative effects when assessing the Proposed Development together with other developments in the study area [\[APP-067\]](#).

Climate Change Adaptation

- 3.8.57. Chapter 19 of the ES [\[APP-061\]](#) set out the assessment of climate events and the impact on the Proposed Development and should be read in conjunction with the CCR Assessment in Appendix 19.B of the ES [\[APP-213\]](#).
- 3.8.58. Several climate adaptation measures have been embedded within the design of the Proposed Development. These were summarised in Section 19.7 of the ES [\[APP-061\]](#) and the CCR Assessment in Appendix 19.B of the ES [\[APP-213\]](#).
- 3.8.59. In terms of construction, the Applicant found the Proposed Development could be subjected to extreme weather events, like extreme storms, which in turn could impact the site's accessibility, restricting working hours and delaying the construction schedule.
- 3.8.60. In terms of operation, the Applicant found the Proposed Development could be subjected to extreme heat, particularly in the summer, which in turn could create unsuitable working conditions for operational site workers, plant and equipment use.
- 3.8.61. A range of mitigation measures would be put in place during construction and operation to mitigate effects. For example, all new structures would either be designed for the climatic conditions using appropriate design guidance where available, or adaptive capacity would be built into the designs.
- 3.8.62. Overall, Tables 1 and 2 in Appendix 19B of the ES [\[APP-213\]](#) review the construction and operational effects, including mitigation, and confirm that the Proposed Development would experience residual effects that are not significant.

LOCAL IMPACT REPORT

- 3.8.63. The LIR from NELC [\[AS-146\]](#) stated that the Proposed Development was part of an allocated site in the NELLP and was acceptable in relation to the sequential test in accordance with Policy 33 of the NELLP.
- 3.8.64. The LIR confirmed the FRA [\[APP-209\]](#) was reviewed by the drainage team within NELC and no concerns were raised. The Proposed Development was therefore deemed to be in accordance with Policies 33 and 34 of the NELLP.

THE EXAMINATION

3.8.65. The main issues considered during the Examination were:

- Physical Processes;
- Flood Risk Drainage and Coastal Protection; and
- Climate Change Adaptation

Physical Processes

3.8.66. The MMO [RR-016] and the EA [RR-010] were generally satisfied with how the Applicant dealt with the assessment of physical processes in the ES [APP-058]. This was clear from the signed SoCG between the Applicant and the MMO [REP7-031], and the Applicant and the EA [REP8-006].

3.8.67. The only issue that required some level of further engagement through the Examination related to the EA's position on the Proposed Development's impact on physical processes and effects on flood defences.

3.8.68. The Applicant provided clarification [REP1-021] by reference to Paragraph 16.8.54 of the ES [APP-058] which stated that the predicted changes in physical processes and effects on the flood defences would be limited. This was ultimately accepted by the EA in the signed SoCG [REP8-006].

3.8.69. The ExA explored physical processes during ExQ1 [PD-008] and ISH3 [EV5-002] and [EV5-003]. Primarily this was to obtain a better understanding of the Proposed Development rather than asking substantive questions about potential issues with the ES [APP-058].

3.8.70. The ExA explored physical processes during ExQ1 [PD-008] and ISH3 [EV5-002] and [EV5-003] to better understand how the Proposed Development would impact this. The ExA also asked some substantive questions about dredging during ExQ1 [PD-008]. This included whether details of dredging needed to be secured in the dDCO, whether dredged material could be put to beneficial reuse in accordance with the NPSfP and whether there would be capacity constraints at disposal sites in the Humber Estuary.

3.8.71. The Applicant responded [REP1-029] clarifying that details of dredging would be suitably controlled by the MMO under the Deemed Marine Licence (DML). Furthermore, that the Waste Hierarchy Assessment [APP-172] did not identify any immediate opportunities for the beneficial reuse of dredged material.

3.8.72. The Applicant also clarified that there would be capacity at disposal sites within the Humber Estuary and using these, rather than disposing on land or elsewhere, would help maintain the existing sediment budget in the Humber Estuary thereby helping preserve physical processes.

ExA's Considerations

3.8.73. The ExA acknowledges all issues relating to physical processes were agreed with each of the relevant IPs at the close of the Examination. The ExA's questions on physical processes were also answered in adequate detail by the Applicant and IPs.

3.8.74. The ExA is satisfied that existing dredging activities and the baseline physical processes within the Humber Estuary are such that activities associated with the Proposed Development would be relatively limited in comparison. Therefore, the ExA

agrees with the environmental effects assessed within the ES [\[APP-058\]](#) that they would not be significant.

- 3.8.75. Overall, the ExA considers that the Proposed Development would preserve physical processes and be in accordance with the relevant provisions of the NPSfP, including those in Section 5.3. As such, this issue is neutral and weighs neither for nor against the Proposed Development.

Flood Risk, Drainage and Coastal Protection

- 3.8.76. The EA were generally satisfied [\[RR-010\]](#) with how flood risk was addressed within the ES [\[APP-060\]](#). However, they raised a holding objection because of residual issues that needed further consideration during the Examination, and these are dealt with below.
- 3.8.77. The EA and the Applicant agreed that the Proposed Development would potentially impact tidal flood defences and the EA identified a need to address reconstruction, future ownership, operation and maintenance during construction and operation. These issues were summarised in G4 to G8, W13 and BoR1 of the SoCG [\[REP8-006\]](#).
- 3.8.78. During Examination the parties considered that the impact on tidal flood defences could be dealt with by a legal agreement and protective provisions. However, a legal agreement between the Applicant and the EA was not submitted by the close of the Examination. The Applicant did include protective provisions within the dDCO, but these were not formally agreed by the close of the Examination. The EA's final position on these issues was set out in their D7 submissions [\[REP7-065\]](#) and in the SoCG [\[REP8-006\]](#). Both parties stated they would continue to work constructively during the decision period and would update the SoS accordingly.
- 3.8.79. The EA acknowledged that most of the site was in fluvial Flood Zone 1 but queried the flood risk associated with Work No.9 that would be in fluvial Flood Zone 2. This was summarised in W3 of the SoCG [\[REP8-006\]](#). The Applicant directed the EA to the details in the oCEMP [\[REP7-011\]](#). The EA were satisfied [\[REP8-006\]](#) that flood risk would be temporary during construction and appropriate guidelines, including for the placement of buildings and plant, could mitigate flood risk so that it would be acceptable.
- 3.8.80. The EA commented on land raising as part of the Proposed Development and whether flows into local drainage systems would be acceptable in the context of impacts on flood risk from ordinary watercourses. This issue was summarised in W7 of the SoCG [\[REP8-006\]](#).
- 3.8.81. Flood risk from ordinary watercourses is outside the EA remit. Consequently, the ExA sought clarification from the relevant statutory authorities of NELC, as the Lead Local Flood Authority, and North East Lindsey Drainage Board (NELDB) [\[PD-008\]](#). Clarification was also sought from the Applicant under Agenda Item 5 of ISH 4 [\[EV6-002\]](#) and [\[EV6-003\]](#).
- 3.8.82. The issue was ultimately resolved to the satisfaction of the EA following the Applicant's engagement with NELDB, who considered that the Drainage Strategy [\[APP-210\]](#) was sufficient to deal with surface water runoff and protect against flood risk from ordinary watercourses. This was provided that the Applicant committed to adequate maintenance of the existing drainage network and that any diversions or other such works to ordinary watercourses would not create additional flood risk.

- 3.8.83. This position was summarised in Item 6 and Item 9 of the SoCG with NELDB [REP7-035]. Requirement 12 of the dDCO secured the submission and approval of a detailed drainage strategy in consultation with the EA and NELDB to progress these issues towards an acceptable conclusion post consent. This would be in general accordance with the Drainage Strategy [APP-210] submitted with the Application.
- 3.8.84. The ExA noted Anglian Water Services (AWS) submissions [RR-001] and that updates to the EA flood models in 2024 would include revised climate change allowances. Consequently, the ExA questioned the EA [PD-008] on whether there were implications for the Proposed Development.
- 3.8.85. The EA responded [REP1-072] that any updates should not materially affect the conclusions of the ES [APP-060] in relation to tidal and fluvial flood risk. This is because the emerging flood models would use local data that was already accounted for in the ES [APP-060].
- 3.8.86. The ExA questioned [PD-014] whether flood risk emergency measures needed to be coherent with control of major accident hazards (COMAH) emergency measures given the potential overlap. The Applicant clarified [REP4-047] that the COMAH emergency measures would be comprehensive and take account of flood risk as a matter of course during the relevant post consent approval procedures.
- 3.8.87. The ExA questioned [PD-017] whether the Flood Emergency Response Plan referred to in the ES [AS-134] was adequately secured in the dDCO because there was no explicit requirement securing the submission of a plan. The ExA proposed an additional requirement was added to the dDCO [PD-019] to make such provisions and the Applicant responded in detail [REP6-022].
- 3.8.88. In relation to construction, the Applicant clarified that the Flood Emergency Response Plan was already fully secured within the dDCO by provisions relating to the submission and approval of the final CEMP under Requirement 6 and corresponding provisions within the DML.
- 3.8.89. In relation to operation, the Applicant clarified that the Flood Emergency Response Plan was partly secured by provisions relating to compliance with the FRA under Requirement 13 of the dDCO and corresponding provisions in the DML. These would require the production of a Flood Emergency Response Plan in consultation with relevant statutory bodies.
- 3.8.90. The Applicant acknowledged there were no provisions within Requirement 13 of the dDCO or corresponding provisions within the DML to secure the timing of approval. Consequently, they did not object to provisions for a Flood Emergency Response Plan during operation.
- 3.8.91. To avoid duplicating provisions relating to construction, the Applicant suggested any provisions for a Flood Emergency Response Plan should be tightly scoped and only relate to the operation of the Proposed Development. Consequently, the Applicant suggested altering the wording of Requirement 21 in the ExA's changed dDCO [PD-019] along with alterations to corresponding provisions within the DML.

ExA's Considerations

- 3.8.92. The ExA acknowledges that most of the issues relating to flood risk, drainage and coastal protection were agreed with each of the relevant IPs before the close of the Examination. The ExA's own questions on this issue were also dealt with in sufficient detail by the Applicant and relevant IPs. Consequently, the ExA is satisfied that most

issues that arose during the Examination have been brought to an acceptable conclusion. Issues benefitting from further reasoning are dealt with below.

- 3.8.93. The ExA sought to introduce a requirement for a Flood Emergency Response Plan during construction and operation. It is clear from the Applicant's submissions that existing provisions in the dDCO would already secure a Flood Emergency Response Plan during construction.
- 3.8.94. Consequently, the ExA is satisfied with the Applicant's proposed approach and Requirement 21 of the changed dDCO [PD-019] can be amended and limited so that it would only secure a Flood Emergency Response Plan during operation.
- 3.8.95. In terms of the objection from the EA, the ExA agrees that a legal agreement and protective provisions would be necessary to ensure the Proposed Development would not adversely impact existing flood defences. This necessity was not disputed by the Applicant during Examination.
- 3.8.96. Consequently, the only reasonable conclusion is that without a legal agreement and agreed protective provisions to secure appropriate mitigation, the Proposed Development would lead to the deterioration and failure of the flood defences.
- 3.8.97. The integrity of the flood defences is fundamental to managing tidal flood risk along this part of the Humber Estuary. Therefore, the loss of integrity as a result of the Proposed Development would result in likely significant adverse effects on the flood risk receptors identified in the ES [APP-060].
- 3.8.98. Paragraph 5.2.16 of the NPSfP states that all three elements of the exception test must be passed for development to be consented. It is clear in this case that not all three elements of the exception test have been passed because the Proposed Development would increase flood risk elsewhere. Consequently, in accordance with Paragraph 5.2.16 of the NPSfP, the Proposed Development is unacceptable in relation to flood risk, and consent cannot be granted.
- 3.8.99. However, the ExA is mindful of Paragraph 15.2 of Advice Note Fifteen and that the law and policy relating to planning conditions in England is derived from the NPPF and PPG, and that these apply to the consideration of requirements. The ExA is also mindful of Paragraph 55 of the NPPF which states that decision makers should consider whether unacceptable development could be made acceptable through conditions or planning obligations.
- 3.8.100. The EA, in their D7 submission [REP7-065], stated that an agreement had been reached on the principle of the need for tidal flood defence matters to be included in *either* the bespoke legal agreement *or* protective provisions. The ExA is of the view that this means a bespoke legal agreement could provide a resolution on its own without corresponding protective provisions in the dDCO.
- 3.8.101. Pursuant to Paragraph 55 of the NPPF, the ExA considers the Proposed Development could be made acceptable in relation to flood risk by using a negatively worded requirement to secure a legal agreement containing the requisite planning obligations to resolve tidal flood defence matters. For clarity, planning obligations secured by legal agreement in relation to applications for development consent are development consent obligations under s174 of the PA2008.
- 3.8.102. The ExA is mindful of PPG (Paragraph 010 Reference ID: 21a-010-20190723) and that the use of a negatively worded condition securing a legal agreement is unlikely to

be appropriate in the majority of cases. However, PPG also states such an approach may be appropriate in exceptional circumstances, where there is clear evidence that the delivery of the Proposed Development would otherwise be at serious risk.

- 3.8.103. The ExA is satisfied that the scale of the increased flood risk, and the failure of the exception test, creates significant risk to the Proposed Development's delivery. Furthermore, whilst the Applicant and the EA have worked constructively and anticipate that a legal agreement and agreed protective provisions would be forthcoming before the end of the Examination, this did not happen.
- 3.8.104. Therefore, it follows that despite the Applicant and the EA continuing to work constructively towards a resolution, there is a residual risk that a legal agreement and agreed protective provisions might not be forthcoming before the end of the SoS's decision period. Consequently, and altogether, the exceptional use of a negatively worded requirement to secure a legal agreement containing development consent obligations is justified in this case.
- 3.8.105. Paragraph 55 of the NPPF states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Among other things, any solution would need to obligate both parties to carry out specified operations or activities on the land and create legal rights of access and maintenance in relation to the tidal flood defences. Consequently, the ExA is satisfied that it is not possible to resolve these matters through the use of a requirement alone and a development consent obligation is appropriate.
- 3.8.106. The ExA has considered the requirement against the six tests set out in Paragraph 56 of the NPPF. The requirement is necessary to ensure that the Proposed Development integrates with the tidal flood defences in an acceptable manner and avoids increasing flood risk elsewhere. It follows that the requirement is also relevant to planning and the development being permitted. The requirement is clear in its purpose and the details that should be submitted, so it is precise and enforceable. It is in the public interest to secure a legal agreement that addresses flood risk, and there is no evidence suggesting it is unreasonable in any other respect.
- 3.8.107. The ExA is mindful of the three tests set out in Paragraph 57 of the NPPF that apply to planning obligations. When discharging the requirement, the relevant local planning authority will need to satisfy themselves that any forthcoming development consent obligations put forward in the legal agreement would meet these policy tests.
- 3.8.108. In the event that the Applicant provides a legal agreement and agreed protective provisions within the SoS's decision period, a requirement securing a legal agreement would become unnecessary and the SoS could remove it before deciding the Application.
- 3.8.109. Overall, subject to a negatively worded requirement securing a legal agreement containing requisite development consent obligations addressing tidal flood defence matters, the Proposed Development would not increase flood risk elsewhere or conflict with Paragraph 5.2.16 of the NPSfP and would pass the exception test. Altogether, it would accord with the NPSfP and as such this issue is neutral and does not weigh for nor against the Proposed Development.

Climate Change Adaptation

- 3.8.110. The IP's involved in the Examination did not raise any significant issues in relation to climate change adaptation. The ExA did raise questions during ExQ1 [\[PD-008\]](#),

including whether the latest climate projection data was used, and how the Proposed Development was designed to deal with extreme weather.

- 3.8.111. The Applicant responded [REP1-024] confirming that the ES [APP-061] and CCR Assessment [APP-213] were established using the most up to date climate projection data, namely UK Climate Projections 2018, and used British Standards to ensure the Proposed Development was designed to withstand extreme weather.

ExA's Considerations

- 3.8.112. The ExA is satisfied with the evidence submitted in the ES [APP-061] and CCR Assessment [APP-213] and that the assessment of climate change adaptation is based on the most recent climate change projections and relevant wind and wave design standards. Consequently, the environmental effects assessed within the ES [APP-061] would not be significant.
- 3.8.113. Overall, the Proposed Development would be adapted to climate change and be in accordance with the relevant provisions of the NPSfP, including those within Section 4.13. As such, this issue is neutral and weighs neither for nor against the Proposed Development.

CONCLUSIONS

- 3.8.114. Based on the evidence submitted as part of the Application and during the Examination the ExA is broadly satisfied that the Applicant has adequately concluded most of the issues relating to flood risk and coastal change.
- 3.8.115. In relation to physical processes, the Proposed Development would be in accordance with the relevant provisions of the NPSfP, including those within Section 5.3. Consequently, this issue is neutral in the planning balance and does not weigh for or against the Proposed Development.
- 3.8.116. In relation to climate change adaptation, the Proposed Development would be in accordance with the relevant provisions of the NPSfP, including those within Section 4.13. Consequently, this issue is neutral in the planning balance and does not weigh for or against the Proposed Development.
- 3.8.117. In relation to flood risk, drainage and coastal protection, the Proposed Development passes the sequential test and the first two parts of the exception test and otherwise accords with the relevant provisions of the NPSfP, including those within Section 5.2 and Section 5.3.
- 3.8.118. However, by the end of the Examination the Applicant had failed to agree either a legal agreement or protective provisions with the EA. Without these in place, the ExA considers that the Proposed Development would lead to the deterioration of tidal flood defences and likely significant effects on the environment because of the increase in flood risk elsewhere.
- 3.8.119. An increase in flood risk elsewhere means the Proposed Development would fail the third part of the exception test and conflict with Paragraph 5.2.16 of the NPSfP. Consequently, in accordance with Paragraph 5.2.16 of the NPSfP, consent cannot be granted because not all three parts of the exception test have been passed.
- 3.8.120. Paragraph 55 of the NPPF states that decision makers should consider whether unacceptable development could be made acceptable through the use of conditions or planning obligations. The ExA has considered whether the Proposed Development

could be made acceptable in relation to flood risk by the use of a negatively worded requirement in the rDCO securing a legal agreement that addresses tidal flood defence matters. PPG states such an approach may be appropriate in exceptional circumstances, where there is clear evidence that the delivery of the development would otherwise be at serious risk.

- 3.8.121. The ExA is satisfied that the scale of the increased flood risk, and the failure of the exception test, creates significant risk to the Proposed Development's delivery. Furthermore, whilst the Applicant and EA have worked constructively, there is still a residual risk that a legal agreement or protective provisions might not be forthcoming during the decision period. Consequently, and altogether, the exceptional use of a negatively worded requirement to secure a legal agreement is justified in this case. The ExA has also concluded the requirement imposed on the rDCO would meet the six policy tests set out in Paragraph 56 of the NPPF.
- 3.8.122. Overall, subject to Requirement 21 in the rDCO securing a legal agreement containing requisite development consent obligations addressing tidal flood defence matters, the Proposed Development would not increase flood risk elsewhere or conflict with Paragraph 5.2.16 of the NPSfP and would pass the exception test. Altogether, the Proposed Development would accord with the NPSfP and as such this issue is neutral and does not weigh for or against it.

3.9. WATER QUALITY AND RESOURCES

BACKGROUND AND POLICY CONTEXT

- 3.9.1. This section considers the effects of the Proposed Development in relation to the potential impacts on water quality and resources. Effects of the Proposed Development in relation to potential impacts from flood risk and coastal change, are considered in section 3.8 Flood Risk and Coastal Change.

National Policy Statement

- 3.9.2. Paragraph 5.6.1 of the NPSfP states that infrastructure can have adverse effects on the water environment. Paragraph 5.6.2 of the NPSfP then states that these effects could lead to adverse impacts on health or on protected species and habitats. Adverse impacts could also result in surface waters, groundwaters or protected areas failing to meet environmental objectives established under the Water Framework Directive (WFD).
- 3.9.3. Paragraph 5.6.3 of the NPSfP states that where projects are likely to have effects on the water environment, applicants should undertake an assessment of the existing status of, and impacts of, the proposed project on water quality, water resources and physical characteristics of the water environment as part of the ES. Paragraph 5.6.4 of the NPSfP then follows on by providing further details of what needs to be included as part of this assessment.
- 3.9.4. Paragraphs 5.6.5 to 5.6.8 of the NPSfP provide guidance for the Secretary of State (SoS). This includes emphasising, in addition to planning control conditions, that other regulatory regimes exist to control amongst other things, pollution and water abstraction.
- 3.9.5. Paragraph 5.1.22 of the NPSfP advises that where capital dredging is required as part of the proposed development, this will need to be subject to a full environmental impact assessment, including the likely effects on protected European sites or species, and tested under the WFD. Maintenance dredging once the port is

operational, including the disposal of arisings whether on land or at sea, should also be considered as part of the ES for the development as a whole.

- 3.9.6. The SoS will generally need to give impacts on the water environment more weight where a project would have adverse effects on the achievement of the environmental objectives established under the WFD. Where such adverse impacts are likely to arise, they should be mitigated through attaching appropriate requirements to any development consent.

Other Legislation and Policies

- 3.9.7. Legislation, policies and guidance relevant to Water Quality and Resources are set out in the ES Chapter 18 [\[APP-060\]](#) of the Application.

THE APPLICATION

Environmental Statement

- 3.9.8. The Applicant's assessment of water quality and resources is set out in the ES in Chapter 18 (Water Use, Water Quality, Coastal Protection, Flood Risk and Drainage) [\[APP-060\]](#). Chapter 18 of the ES sets out the Applicants assessment methodology, baseline conditions and the likely significant effects with respect to water quality and resources from the construction and operation of the Proposed Development.

- 3.9.9. The assessment was supported by the following application documents:

- Figure 17.1: Water Framework Directive (WFD) water bodies [\[APP-143\]](#);
- Figure 17.2: WFD protected areas [\[APP-144\]](#);
- Figure 17.3: Water sampling location [\[APP-145\]](#);
- Figure 18.4: WFD Waterbodies within the Zone of Influence [\[APP-149\]](#);
- Figure 18.5: WFD Baseline Screening Sampling Locations [\[APP-150\]](#);
- Figure 21.6: Source Protection Zones [\[APP-156\]](#);
- Appendix 17.A: WFD Compliance Assessment [\[APP-208\]](#); and
- Appendix 18.C: Water Quality Sampling 2023 [\[APP-211\]](#).

Scope and Methodology

- 3.9.10. The scope of the Applicant's assessment is based on the 2023 Scoping Opinion [\[APP-167\]](#) [\[APP-168\]](#).
- 3.9.11. An area of 1km around the Order limits was used for water quality assessment purposes, with professional judgement being used to decide if the study area should be wider where relevant.
- 3.9.12. In the absence of standard guidance for developments of this type, professional judgement and experience from similar schemes was used by the Applicant to qualitatively assess the likely significant effects on water quality and resources.
- 3.9.13. The Applicant identified sensitive receptors for the Proposed Development in relation to the water environment to include various watercourses, drains, ponds, aquifers, abstractions and people. There are also a number of large source protection zones (SPZ) local to the Proposed Development.
- 3.9.14. To establish a baseline for water quality, a desk-based study was undertaken in May 2023. This was preceded by a site walkover in February 2023 by a surface water quality specialist and hydromorphologist. This was followed up with two rounds of water quality sampling in March 2023.

Applicant's Assessment of Effects and Proposed Mitigation

Water Resources

- 3.9.15. For the purposes of water resources, the Applicant deemed no further assessment in addition to that which Anglian Water (AW) had carried out was required, in relation to impacts associated with water demand or supply, including any environmental impacts which might be associated with the provision of resources such as new abstractions. This was on the basis that a commercial offer is in place for provision of these resources for both the construction and operational phases of the Proposed Development from AW who, as part of their Water Resources Management Planning (WRMP24) process, would have made their own assessment in order to give this response.

Water Quality

- 3.9.16. An assessment of the impacts on water quality and resources during each of the three phases of the Proposed Development; construction, operation and decommissioning, was undertaken by the Applicant [[APP-060](#)].
- 3.9.17. The assessment was conducted in two stages, firstly assuming no mitigation measures would be in place. This was then followed up by a more detailed assessment, with the assumption that the mitigation measures detailed in section 18.7 of ES Chapter 18 [[APP-060](#)] would be in place.
- 3.9.18. To manage and minimise the potential impact the Proposed Development would have on water quality during the operational phase, the Applicant stated that environmental management plans and procedures, in accordance with legislation, regulations and industry best practice, would be in place. For the construction and decommissioning phases of the project, the Applicant identified standard mitigation measures and best practice guidance to be implemented by the contractor.
- 3.9.19. With the stated mitigation measures in place and secured through the dDCO, the ES concludes that the residual effects on water quality from the Proposed Development, would be negligible or minor adverse and would be not significant.
- 3.9.20. A summary of the likely significant effects of the Proposed Development on water quality, is provided in Table 18-12 of ES Chapter 18 [[APP-060](#)].

WFD Assessment

- 3.9.21. Following a screening assessment, the Applicant identified one WFD surface water body (North Beck Drain) as being present within the work area of the Proposed Development. However, as impacts could potentially propagate along the North Beck Drain for approximately half a kilometre, after which the flow enters the Humber estuary, the Humber estuary was also included in the WFD assessment.
- 3.9.22. A WFD assessment, which included the potential impacts of dredging, was then undertaken by the Applicant to determine the potential implications of the Proposed Development on the objectives of these two relevant water bodies. The WFD Compliance Assessment is provided as Appendix 17.A [[APP-208](#)].
- 3.9.23. The Applicant concluded that the Proposed Development is not likely to have a permanent effect on the status of WFD parameters that are significant at water body level. Therefore, deterioration from the current status of the Humber Lower transitional water body and/or North Beck Drain river water body was not predicted. It

was also predicted that the Proposed Development would not prevent these water bodies from achieving future WFD status objectives.

LOCAL IMPACT REPORT

- 3.9.24. There were no substantive comments relating to water quality and resources in the submitted LIR from NELC [\[AS-146\]](#).

THE EXAMINATION

WFD compliance

- 3.9.25. In their RR [\[RR-010\]](#), the EA sought additional information and clarification in respect of certain aspects of water quality that had a bearing on the Applicant's WFD assessment. In response to the ExA's written questions [\[REP1-072\]](#), the EA confirmed they had received clarification from the Applicant on the matters raised. At Deadline 4 [\[REP4-050\]](#), the EA confirmed that, subject to the implementation of all the required pollution prevention measures and NE not raising any issues in respect of the HRA conclusions, they were in support of the Applicant's conclusions on the WFD assessment.

ExA's Considerations

- 3.9.26. With regards to compliance with the WFD, the signed SoCG between the Applicant and the EA [\[REP8-006\]](#), confirms all matters have been agreed between them, subject to the caveats identified above. The signed SoCG between the Applicant and NE [\[REP7-033\]](#), confirms all matters have been agreed regarding water quality impacts in relation to HRA. With NE not having any outstanding issues on this matter and pollution prevention measures being secured through R6 of the dDCO, the ExA finds that the Proposed Development accords with the requirements of the Water Framework Directive Regulations 2017 and the NPSfP.

Water Quality

- 3.9.27. In response to the ExA's first round of written questions [\[REP1-030\]](#), the Applicant stated discharges from site would be via retention ponds only, with monitoring of the water in the ponds taking place, to ensure it is clean and suitable for discharge.
- 3.9.28. At ISH 3 [\[EV-5-002\]](#), the Applicant explained their commitment to a Water Management Plan (WMP) that would be included as an Appendix to the oCEMP [\[APP-221\]](#), the submission of which is secured by R6 of the dDCO. In ES Chapter 18 [\[APP-060\]](#), the Applicant confirmed the oCEMP including the WMP would outline the measures necessary to avoid, prevent and reduce adverse effects where possible upon the local surface water environment.
- 3.9.29. Whilst the EA raised a number of issues in their RR [\[RR-010\]](#), at the end of the Examination, all matters relating to water quality were agreed in the signed SoCG between the EA and the Applicant [\[REP8-006\]](#).

ExA's Considerations

- 3.9.30. The ExA is satisfied that the Applicant has adequately assessed the impact of the Proposed Development on water quality. In accordance with Paragraphs 5.6.8 and 5.6.9 of the NPSfP, any adverse impacts would be satisfactorily mitigated through the actions and commitments contained in their oCEMP, secured in the dDCO as R6.

Water Resources

- 3.9.31. In response to the ExA's first round of written questions [\[REP1-030\]](#) and again at ISH 3 [\[EV5-002\]](#), the Applicant explained their approach to seeking ways to reduce water needs and the potential use of sustainable sources.
- 3.9.32. At ISH 3 [\[EV5-002\]](#), the Applicant confirmed that the commercial offer they have from AW, is for supplying sufficient non-potable water to meet the needs of the Proposed Development at all phases of the project, which also includes an additional amount to allow for flexibility during periods of higher demand.
- 3.9.33. In their RR [\[RR-001\]](#), AW highlighted the issue of water resources in the Immingham area and potential options that may be available to meet the needs of the Proposed Development. Due to this uncertainty of supply options, AW sought the inclusion of a new pre-commencement Requirement in the dDCO for the Applicant to complete a Water Resources Assessment (WRA). The purpose of the WRA being to further improve the water efficiency ahead of final design and construction commencement to sustainably manage water resources.
- 3.9.34. In response, the Applicant considered a new Requirement to be unnecessary, on the basis that water use would be regulated through the Environmental Permit and should therefore not be duplicated through requirements of the dDCO.
- 3.9.35. AW maintained their position through the Examination [\[AS-145\]](#) and, in the SoCG between the parties [\[REP7-045\]](#), the matter remained as not agreed.
- 3.9.36. The SoCG between the Applicant and AW also identified that offers for the supply of both potable water and non-potable water to meet the needs of the Proposed Development have previously been made by AW to the Applicant. However, as some of these offers have or are approaching expiry, they are currently being reviewed, hence the position in the SoCG remains as ongoing discussions.

ExA's Considerations

- 3.9.37. The ExA is content that the Applicant has satisfactorily explored options for reducing the water needs of the Proposed Development and the potential use of sustainable sources, as per the requirements of Paragraph 5.6.11 of the NPSfP. In relation to the suggested new Requirement by AW, the ExA agrees with the Applicant that, given water use and efficiency would be regulated through the Applicant's Environmental Permit, a Requirement for a WRA is not deemed necessary.
- 3.9.38. Whilst the ExA notes that issues of water supply and demand could potentially be an issue for future developments in the Immingham and greater Humber area, the ExA accepts the Applicant's view that AW would have conducted an impact assessment associated with water demand or supply as part of their Water Resource Management Plan 2024 (WRMP24), prior to making any commercial offer to the Applicant.

CONCLUSIONS

- 3.9.39. As stated in '[How to comply with your environmental permit. Additional guidance for the inorganic chemical sector](#)' the EPR Regulations require the Applicant to conduct periodic audits on water use and efficiency, therefore the ExA agrees with the Applicant, in that a pre-commencement requirement in the rDCO (Appendix D) for a WRA, is not needed.

- 3.9.40. The ExA is satisfied that, subject to the mitigation measures identified in table 13 of the Schedule of Mitigation and Monitoring [[APP-234](#)], along with compliance of the Environmental Permitting Regulations (EPR) 2016 and the COMAH Regulations, enforced by the appropriate regulatory authorities, the residual effects on water quality from the Proposed Development, would be negligible or minor adverse and would not be significant. As such, the ExA concludes that the Proposed Development accords with the requirements of the Water Framework Directive Regulations 2017.
- 3.9.41. There is no evidence to suggest AW's impact assessment associated with water demand or supply as part of their WRMP24 is no longer valid and that they will not renew their commercial offer of supplying non-potable water to the Applicant. On this basis the ExA finds that the Proposed Development would have no adverse impact upon water resources.
- 3.9.42. The ExA is satisfied the Applicant's assessment and the Proposed Development overall, with regard to water quality and water resources, accords with the NPSfP.
- 3.9.43. The ExA concludes that water quality and water resources matters are neutral in the planning balance and therefore weigh neither for nor against the making of the Order.

3.10. TRAFFIC AND TRANSPORT

BACKGROUND AND POLICY CONTEXT

- 3.10.1. This section considers the effects of the Proposed Development in relation to the potential impacts on landside traffic and transport. Effects of the Proposed Development in relation to potential impacts from marine transport and navigation, are considered in section 3.11: Marine Movement and Operational Safety.

National Policy Statement

- 3.10.2. The transport of goods, users of ports and port related businesses can all affect congestion on connecting networks, which as stated in Paragraph 5.4.2 of the NPSfP, is likely to be mainly on the road infrastructure which in turn can lead to an increase in noise and emissions.
- 3.10.3. Paragraph 5.4.4 of the NPSfP states that where projects are likely to have significant transport implications, applicants should undertake a transport assessment, with the assessment distinguishing between the construction, operation and decommissioning project stages.
- 3.10.4. A travel plan should be prepared by the Applicant, which should include demand management measures, as stated in Paragraph 5.4.5 of the NPSfP. The plan should also contain details of proposed measures to improve access by public transport, walking and cycling.
- 3.10.5. Where mitigation is needed Paragraphs 5.4.11 to 5.4.13 of the NPSfP states demand management measures must be considered. For HGV movements this is followed up in Paragraph 5.4.22 of the NPSfP, which states mitigation measures such as control of HGV movements and ensuring parking provisions are in place, should be considered as requirements in the DCO.

Other Legislation and Policies

- 3.10.6. Legislation, policies and guidance relevant to Traffic and Transport Resources are set out in the Environmental Statement (ES) Chapter 11 [[APP-053](#)] of the Application.

THE APPLICATION

Environmental Statement

- 3.10.7. In respect of landside traffic and transport effects, the Applicant's assessment is set out in the ES in Chapter 11: Traffic and Transport [[APP-053](#)].
- 3.10.8. Potential effects of traffic and transport from the Proposed Development on other impact categories are addressed in the following ES chapters of the Application:
- Air Quality – Chapter 6 [[APP-048](#)]; and
 - Noise and Vibration – Chapter 7 [[APP-049](#)].
- 3.10.9. Chapter 11 of the ES sets out the Applicant's assessment methodology, baseline conditions and the likely significant effects with respect to landside traffic and transport from the construction, operation and decommissioning of the Proposed Development.
- 3.10.10. The assessment was supported by the following application documents:
- Figure 11.1: Site Location [[APP-098](#)];
 - Figure 11.2: Local Highway Network [[APP-099](#)];
 - Figure 11.3: Public Right of Way (PRoW) Network [[APP-100](#)];
 - Figure 11.4: Collision Locations [[APP-101](#)];
 - Appendix 11.A: Traffic Collision Data [[APP-189](#)]; and
 - Appendix 11.B: Traffic and Transport Cumulative Effects Assessment [[APP-190](#)].

Scope and Methodology

- 3.10.11. The scope of the Applicant's assessment was based on the 2023 Scoping Opinion [[APP-167](#)] [[APP-168](#)].
- 3.10.12. During the operational phase, the Applicant anticipated that the Proposed Development would employ 120 workers in total for IGET and the hydrogen production facility, of which more than half would be working to shift patterns. In addition to this, it is also anticipated that 96 two-way daily HGV movements would be associated with the operational hydrogen production facility.
- 3.10.13. These volumes of traffic during the operational phase were below the screening threshold for including highway links, where traffic flows would increase by more than 30% for assessment, as outlined in the GEART (Guidelines for the Environmental Assessment of Road Traffic). For this reason, the Applicant scoped out the operational impacts of the Proposed Development traffic and transport assessment.
- 3.10.14. The decommissioning effects of landside traffic and transport were also scoped out of the assessment, as significant traffic and traffic effects were assessed as being unlikely [[APP-167](#)].
- 3.10.15. The construction period of the Proposed Development was therefore the only scenario for which traffic and transport impacts were considered for assessment by the Applicant.
- 3.10.16. The assessment considered the impacts of construction traffic, both from construction workers accessing the site and HGV deliveries required during the construction phase, with traffic being split between the west and east sites.

- 3.10.17. The study area was defined by roads where there was potential for significant effects due to additional traffic associated with the Proposed Development, these roads included the local road network and the strategic road network. Links included in the assessment, and which define the traffic and transport study area (comprising the immediate network and the route to the Strategic Road Network), were agreed with NELC through the Scoping exercise.
- 3.10.18. In line with the Rochdale Envelope approach, the Applicant assessed a worst-case scenario of the likely significant effects of the Proposed Development. The assessment was based on the assumption that the peak of activity would occur in Month 23 of construction.
- 3.10.19. Cumulative effects with other shortlisted developments from construction related traffic have been included within the assessment, with no significant cumulative effects being predicted. This is discussed further in Chapter 3.14 of this Report.

Applicant's Assessment of Effects and Proposed Mitigation

- 3.10.20. The existing road network is set within a largely industrial area with few residential properties, with many local roads being of single carriageway design. Key routes providing connectivity in the local area include the Kings Road, Queens Road and Laporte Road. The A180 and A160 roads provide connections to the wider area. The Applicant has explained the current status of transport networks in paragraphs 11.6.1 to 11.6.15 of ES Chapter 11 [\[APP-053\]](#).
- 3.10.21. The Applicant has stated design and management procedures will be used to reduce as far as possible the number of vehicle trips on the local highway network, with the following plans playing a vital role:
- Construction Worker Travel Plan (CWTP); and
 - Construction Traffic Management Plan (CTMP).
- 3.10.22. The Applicant estimates a total of 1,518 two-way worker trips and 199 HGV trips will be generated at the peak of construction, with the construction activity occurring across both the western and eastern sites. Therefore, for both the construction workers (landside and marine) and the construction HGV's, the Applicant envisages traffic to be split across the road network.
- 3.10.23. Using data from other projects, as well as Automated Traffic Counts (ATCs) undertaken on Laporte Road, distribution data both for traffic flows throughout the day and across the road network in Immingham, a maximum flow of 75 construction worker vehicles per hour was estimated on the A180(E). The Applicant considers these extra 1.25 vehicles per minute to be within any daily variation and would be controlled and mitigated through the CWTP.
- 3.10.24. For HGVs to and from the Site, it is anticipated these would be spread evenly over the day. During the weekday AM and PM peak periods, a maximum of 18 HGVs would be on the road network, which the Applicant does not consider to represent a severe impact.
- 3.10.25. In relation to HGV distribution, it was assumed that all construction vehicles would travel to and from the Site via the A1173 towards the A180. HGVs will not be permitted to travel through the residential area of Immingham to the north.
- 3.10.26. Future year baseline traffic flows for the assessment year of 2026, being the anticipated peak of construction, were derived by using the national standard

programme Trip End Model Presentation Program (“TEMPRO”) to derive a traffic growth factor. This growth factor was then applied to actual traffic data collated from previous years, providing a forecast for both growth in background traffic, as well as some additional levels of development.

- 3.10.27. Comparing the 2026 future baseline traffic flows against construction traffic flows, the percentage increase for total vehicles and HGVs on each of the links within the study area during the peak construction year, was calculated.
- 3.10.28. The Applicant’s assessment found that the majority of the links would experience a low or very low magnitude of impact. The exceptions being, Link 2 (A1173 between A1173/Kiln Lane and A1173/Kings Road) and Link 3 (Kings Road - between A1173 and Queens Road), which would experience a medium impact for some of the assessment criteria.
- 3.10.29. The Applicant’s assessment concluded that the traffic and transport effects within the defined study area would be negligible, not significant, with the exception being Link 2 (A1173 - between A1173/Kiln Lane and A1173/Kings Road), Link 3 (Kings Road, between A1173 and Queens Road) and Link 4 (Queens Road between Kings Road and Laporte Road) where the effect would be minor, not significant.
- 3.10.30. At the time of the original Application the Applicant stated that, should they be successful in voluntarily acquiring the residential properties on Queens Road as intended, ahead of the construction works commencing, the minor, not significant effect on those properties in respect of Link 4 would not arise.

LOCAL IMPACT REPORT

- 3.10.31. The LIR from NELC [[AS-146](#)] states the proposed development would not unduly harm highway safety or amenity either through the construction phase or the operational phase.

THE EXAMINATION

- 3.10.32. In response to the ExA’s first written questions [[REP1-031](#)], the Applicant provided further evidence on the adequacy of traffic survey data used to complete their assessment on potential traffic and transport impacts. This was also explored by the ExA at ISH 2 [[EV4-004](#)]. Further explanation of how traffic management plans including their enforcement would work in practice, was also provided at ISH2 [[EV4-004](#)] by the Applicant.
- 3.10.33. At ISH5 [[EV7-004](#)], the Applicant explained that their initial assessment on cumulative impacts did not include the Viking CCS development. However, their response at D1 on cumulative effects [[REP1-043](#)], did include the combined traffic during the peak of construction in 2026 from all three projects, being the Proposed Development, the IERRT and Viking CCS. The Applicant’s assessment on the cumulative effect of transport and traffic impacts, concluded that it results in either a negligible or minor, not significant effect.
- 3.10.34. In their RR [[RR-022](#)], NELC raised a number of issues, however in the signed SoCG between the Applicant and NELC [[REP7-023](#)], all matters were agreed by the end of the Examination. The SoCG states NELC’s position as agreeing with the Applicant’s assessment and conclusions and that in their view, no further assessment or mitigation was required.

- 3.10.35. In their response to the ExA's first written questions [REP1-082], NH acknowledged the Applicant's conclusion, that in all scenarios the A180/A1173 would operate within capacity, with negligible increases in the total queue and delay, due to development construction traffic. However, National Highways (NH) sought clarification of the input traffic flows and modelling results before they could come to a full conclusion.
- 3.10.36. In the signed SoCG between the Applicant and NH [REP7-027], all matters had been agreed by the end of the Examination. This confirms the position of NH with regards to traffic and transport impacts from the Proposed Development. NH considered the Applicant's assessment methodology as acceptable and that the strategic road network is predicted to operate within capacity at the peak year of construction, when impacts are likely to be at their highest.
- 3.10.37. The ExA also notes that in the signed SoCGs with NH [REP7-027] and NELC [REP7-023], the assessment of likely significant effects for traffic and transport was an agreed matter.
- 3.10.38. In their RR [RR-024], PD Ports raised objections due to the potential impact of the Proposed Development on its business during construction. However, in their final representation [REP5-059], PD Ports stated they had withdrawn these objections.
- 3.10.39. The Davey family raised an objection in their RR [RR-007] on the potential impact the Proposed Development could have on local traffic and transport infrastructure in general. No further representations were received from the Davey family during the Examination.
- 3.10.40. Polynt Composites also raised concerns [REP1-106] on the traffic and transport impacts from the Proposed Development, particularly with regard to the possibility of access restrictions to their site due to the additional traffic on Laporte Road. The Applicant addressed these concerns in their response to the ExA [REP2-016], in which they have stated the vast majority of traffic, both construction and operational, would enter the Proposed Development, via the A1173, Kings Road, Queens Road and Laporte Road route. As such, the Applicant does not envisage there to be a material impact on vehicles trying to gain access to the Polynt Composite site.
- 3.10.41. The ExA is satisfied the concerns raised by both the Davey family and Polynt Composites, have been taken into consideration during the Examination.

CONCLUSIONS

- 3.10.42. The ExA agrees with the Applicant's assessment of impacts from the Proposed Development on traffic and transport, which would mainly arise during the construction phase when impacts would be at their peak. The ExA is therefore satisfied the assessment meets the requirements as set out in the NPSfP.
- 3.10.43. Whilst the ExA acknowledges that there would be an increase in traffic from the Proposed Development at all stages of the Proposed Development, we are satisfied that the Applicant's control and management measures would be sufficient to mitigate any negative impacts to an acceptable level. The ExA also finds the Applicant's control and management measures would meet the mitigation demand management requirements as set out in the relevant sections of the NPSfP. These control and management measures secured through R6, R7 and R8 of the rDCO (Appendix D), require the Applicant to gain approval from NELC before commencing highway works, ensuring mitigation identified in the ES is adequately carried out.

- 3.10.44. On this basis, the ExA concludes that no significant traffic or transportation effects are likely to arise from the Proposed Development.
- 3.10.45. The ExA concludes that traffic and transport related matters are neutral in the planning balance and therefore weigh neither for nor against the making of the Order.

3.11. MARINE MOVEMENT AND OPERATIONAL SAFETY

BACKGROUND AND POLICY CONTEXT

- 3.11.1. This section considers the effects of the IGET in relation to the movement of marine vessels and matters of operational safety.

National Policy Statement

- 3.11.2. Paragraph 4.4.1 of the NPSfP identifies that the decision-maker may need to make judgements as to whether possible adverse impacts would arise from the impact of the development on other commercial operators.
- 3.11.3. Paragraph 4.10.4 states that in considering applications, the decision-maker should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.
- 3.11.4. At Paragraph 3.3.3, the NPSfP also states that to meet the requirements of the Government's policies on sustainable development, new port infrastructure must be well-designed functionally.

Other Legislation, Policy and Guidance

Department for Transport ("DfT") Port Marine Safety Code, and relevant sections of the Guide to Good Practice

- 3.11.5. The Port Marine Safety Code (PMSC), and its supporting Guide to Good Practice, sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK port marine environment.

The Pilotage Act 1987

- 3.11.6. The Pilotage Act requires Competent Harbour Authorities (CHAs) to keep under consideration the pilotage services that may be required to secure the safety of ships. This Act gives a CHA the powers to make pilotage compulsory within their pilotage district and levy charges for the use of a pilot, grant pilotage exemption certificates and authorise pilots within their district.
- 3.11.7. In response to ExQ1 [\[PD-008\]](#) the Applicant provided [\[REP1-032\]](#) a full list of all relevant safety codes, plans, guides and measures that the IGET would be required to comply with.

THE APPLICATION

Environmental Statement

- 3.11.8. ES Chapter 12 (Marine Transport and Navigation) [\[APP-054\]](#) set out the baseline analysis and the likely significant effects with respect to marine navigation as a result of the construction and operation of the IGET.
- 3.11.9. The assessment was supported by the following:

- Figure 12.1: General Overview of Humber Estuary [[APP-103](#)];
- Figure 12.2: Detailed Overview of Site [[APP-104](#)];
- Figure 12.3: Vessel Tracks by Type [[APP-105](#)];
- Figure 12.4: Vessel Tracks (Recreational) [[APP-106](#)];
- Figure 12.5: Vessel Densities [[APP-107](#)];
- Appendix 12.A: Navigational Risk Assessment [[APP-191](#)]; and
- Appendix 12.B: Ship Navigation Simulation Study [[APP-192](#)].

Scope and Methodology

- 3.11.10. An assessment of marine transport and navigational hazards/ risks was undertaken in accordance with the PMSC and its associated 'A Guide to Good Practice on Port Marine Operations', and the International Maritime Organisation (IMO) Formal Safety Assessment (FSA) methodology.

Applicant's Assessment of Effects and Proposed Mitigation

- 3.11.11. The ES [[APP-054](#)] identifies that the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects to marine transport and navigation through the process of design development and by embedding mitigation measures into the design.
- 3.11.12. A Navigation Risk Assessment (NRA) was submitted with the Application [[APP-191](#)] and provided a baseline assessment of activities within the study area (for the NRA this was defined as the area from Humber Bridge to the eastern approaches to the Humber). The NRA also included a detailed assessment of river traffic, a review of marine incidents within the area and the results from a hazard workshop. It also included a review of the IGET against a predicted future baseline, which included the proposed IERRT.
- 3.11.13. Through the preparation of a hazard log, a total of 18 unique hazard scenarios associated with the IGET, during both construction and operational phases, were identified. The hazards were ranked in terms of frequency and consequences to people, property, the planet, and the Port, then evaluated based on their most likely and worst credible outcomes. The NRA concluded that in all cases, the risks were assessed to be tolerable and ALARP (As Low As Reasonably Possible) based on existing control measures and/ or new measures to be established as part of the IGET.
- 3.11.14. The Applicant also undertook a real time ship Navigational Simulation Study (NSS) [[APP-192](#)] to assess the feasibility of the development. The NSS study informed the NRA and initially considered a jetty supporting 2-berths. The NSS concluded that the layouts were both feasible designs, assuming the provision of appropriate exclusion zones. After its completion, the design was revised to make provision for only a single berth, with the updated report confirming that the overall conclusions of the NSS remained valid, despite this design change [[APP-192](#)].
- 3.11.15. As a result of the NSS and NRA, a number of mitigation measures were proposed:
- Updating existing port documents including the Port Marine Safety Management System (MSMS), Humber Passage Plan (HPP), and Humber Emergency Plan (HEP), to take into account the IGET;
 - Vessels to be sequenced as per the Humber Passage Plan to help avoid encounters and prevent overtaking;
 - Maximum speed limit of 5 knots to apply to vessels passing the IGET berth when a vessel is mooring, moored or unmooring (the same as at IOT); and

- Minimum 150m exclusion zone to apply to passing vessels from the berth line.
- 3.11.16. In relation to the adjacent Immingham Oil Terminal (IOT), the NSS recommended that the approach and departure tracks for vessels operating at IOT should be adjusted, although this was considered to be marginal and would not result in any additional time or resource requirements. Neither did it conclude that the proposed exclusion zones would preclude or change the timings or execution of concurrent arrivals to IOT berths.
- 3.11.17. In relation to ships passing IGET, the NSS concluded that, other than the exclusion zones, it would impose no additional restrictions on the ability of ships to navigate safely in the main channel, when compared with the existing situation, or result in any significant increase in transit time for passing vessels.
- 3.11.18. Overall, the ES concluded that, with these measures in place, along with existing controls already active and enforced by the Harbour Authority within the Port of Immingham or by Humber Estuary Services (HES), effects during both construction and operation of the IGET would be ALARP and therefore not considered to be significant.

LOCAL IMPACT REPORT

- 3.11.19. There were no substantive comments relating to marine movement and operational safety in the submitted LIR from NELC [\[REP1-070\]](#).

THE EXAMINATION

- 3.11.20. The main organisations with an interest in navigation matters are the Harbour Master, Humber (HMH), Corporation of Trinity House of Deptford Strond (Trinity House), the Maritime and Coastguard Agency (MCA) and the MMO.
- 3.11.21. At ISH3 [\[EV5-005\]](#), the Applicant provided an overview of the various bodies who were responsible for marine movement and safe operation of vessels on the estuary. This included an explanation of the relationship between the Applicant and the Harbour Master, along with an identification of the relevant statutes and bylaws which govern vessels using the estuary. The ExA sought clarification on a number of points and, on the ASI, observed a number of the bodies at first hand. No IPs raised any comments or questions on the overall roles of the various bodies or their relationship with the Applicant.
- 3.11.22. The MMO [\[RR-016\]](#) deferred to the MCA and Trinity House on matters of shipping and navigation. The MCA [\[RR-017\]](#) noted that all the works associated with the IGET, fall entirely within the statutory harbour area, who would therefore be responsible for maintaining the safety of navigation within their area of jurisdiction during the construction and operation phases. Trinity House did not comment directly on navigation matters beyond registering its interest [\[RR-006\]](#).
- 3.11.23. The HMH made submissions during the Examination [\[RR-003\]](#), [\[REP1-097\]](#) and [\[REP3-107\]](#), with discussions between the HMH and the Applicant continuing throughout the Examination. At D7, a signed SoCG [\[REP7-037\]](#) between the Applicant and the HMH was submitted, which confirmed that agreement had been reached concerning the drafting of relevant Articles in the dDCO, along with the wording of the Protective Provisions contained in Schedule 14, Part 1 [\[REP7-004\]](#).
- 3.11.24. In response to questions from the ExA, the HMH confirmed that navigational systems already existed, which are controlled via other legislation and bylaws. These, along

with the measures in the dDCO, would, in his view, ensure the safe operation of vessels accessing IGET [REP3-107]. In response to a question from the ExA [PD-008], the HMH expressed a view [REP1-098] that there would be no navigational safety implications for existing ports, as navigational safety in the Humber, including IGET, could be managed safely through existing procedures and the proposed additional mitigation.

- 3.11.25. In terms of vessel capacity, the HMH confirmed in response to ExQ1 [PD-008] that he did not expect IGET to have any material effect on the overall capacity of the river. The HMH submitted evidence [REP1-098] to show existing and predicted future vessel numbers. The HMH also considered [REP1-098] that the assessment approach adopted by the Applicant, including the NRA [APP-191] and NSS [APP-192], was robust, and that the conclusions in relation to the identified risks was reasonable.
- 3.11.26. At the outset of the Examination, concerns were raised by both IOT and CLdN Ports Killingholme in relation to the impact of the IGET upon their operations, both from a safety perspective, but also the potential commercial implications from the proposed mitigation measures, in particular the reduced speed limit and the new exclusion zone. However, by the close of the Examination, all matters were resolved and both parties withdrew their RRs at D5 [REP5-056] and D6 [REP6-027] respectively.
- 3.11.27. DFDS Seaways [RR-008], whilst not objecting to the principle of the IGET, raised issues in relation to the methodology used in the NRA, in particular a lack of stepped changes in tolerability thresholds, along with a concern over the tide assumptions used within the simulations. DFDS also highlighted an issue around the availability of tugs on the estuary and considered that the Applicant's approach of leaving the provision of towage to 'market forces', would not guarantee sufficient towage, especially in the short term, which could lead to delays and disruption to business.
- 3.11.28. In response [REP1-021] the Applicant confirmed that tolerability was set in accordance with the PMSC, and its associated Good Practice Guide. In relation to tidal direction, the Applicant confirmed that their model included a more sophisticated approach than that referred to by DFDS. On the matter of tug availability, the Applicant identified that towage is not guaranteed albeit, in their opinion, it made commercial sense for the towage providers to make sufficient tugs available to service the current market needs.

CONCLUSIONS

- 3.11.29. The ExA concludes that marine movement and operational safety matters have been satisfactorily considered in the Application.
- 3.11.30. In relation to navigational safety along the estuary, it is clear to the ExA that there already exists an extensive, long established and co-ordinated network that is responsible for ensuring the safe passage of all vessels using the estuary. This network is governed by a range of national and local regulations, along with specific bespoke local bylaws, which establish the laws and rules to be obeyed. Compliance with these falls within the jurisdiction of a number of bodies, including the HMH.
- 3.11.31. On this basis, the ExA considers that the proposed mitigation and measures set out in the ES and secured in the dDCO, including the Protective Provisions, coupled with the existing network of controls, would ensure sufficient mechanisms and processes are in place to minimise the risk from additional marine movement and operational safety issues arising from IGET. Furthermore, the ExA was not presented with any

evidence to lead us to doubt that the existing processes and relevant bodies would not be capable of managing the additional vessels accessing IGET. The ExA is therefore satisfied there are no issues outstanding which would be likely to cause a danger to marine movement and operational safety matters.

- 3.11.32. The ExA therefore concludes that marine movement and operational safety matters are neutral and therefore weigh neither for nor against the making of the Order.

3.12. MAJOR ACCIDENTS AND HAZARDOUS SUBSTANCES

BACKGROUND AND POLICY CONTEXT

- 3.12.1. This section considers the effects of the Proposed Development in relation to the potential impacts on human health, welfare and the environment, as a result of major accident and/or disaster (MA&D) events and hazardous substances (HS). Effects of the Proposed Development in relation to potential impacts from marine transport and navigation, are considered in section 3.13: Marine Movement and Operational Safety.

National Policy Statement

- 3.12.2. The National Policy Statement for Ports (NPSfP) does not specifically mention MA&D or HS, however several requirements from other sections of the NPSfP are applicable.
- 3.12.3. Particularly applicable to MA&D is Paragraph 4.11.3 of the NPSfP, which states the decision-maker should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator.
- 3.12.4. With the Applicant wishing to hold stocks of certain hazardous substances above a certain threshold at the Proposed Development, Paragraph 4.15.1 of the NPSfP refers to the need for a hazardous substances consent (HSC).
- 3.12.5. As stated in Paragraph 4.15.2 of the NPSfP, the Health and Safety Executive (HSE) will assess the risks based on the development consent application and will recommend whether the HSC should be granted subject to any conditions.
- 3.12.6. A consultation distance around every site with HSC is set by the HSE, with section 4.15.3 of the NPSfP recommending early consultation with the relevant local planning authority on whether or not the Proposed Development falls within the consultation distance of any site with an HSC. Should this be the case, section 4.15.3 of the NPSfP recommends the Applicant seek advice from the HSE on locating the particular development there.

Other Legislation and Policies

- 3.12.7. Legislation, policies and guidance relevant to MA&D and HS are set out in the ES Chapter 22 [\[APP-064\]](#) of the Application.
- 3.12.8. Legislation specifically relevant to Chapter 22 [\[APP-064\]](#) of the Application includes:
- The Control of Major Accident Hazards (COMAH) Regulations 2015. The COMAH Regulations require that operators take all necessary measures to prevent major accidents involving dangerous substances and are enforced by the Competent Authority, comprising HSE and Environment Agency (EA) acting in cooperation.

- The Planning (Hazardous Substances) Regulations (PHSR) 2015. The PHSR 2015 apply to facilities which hold quantities of hazardous substances at or above defined limits within the Regulations. These facilities must obtain a Hazardous Substance Consent (HSC), usually from the local planning authority.
- The Pipelines Safety Regulations (PSR) 1996. The PSR Regulations, provide a means of securing pipeline integrity, by ensuring that a pipeline is designed, constructed, and operated safely, thereby reducing risks to the environment.
- The Environmental Permitting (England and Wales) Regulations (EPR) 2016. EPR requires operators of 'regulated facilities' to obtain a permit and only if the permit is issued are operations allowed to commence. In this way EPR provides for ongoing supervision by regulators of activities which could harm the environment.

THE APPLICATION

Environmental Statement

- 3.12.9. In respect of MA&D and HS effects, the Applicant's assessment is set out in the ES in Chapter 22: Major Accidents and Disasters [[APP-064](#)] of the Application. Chapter 22 of the ES sets out the Applicants assessment methodology, baseline conditions and the likely significant effects with respect to MA&D and HS from the construction, operation and decommissioning of the Proposed Development.

Scope and Methodology

- 3.12.10. The scope of the Applicant's assessment is based on the 2023 Scoping Opinion [[APP-167](#)] [[APP-168](#)].
- 3.12.11. The Applicant's assessment of MA&D and HS involved identifying the residual risks based on the hazardous substances expected to be on site. After taking into consideration proposed mitigation measures, a conclusion was reached on the tolerability and significance of the residual risks to determine if risks have been reduced to As Low As Reasonably Practicable (ALARP).
- 3.12.12. As the jetty and associated facilities may be used to import and export carbon dioxide (CO₂) as a bulk liquid from carbon capture and storage installations, it was assessed in the accident scenarios due to its hazard potential.
- 3.12.13. The protected environmental receptors such as the Humber estuary, industrial sites and the residential area of Immingham are all located within a 5km radius of the Proposed Development. Taking this into consideration, along with using experience and professional judgement, an area defined by a radius of 5km from the Order limits of the Proposed Development was used by the Applicant as the study area.

Applicant's Assessment of Effects and Proposed Mitigation

- 3.12.14. To establish a baseline, the Applicant identified all receptors that could potentially be impacted by a MA&D event. These receptors included: infrastructure and industrial sites; natural features; protected environmental sites; the Humber estuary; surrounding bedrock groundwater; and off-site sensitive receptors.
- 3.12.15. The Applicant has stated their commitment to complying with all relevant safety and environmental legislation for the management of risks on industrial facilities, from the design and construction phase, through operation and eventual decommissioning.
- 3.12.16. The Applicant identified that at all stages of the project, these various pieces of legislation would require several stipulations, including appropriate formal risk

assessments, to be fulfilled to the satisfaction of the regulators. The Applicant confirmed that these requirements/ measures had been taken account of, in the impact assessment process on the basis that they will be delivered and implemented as part of the project.

- 3.12.17. For all phases of the Proposed Development, a total of 15 potential hazardous scenarios were initially identified by the Applicant of which ten were considered credible and therefore deemed Risk Events. These identified risk events lead to potentially harmful consequences to people, primarily to those present on-site and the environment.
- 3.12.18. Given the flammable and toxic properties of hydrogen and ammonia, the Applicant has concluded it was not possible to eliminate risks entirely. The Applicant identified that Risk Events would therefore be managed throughout the lifecycle of the Project, by a comprehensive safety and environmental protection programme implemented via engineering design, operational measures and management to achieve ALARP, as required by the COMAH Regulations.

LOCAL IMPACT REPORT

- 3.12.19. The LIR from NELC [[AS-146](#)], states the Proposed Development would constitute a hazardous installation and as such would have associated zones which could constrain wider development and may impact adjacent land uses.

THE EXAMINATION

- 3.12.20. The issues examined were:
- Applicant's approach
 - Identifying and mitigating risk to ALARP levels; and
 - Impact on land use planning.

Applicant's approach

- 3.12.21. In response to the ExA's first round of written questions [[REP1-033](#)], the Applicant explained how events that could lead to major incidents had been derived and how they propose to reduce these to acceptable levels. These responses were followed up by the ExA at ISH 2 [[EV4-004](#)], during which the Applicant explained the processes undertaken to model the potential impact of credible MA&D and the techniques used to identify all the events/ risks that could lead to these incidents.
- 3.12.22. In ISH8 [[EV11-004](#)], the Applicant confirmed that in accordance with the 2015 COMAH Regulations, operations cannot commence until safety related measures have been addressed to the satisfaction of the Competent Authority. These measures include demonstrating through submission of a safety report that a combination of techniques have been used to identify all risks and that mitigation measures are in place to ensure these risks are ALARP.
- 3.12.23. In ISH 7 [[EV10-002](#)] NELC confirmed that due to the storage and use of hazardous substances on the Proposed Development, the Applicant will require a HSC. The HSC is granted by NELC as the local authority for the area, following consultation with the HSE, who as part of this consultation would provide the local authority with advice on land use planning zones, also known as COMAH zones.

Identifying and mitigating risk to ALARP levels

- 3.12.24. At the start of the Examination, IOT operators raised safety concerns [\[RR-014\]](#) due to the potential fire, explosion and toxic gas release hazard associated with the storage and processing of ammonia and hydrogen at the Proposed Development. However following discussions during Examination with the Applicant, IOT subsequently withdrew these concerns [\[REP5-056\]](#).
- 3.12.25. Concerns of having another COMAH facility in the area were also raised by Polynt Composites [\[REP1-106\]](#). The Applicant addressed the concerns raised by Polynt Composites, in their response to the ExA [\[REP2-016\]](#). In this response the Applicant states, as per the requirements of the COMAH regulations and other consenting regimes, operational and cumulative impacts have been assessed, including impacts on surrounding land users and that they are committed to engaging with local stakeholders regarding emergency plan arrangements.

ExA's Considerations

- 3.12.26. The EA representing the Competent Authority, referred to Regulation 5 of the COMAH regulations at ISH2 [\[EV4-004\]](#), which states "Every operator must take all measures necessary to prevent major accidents". With the COMAH regulations requiring implementation of all identified safety related measures, the ExA is satisfied safety concerns raised by IP's will be addressed under these regulations.
- 3.12.27. Although there is no specific mention of MA&D and HS in the NPSfP, other legislation relevant to planning requires the Applicant to demonstrate they have adequately assessed the likelihood and potential impacts of MA&D, including the need for mitigation measures to reduce these risks to ALARP at the Proposed Development.
- 3.12.28. The Applicant's response to the ExA's first round of written questions [\[REP1-033\]](#), followed by their further explanation at ISH 2 [\[EV4-004\]](#) confirms this assessment has been carried out, which the ExA accepts. As a consequence, the ExA finds that the Applicant has as far as possible, identified and mitigated risks to ALARP.

Impact on land use planning

- 3.12.29. NELC raised concerns around the extent of the COMAH zones and how these may affect the surrounding area in regard to future development growth [\[RR-022\]](#). The potential impact and implications of COMAH zones, was therefore explored during ISH2 [\[EV4-004\]](#) and again at ISH7 [\[EV10-002\]](#).
- 3.12.30. In response to ExA questioning at these hearings, NELC confirmed they had received an HSC application from the Applicant, however they were awaiting consultation advice from the HSE to advise on the size and extent of these COMAH zones. NELC advised that this consultation advice from the HSE was unlikely to be available before the close of the Examination.
- 3.12.31. In response to Action Point 1 [\[EV8-006\]](#) from Compulsory Acquisition Hearing (CAH) 1 [\[EV8-004\]](#), the Applicant provided a quantitative summary report on land use planning [\[REP3-069\]](#) produced by Gexcon Limited.
- 3.12.32. Section 5.2 of the Gexcon report identified that 10 residential properties on the west side of Queens Road, would fall within the inner COMAH zone. Gexcon advised that due to the sensitivity assigned to residential properties, it would mean the HSE would likely advise against compatibility between them and the Proposed Development.

- 3.12.33. By the end of the Examination, the Applicant confirmed that it had voluntarily purchased the 10 residential properties along Queens Road identified as falling within the inner COMAH zone. This would mean, according to the assessment conducted by Gexcon Limited [REP3-069], there would be no compatibility issues between the Proposed Development and the surrounding area and therefore a do not advise against (DAA) conclusion would be received from the HSE for all COMAH zones.
- 3.12.34. In the signed SoCG between the Applicant and NELC [REP7-023], it states NELC have reviewed the Applicant's report on land use planning and that they are reassured that the surrounding allocated employment land would not be sterilised for future development growth.

ExA's Considerations

- 3.12.35. The ExA find that following the Applicant's voluntary purchase of the residential properties on Queens Road, potential compatibility issues between the Proposed Development and the surrounding land, would no longer exist. The ExA acknowledge that this cannot be confirmed until the HSE have completed their assessment and provided their conclusions to NELC, however there is no evidence to suggest the HSE will arrive at a different conclusion to the Applicant with regard to the size and extent of COMAH zones. The ExA is therefore satisfied the issue of COMAH zones and how these may affect the surrounding area has been addressed.

CONCLUSIONS

- 3.12.36. The 2015 COMAH Regulations enforced by the Competent Authority, is the primary piece of legislation requiring environmental and safety mitigation measures for major hazard installations to be identified and implemented by the Applicant. These regulations stipulate operations must not commence until identified mitigation measures have been addressed to the satisfaction of the Competent Authority. The regulations also require the Applicant to demonstrate at each of the development phases that measures are in place to reduce risks to ALARP.
- 3.12.37. The ExA accepts the Applicant's approach for reducing risks to ALARP. The ExA is therefore satisfied that the potential impacts on human health, welfare and the environment, as a result of MA&D events and hazardous substances, have been appropriately identified and mitigated. With safety issues and concerns, in relation to the storage and use of hazardous substances being dealt with under the COMAH regulations, to avoid duplicate regulation the ExA does not consider the need for them to be addressed again in the rDCO (Appendix D).
- 3.12.38. Although final confirmation of the HSE's agreement with the findings of the Applicant's assessment [REP3-069] on the size and extent of COMAH zones was not presented by the close of the Examination, at ISH7 [EV10-002] NELC stated this is likely to be forthcoming shortly after the close of the Examination. With no evidence to suggest otherwise, we have assumed the HSE will arrive at the same conclusion to the Applicant with regard to COMAH zones. On this basis the ExA agrees with the Applicant's assessment [REP3-069] and is satisfied the impact of the Proposed Development on future land use planning, is not considered significant.
- 3.12.39. The ExA concludes that MA&D related effects are neutral in the planning balance and therefore weigh neither for nor against the making of the Order.

3.13. SOCIO-ECONOMIC

BACKGROUND AND POLICY CONTEXT

- 3.13.1. This section considers the effects of the Proposed Development in relation to the potential impacts on socio-economics. Effects relating to human health are considered in Section 3.16: Other Environmental Matters.

National Policy Statement

- 3.13.2. Paragraph 4.2.3 of the NPSfP requires the decision-maker to take account of any longer-term benefits that have been identified, such as job creation, or any wider benefits to national, regional or local economies, environment or society”.
- 3.13.3. Paragraph 4.3.5 of NPSfP states that substantial weight should be given to positive impacts associated with economic development.
- 3.13.4. As stated in paragraph 5.14.1 of the NPSfP, the construction, operation and decommissioning of port infrastructure may have socio-economic impacts at local and regional levels. Should this be the case, paragraph 5.14.2 of the NPSfP requires the Applicant to undertake an assessment as part of the ES.
- 3.13.5. Existing socio-economic conditions in the surrounding areas should be described and reference to how the development’s socio-economic impacts correlate with local planning policies should be made, as required under paragraph 5.14.4 of the NPSfP.
- 3.13.6. Paragraph 5.14.6 of the NPSfP states that when assessing socio-economic impacts, sources other than just those identified by the Applicant should be used to help identify a wider range of impacts. Limited weight is to be given to socio-economic impacts in the absence of evidence, as stated in paragraph 5.14.7 of the NPSfP.
- 3.13.7. Paragraph 5.14.8 of the NPSfP states that positive provisions made by the developer should be considered, such as those made through contributions, as well as options for phasing development in relation to the socio-economic impacts. Paragraph 5.14.9 states consideration should be given by the Secretary of State as to whether measures are necessary to mitigate any adverse socio-economic impacts of the development.

Other Legislation and Policies

- 3.13.8. Legislation, policies and guidance relevant to socio-economics are set out in the Environmental Statement (ES) Chapter 23 [\[APP-065\]](#) of the Application.

THE APPLICATION

Environmental Statement

- 3.13.9. In respect of socio-economic effects, the Applicant’s assessment is set out in the ES in Chapter 23: Socio-economics [\[APP-065\]](#) of the Application.
- 3.13.10. Chapter 23 of the ES sets out the Applicant’s assessment methodology, baseline conditions and the likely significant effects with respect to socio-economics from the construction, operation and decommissioning of the Proposed Development.
- 3.13.11. The assessment was supported by the following application documents:
- Figure 23.1: Socio Economic Receptors within the Site Boundary [\[APP-159\]](#);

- Figure 23.2: Socio Economic Receptors within 500m of the Site Boundary [[APP-160](#)];
- Figure 23.3: Socio Economic Receptors within 5km of the Site Boundary [[APP-161](#)];
- Figure 23.4: Lower Super Output Area [[APP-162](#)];
- Figure 23.5: North East Lincolnshire Local Authority Area [[APP-163](#)]; and
- Figure 23.6: Access to the Sea Wall [[APP-164](#)].

Scope and Methodology

- 3.13.12. The scope of the Applicant's assessment is based on the 2023 Scoping Opinion [[APP-167](#)] [[APP-168](#)].
- 3.13.13. The Proposed Development has the potential to result in a wide range of socio-economic effects. For the purposes of this assessment, the Applicant gave consideration to effects on or arising from the following:
- Employment and gross value added (GVA);
 - Recreational routes and Public Rights of Way (PRoW) during construction and decommissioning only;
 - Private and public assets including residential properties, business premises, agricultural land and community facilities;
 - Development land; and
 - Influx of workers.
- 3.13.14. The above effects were evaluated for each phase of the Proposed Development, construction, operation and decommissioning. For assessment purposes, short term impacts were considered to be of one year or less, medium term impacts of one to four years and long-term impacts of five or more years.
- 3.13.15. Depending on the nature of the effect being considered, the study area varied.
- Economic effects – North East Lincolnshire area.
 - PRoW effects – located in or within 500m of the Proposed Development.
 - Private and public assets –in or within 500m of the Proposed Development for development land applications, residential and business premises and 1.5 km for community facilities.
 - Influx of new worker effects – 5km of the Proposed Development.

Applicant's Assessment of Effects and Proposed Mitigation

Baseline

- 3.13.16. The Applicant identified a number of sensitive receptors within the relevant study areas. These included:
- The existing site and land use, including development land;
 - Population and labour force;
 - The local economy;
 - PRoWs;
 - Residential properties;
 - Business premises;
 - Community facilities;
 - Primary healthcare facilities (GP surgeries); and
 - Accommodation facilities.

3.13.17. The Applicant anticipated that the future baseline to be largely the same as the existing baseline for socio-economics and they assumed that the Proposed Development would continue to be characterised as an industrial landscape, partially utilised as an operational port.

Mitigation measures

3.13.18. Through the process of design development and by embedding mitigation measures, the Applicant states environmental impacts and effects have either been avoided or minimised.

3.13.19. In addition to this, standard mitigation measures, such as notifying residents on details of work to utilities, would be used.

Construction Effects

3.13.20. The number of jobs created from both direct and indirect employment during the construction phase of the Proposed Development, after taking displacement of other workers into account, was estimated to be 645. With a potential loss of 18 existing jobs, the total net employment during construction would be 627. The Applicant concluded that this would have a temporary major beneficial effect on the North East Lincolnshire (NEL) economy.

3.13.21. Applying the average GVA per construction worker in the area to the total number of construction workers generated from the Proposed Development, the Applicant calculated the total GVA arising from the construction period, for both North and North East Lincolnshire (NEL) combined, to be £35 million. Of this, £24.5 million would be for the NEL area. The Applicant concluded that this would have a temporary moderate beneficial effect on the NEL economy.

3.13.22. Public Bridleway 36 would be affected during construction, with a temporary diversion in place during this period. The Applicant concluded that this would have a temporary minor adverse effect on the local PRow network.

3.13.23. The Proposed Development has the potential to impact several areas which fall under the category of private and public assets. The effect on each of these from the Proposed Development, was considered in turn.

- Residential properties - loss of residential properties due to incompatibility with COMAH zones, was assessed to have a permanent moderate adverse effect, which was considered to be significant.
- Businesses - loss of business premises at 7-8 and 18 Queens Road was assessed to have a permanent negligible effect, which was considered not to be significant.
- Agricultural land – land required on a temporary basis, would be returned with no change in condition and land acquired on a permanent basis, already has planning permission for industrial use.
- Community facilities – sea anglers not having access to certain section of sea wall, was assessed to have a permanent minor adverse effect, which was considered not to be significant.
- Development land - the use of development land is in line with NEL Plans, impacts have therefore been assessed to be negligible, not significant.
- Impact of a changing influx of workers:

- Primary healthcare – impact on such amenities due to construction workers, assessed to have a temporary minor adverse effect, which was considered not to be significant.
- Accommodation - there was considered to be sufficient local supply to facilitate all construction workers. Impacts were therefore assessed to be negligible and not significant.

Operation Effects

3.13.24. The number of employment opportunities created from both direct and indirect employment once the Proposed Development was operational, after taking displacement of other workers into account, was estimated by the Applicant to be 207. The Applicant anticipated 145 job roles to remain within the NEL Area. This was assessed to have a permanent moderate beneficial effect on the NEL economy, which was considered to be significant.

3.13.25. In relation to other impacts, the Applicant’s assessment concluded:

- Residential Properties – no additional impacts to those identified during construction.
- Businesses – it was not anticipated the trading of any businesses would be impacted, as such there would be no effect on businesses during the operational phase of the Proposed Development.
- Community facilities - no additional impacts to those identified during construction.
- Development land - it was assumed there would be implications for land use and development in the vicinity of the hydrogen production facility in terms of major hazard planning. As a result, the consequences for future development land in the vicinity of the Proposed Development were assessed to have a permanent minor adverse effect, which was considered not to be significant.

3.13.26. The Applicant assessed a changing influx of workers was likely to impact local amenities, namely primary healthcare. The Applicant estimates from the total number of workers employed during the operational phase, 40 workers are expected to reside outside the area and therefore unlikely to be registered with one of the local General Practitioner (GP) practises. The Applicant then took a ‘worst-case scenario’ approach, in which all the additional workers required for the operational phase register at local GP practices. The Applicant’s assessment concluded this would increase the overall practice list size from 2,099 patients per GP to 2,101 patients per GP. This was assessed to have had a permanent minor adverse effect, which was considered not to be significant.

Decommissioning Effects

3.13.27. In ISH 3 [\[EV5-008\]](#), the Applicant confirmed decommissioning would only involve the hydrogen production facility and not the marine facilities. The Applicant therefore considered impacts during this period to be less than those from the construction phase. As decommissioning would create some jobs, this was likely to result in a temporary minor beneficial effect, which the Applicant considered to be not significant.

3.13.28. The Applicant did not envisage a need to close or divert any PRoW including Public Bridleway 36, during the decommissioning phase. The Applicant’s assessment therefore concluded that there would be no effect on users of PRoW during this phase. With no further requirements for land to that used in construction and

operation, the Applicant's assessment also concluded there would be no effect on private and public assets.

LOCAL IMPACT REPORT

- 3.13.29. The LIR from NELC [\[AS-146\]](#), recognised the economic benefits that the Proposed Development would bring to the region and did not consider there to be any unacceptable impacts in regard to neighbouring land uses.

THE EXAMINATION

- 3.13.30. In ExQ1 [\[PD-008\]](#) the ExA sought clarification regarding the duration of the diversion for Public Bridleway 36 during construction, along with clarification on whether users such as sea anglers had been consulted.
- 3.13.31. In response to ExQ1 [\[REP1-035\]](#) the Applicant stated that consultation had been carried out with the sea anglers and that access restrictions to this section of the sea wall, would be temporary and anticipated to last for 2.5 to 3 years (first phase of construction). No relevant representations were received from representatives of the sea anglers during the Examination.
- 3.13.32. Potential impacts on socio-economic factors from the Proposed Development, were explored further at ISH5 [\[EV7-004\]](#) and ISH 6 [\[EV9-004\]](#). During these hearings, the Applicant explained that effects were largely beneficial due to the employment opportunities the Proposed Development would create. The Applicant's commitment to giving priority to those residing in the local area was included in the oCEMP [\[APP-221\]](#), which would be secured by Requirement 6 of the dDCO.
- 3.13.33. In the Applicant's response to ExQ1 [\[REP1-035\]](#) they stated that, with proposed mitigation measures in place, no significant adverse cumulative impacts were expected on socio-economic factors. However in their cumulative and in-combination effects submission at D5 [\[REP5-009\]](#), the Applicant did acknowledge that two potential adverse effects, due to short term risks on possible shortages for accommodation and healthcare had been identified, however these were not considered to be significant.
- 3.13.34. The ExA received one objection with regards to socio-economic impacts from the Proposed Development, being from the Davey family [\[RR-007\]](#). The Davey family raised a number of concerns in their RR, however in relation to socio-economic impacts, the main issues raised were potential impacts on local services, including schools, hospitals and GP services. The ExA is satisfied the concerns raised have been taken into consideration during the Examination.
- 3.13.35. The ExA considers that the Applicant has adequately assessed the impacts the Proposed Development would have on socio-economics and that any adverse impacts would be satisfactorily mitigated by actions and commitments contained in their oCEMP, which the ExA considers is secured in the dDCO at R6.

CONCLUSIONS

- 3.13.36. The ExA finds that the closure of Public Bridleway 36 would have a minor adverse impact to existing users however, the ExA acknowledge that this would only be for a temporary period and as such, has attributed this impact a little weight.
- 3.13.37. The ExA finds that whilst there is potential for adverse effects primarily during the construction phase on areas such as, users of PRoW, primary healthcare and

accommodation, mitigation measures would be implemented to minimise these. The ExA is satisfied that the proposed mitigation and measures, as set out in the ES are adequately secured in the rDCO (Appendix D).

- 3.13.38. The ExA finds the Proposed Development would secure significant employment opportunities both during construction and operation, as well as bringing wider socio-economic benefits to NEL.
- 3.13.39. The ExA considers the Applicant has adequately assessed the effects of the Proposed Development and has provided sufficient evidence to support its conclusions on those effects. The ExA is satisfied the Applicant's assessment and the Proposed Development overall with regard to socio-economics, accords with the NPSfP.
- 3.13.40. The ExA concludes that in the planning balance, socio-economic related effects have a positive weight in favour of making the rDCO (Appendix D). Given the emphasis contained within the NPSfP to the positive impacts associated with economic development, the ExA have attributed this benefit great weight in the planning balance.

3.14. CUMULATIVE EFFECTS AND IN-COMBINATION EFFECTS BACKGROUND AND POLICY CONTEXT

- 3.14.1. Cumulative effects and in-combination effects were identified as a principal issue in Annex C of the Rule 6 letter [\[PD-005\]](#). This concerned the effects of the Proposed Development in terms of:
- 3.14.2. Whether the cumulative effects of the construction and operational phases have been sufficiently assessed alongside other plans, projects and on-going activities; and
- 3.14.3. Whether the in-combination effects of the construction and operational phases have been sufficiently considered, in particular in-combination effects upon the living conditions of nearby residents.

National Policy Statements

- 3.14.4. The NPSfP advises that:
- if port developments are occurring in parallel, it may be necessary to make some assessment of the effects of competition in assessing the demand on inland access links and on the phasing of road, rail and other infrastructure demands. These considerations are expanded on in section 5.4 of the NPSfP;
 - when considering cumulative effects, the ES should provide information on how the effects of the applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been granted, as well as those already in existence);
 - consideration should be given to how the accumulation of, and interrelationship between, effects might affect the environment, economy or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place;
 - the Applicant and decision-maker should consider cumulative impacts of new port developments on health; and
 - where a project is likely to have socio-economic impacts at local or regional levels, the applicant's assessment should include consideration of cumulative effects if development consent were to be granted for a number of projects within

a region and these were to be developed in a similar timeframe, for example a potential shortage of construction workers to meet the needs of other industries and major projects within the region.

- 3.14.5. The NPS EN-1 at paragraph 4.2.5 advises that an ES should provide information on how the effects of the applicant's proposal would combine and interact with the effects of other development.

EIA Regulations

- 3.14.6. Schedule 4, paragraph 5 of the EIA Regulations sets out the information that should be included in the ES, including a description of the likely significant effects of the project on the environment, covering the cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, and also the measures envisaged for avoiding or mitigating significant adverse effects.

THE APPLICATION

Environmental Statement

- 3.14.7. The Applicant sets out their Cumulative Effects Assessment (CEA) in Chapter 25 of the ES [APP-067], drawing on the assessment of impacts undertaken within chapters 6 to 24 of the ES and considering both cumulative effects and in-combination (combined) effects. The CEA is supported by the following figures and appendices:

- Figure 25.1: Cumulative Assessment Long List [APP-165];
- Figure 25.2: Cumulative Assessment Short List [APP-166];
- Appendix 25.A: Cumulative Effects Assessment Long List [APP-218];
- Appendix 25.B: Cumulative Effects Assessment Short List [APP-219]; and
- Appendix 25.C: Assessment of Cumulative Effects [APP-220].

Cumulative Effects

- 3.14.8. The potential significant cumulative (inter-project) effects were summarised in Table 25-11 of ES Chapter 25, identifying:
- A large beneficial socio-economic effect due to the construction of the Project together with 10 other developments;
 - Moderate adverse cumulative landscape effects on the site and its immediate setting by the project and other developments;
 - Large adverse visual effects on Viewpoint 2 as a result of the construction of the Proposed Development and others;
 - Large adverse cumulative visual effects on Viewpoint 11 as a result of the construction of the Proposed Development and other developments;
 - Moderate adverse cumulative visual effects on Viewpoint 2 as a result of the visibility of characteristic built structures slightly intensifying due to the operation of the Proposed Development along with three other developments;
 - Moderate adverse cumulative visual effects on Viewpoint 3 due to the presence of the stacks associated with identified cumulative developments slightly intensifying the visibility of characteristic built structures; and
 - Moderate beneficial cumulative socio-economic effects due to the operation of the Proposed Development together with other developments, due to the increase in employment opportunities.

In-combination Effects

- 3.14.9. The potential significant in-combination (intra-project) effects were summarised in Table 25-10 of ES Chapter 25, identifying:

- Large adverse effects from construction dust, noise, vibration, visual effects, traffic and transport and increases in flood risk to 31 Queens Road and other residential properties along Queen’s Road, at the eastern end;
- Large adverse effect from construction dust, noise, vibration, visual effects, traffic and transport and increases in flood risk to 1 Queens Road and other residential properties along Queen’s Road, at the western end;
- Large adverse effect as a result of visual and socio-economic combined effects on Bridleway 36 and the proposed England Coastal Path; and
- Moderate adverse effect from the construction of the pipe-rack and jetty access road causing loss of woodland habitat, combined with the effect on the setting of the asset from a historic environment perspective on the “Long Strip” woodland.

EXAMINATION

- 3.14.10. During the Examination, additional information was provided through revised or new submissions and by means of answers to the ExA’s Written Questions. These are covered in the relevant subject sections of this Report, and conclusions reached therein, apart from the specific issues considered below.
- 3.14.11. In ExQ1[[PD-008](#)] (Section Q1.16.1) the Applicant was asked to keep under review the CEA Long and Short Lists [[APP-218](#)] and [[APP-219](#)] and to provide an updated assessment of the impact of the Viking CCS Pipeline project, along with specific issues relating to the Long Strip woodland and to transport-related matters. The Applicant’s answers are set out in [[REP1-037](#)]. NELC confirmed [[REP1-071](#)] that they were happy with the CEA Long and Short lists and that they were up to date.
- 3.14.12. In Q1.14.2.1 of ExQ1[[PD-008](#)] the Applicant was asked to provide a summary of what mitigation measures would be put in place to reduce impacts on local residents and businesses due to several construction projects taking place at the same time. The Applicant’s response [[REP1-035](#)] stated that the range of mitigation measures was set out in ES Chapter 25 [[APP-067](#)] and the oCEMP [[APP-221](#)] and that these would reduce or avoid impacts on local businesses and residents during the construction phase of the Project, in particular with regard to control of noise and traffic. With this mitigation in place, significant adverse cumulative effects could still occur in respect of landscape and visual impacts during construction, but no other significant cumulative effects were expected. The Applicant considered, however, that the significant cumulative landscape and visual effects identified in the assessment were no greater than the effects identified by the Proposed Development in isolation.
- 3.14.13. ISH5 [[EV7-004](#)]; [[EV7-005](#)] included consideration of the potential inter-project effects of the Proposed Development along with the Viking CCS Pipeline and the IERRT. These three NSIP projects would be within close proximity, and would have the potential for cumulative transport effects, and also socio-economic effects relating to availability of labour and of housing for construction workers during their construction phases.
- 3.14.14. Final versions of ES Chapter 25, along with its Appendices and the Cumulative Effects Assessment Long and Short Lists were submitted by the Applicant at Deadline 5: [[REP5-009](#)]; [[REP5-011](#)]; [[REP5-013](#)]; and [[REP5-015](#)].
- Cumulative Assessment with Immingham Eastern Ro-Ro Terminal**
- 3.14.15. The IERRT (ID22 on the CEA Short and Long Lists) had been submitted before the Application for the Proposed Development and was identified by the Applicant in their initial inter-project CEA. The construction period for IERRT, although uncertain, has

the potential to overlap with the Proposed Development, and the potential for cumulative effects was assessed in relation to the following topics:

- Air quality, noise and vibration;
- Marine ecology;
- Ornithology;
- Marine transport and navigation;
- Historic environment (marine);
- Physical processes, marine water and sediment quality;
- Water use, water quality, coastal protection, flood risk and drainage;
- Socio-economic effects; and
- Human health and wellbeing.

3.14.16. The IERRT development had been highlighted as having the potential to result in significant cumulative effects, due to the nature and close proximity of the development to the Proposed Development, however no significant adverse residual effects were identified. A significant (moderate beneficial) residual cumulative effect was identified in relation to employment during the construction and operational phases. The construction of the Proposed Development and IERRT was considered likely to generate employment, which would lead to greater beneficial health effects than either project in isolation.

3.14.17. Development Consent was granted for IERRT by the SoS on 4 October 2024 after the close of this Examination.

Cumulative Assessment with Viking CCS Pipeline

3.14.18. The Viking CCS Pipeline project was also identified (ID29) by the Applicant in their inter-project CEA. The Viking project DCO Application was submitted to the Planning Inspectorate during the Examination, and at D1 the Applicant submitted a CEA Update [[REP1-043](#)] considering whether there would be likely to be any new or different cumulative effects of the Viking project in combination with the Proposed Development, compared with the assessment originally presented.

3.14.19. In their reassessment, the Applicant concluded that the only significant residual effect after mitigation would be socio-economic effects in relation to employment. This would be likely to experience a large beneficial effect during construction, due to the generation of additional employment opportunities and associated economic benefits to add to the benefits of the Proposed Development during construction. Whilst there might be a risk of temporary labour shortage or local accommodation shortage, should multiple projects progress simultaneously, the Applicant considered that the cumulative socio-economic effects of the Viking project together with the Proposed Development would be significantly beneficial overall. The Applicant reiterated this conclusion during ISH5.

Queen's Road Residential Properties

3.14.20. Although potential adverse effects were identified by the Applicant in relation to cumulative intra-project impacts on residential properties in Queen's Road, these properties were subject to Compulsory Acquisition (CA). By the close of the Examination, the Applicant and Air Products Limited had finalised the voluntary acquisition of all identified Queen's Road properties, with the intention of ending their residential use.

CONCLUSIONS

- 3.14.21. The ExA considers that the Applicant's assessment of both cumulative and combined effects, as amended during the Examination, is adequate and accords with the EIA Regulations and the relevant NPSs. Whilst the Proposed Development will be likely to cause effects particularly in relation to ecological, landscape and visual, socio-economic and transport-related matters, the ExA is satisfied that there are not likely to be any significant adverse cumulative or combined effects that are worse than the effects of the Proposed Development alone, and that the rDCO adequately provides and secures mitigation measures to minimise individual and cumulative effects.
- 3.14.22. In conclusion, the ExA considers that matters relating to cumulative and in-combination effects are neutral and therefore weigh neither for nor against the making of the Order.

3.15. HERITAGE

BACKGROUND AND POLICY CONTEXT

- 3.15.1. This section considers the effects of the Proposed Development in relation to terrestrial and marine heritage. It includes a summary of legislation, policy, and guidance relevant to considering the historic environment.

National Policy Statements

- 3.15.2. The NPSfP addresses the historic environment in Section 5.12. At 5.12.1, it states that the construction, operation and decommissioning of port infrastructure has the potential to result in adverse impacts on the historic environment. Paragraphs 5.12.3 to 5.12.5 describe both designated and non-designated heritage assets and states that the decision maker should consider the impacts on all heritage assets.
- 3.15.3. Paragraph 5.12.13 is clear that there should be a presumption in favour of the conservation of designated heritage assets. Substantial harm to, or loss of, designated assets of the highest significance should be wholly exceptional. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss or harm.
- 3.15.4. Paragraph 5.12.6 states that as part of the ES, the applicant should provide a description of the significance of the heritage assets affected by the proposed development and the contribution that their setting makes to that significance.
- 3.15.5. Paragraph 5.12.7 states that where a development site includes, or the available evidence suggests it has potential to include, heritage assets with an archaeological interest, the applicant should carry out appropriate desk-based assessment or field evaluation.
- 3.15.6. Paragraph 5.12.12 states that the SoS should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality.
- 3.15.7. Paragraph 5.12.16 states that when considering applications for development affecting the setting of a heritage asset, the SoS should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or

that better reveal the significance of, the asset. When considering applications that do not do this, the SoS should weigh any negative effects against the wider benefits of the application.

- 3.15.8. Paragraph 5.12.17 notes that a documentary record of our past is not as valuable as retaining the heritage asset, and therefore the ability to record evidence of the asset should not be a factor in deciding whether consent should be given. Paragraph 5.12.18 indicates that decision-maker should require the developer to record and advance understanding of an asset's significance before it is lost and that the extent of the requirement should be proportionate to the nature and level of the asset's significance.
- 3.15.9. The policy requirements in NPS-EN1 in relation to the historic environment are largely consistent with those of the NPSfP.

Other Legislation, Policy and Guidance

- 3.15.10. A full account of legislation, policy, and guidance can be found in the Planning Statement [\[APP-226\]](#) and Chapters 14 [\[APP-056\]](#) and 15 [\[APP-057\]](#) of the ES.

The National Planning Policy Framework (NPPF)

- 3.15.11. Chapter 16 of the NPPF deals with conserving and enhancing the historic environment. Paragraph 200 of the NPPF states that local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on its significance.
- 3.15.12. Paragraph 205 requires that great weight should be given to an asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 3.15.13. Paragraph 208 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposals.
- 3.15.14. Paragraph 209 states that in relation to non-designated heritage assets, a balanced judgement is required when determining an application, having regard to the scale of any harm or loss and the significance of the heritage asset.
- 3.15.15. Paragraph 211 states that developers should be required to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance.

National Planning Practice Guidance (NPPG)

- 3.15.16. The NPPG, Paragraph 020, also provides guidance on what is meant by the term public benefits. It states that: "*Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits*".
- 3.15.17. Appendix A of this Report includes a table listing all the legislation, policy, and guidance relevant to the whole Application.

THE APPLICATION

Environmental Statement

- 3.15.18. The ES Chapter 14 (Historical Environment – Terrestrial) [\[APP-056\]](#) and Chapter 15 (Historical Environment – Marine) [\[APP-057\]](#) set out the baseline analysis and likely significant effects of the Proposed Development on the terrestrial and marine historic environment.
- 3.15.19. ES Chapter 14 was supported by the following documents:
- Figure 14.1: Location of Designated Assets [\[APP-118\]](#);
 - Figure 14.2: Non-Designated Heritage Assets [\[APP-119\]](#);
 - Figure 14.3: Historic Landscape Character [\[APP-120\]](#);
 - Appendix 14.A: Historic Environment Events Register [\[APP-195\]](#) ;
 - Appendix 14.B: Heritage Assets Register [\[APP-196\]](#);
 - Appendix 14.C: Archaeology and Cultural Heritage Desk Based Assessment [\[APP-197\]](#);
 - Appendix 14.D: Heritage Standards and Guidance [\[APP-198\]](#);
 - Appendix 14.E: Written Scheme of Investigation for GI Watching Brief, Geoarchaeological Boreholes, Geophysical Survey and Archaeological Trial Trenching [\[APP-199\]](#);
 - Appendix 14.F: Report on Trial Trench Evaluation [\[APP-200\]](#);
 - Appendix 14.G: Report on Geoarchaeological Survey and monitoring of Geotechnical Investigations [\[APP-201\]](#); and
 - Appendix 14.H: Report on Geophysical Survey [\[APP-202\]](#).
- 3.15.20. By the end of the Examination, the following documents had been updated:
- Figure 14.1: Location of Designated Assets [\[AS-106\]](#);
 - Figure 14.2: Non-Designated Heritage Assets [\[AS-107\]](#); and
 - Figure 14.3: Historic Landscape Character [\[AS-108\]](#).
- 3.15.21. ES Chapter 15 was supported by the following documents:
- Figure 15.1: Site Location and Study Area [\[APP-121\]](#);
 - Figure 15.2: Palaeogeographic features of archaeological potential [\[APP-122\]](#);
 - Figure 15.3: Palaeogeographic feature data example – 7502 [\[APP-123\]](#);
 - Figure 15.4: Seabed features of archaeological potential [\[APP-124\]](#);
 - Figure 15.5: Data examples of seabed features [\[APP-125\]](#);
 - Appendix 15.A: Marine Archaeology Technical Report [\[APP-203\]](#); and
 - Appendix 15.B: Outline Marine Archaeological Written Scheme of Investigation [\[APP-204\]](#).
- 3.15.22. By the end of the Examination, the following documents had been updated:
- Figure 15.1: Site Location and Study Area [\[AS-109\]](#);
 - Figure 15.2: Palaeogeographic features of archaeological potential [\[AS-110\]](#);
 - Figure 15.3: Palaeogeographic feature data example – 7502 [\[AS-111\]](#); and
 - Figure 15.4: Seabed features of archaeological potential [\[AS-112\]](#).

Scope and Methodology

- 3.15.23. The assessments of terrestrial historic environment impacts (Chapter 14 of the ES [\[APP-056\]](#)) and marine environmental impacts (Chapter 15 of the ES [\[APP-057\]](#)) were undertaken in accordance with the requirements of the NPSfP and the NPPF. Guidance published in “Principles of Cultural Heritage Impact Assessment in the UK”,

published jointly by the Institute of Environmental Management and Assessment (IEMA), the Institute of Historic Building Conservation and the Chartered Institute for Archaeologists was also referred to and the assessments took national and local policy and guidance into account. Both ES chapters identified that the Proposed Development had been designed, as far as possible, to avoid and minimise impacts and effects to the historic environment through the process of design development, and by embedding mitigation measures into the design.

- 3.15.24. With regards to the terrestrial environment, in addition to desktop assessment of existing surveys and historic environment data, field investigations were undertaken. These included geotechnical investigations, geoarchaeological evaluation, geophysical survey and trial trench evaluation. The results of these were outlined in Chapter 14 of the ES [\[APP-056\]](#).
- 3.15.25. With regards to the marine environment, desktop assessment of existing databases, geophysical surveys and aerial photography were undertaken and were outlined in Chapter 15 of the ES [\[APP-057\]](#).
- 3.15.26. The Applicant adopted different sizes of study areas depending on the type of heritage assets:
- Terrestrial designated heritage assets - 2km
 - Terrestrial known non-designated heritage assets and for assessing archaeological potential - 1.6km from an approximate centre-point of the Order limits.
 - Marine archaeology - the Marine Order limits plus a 500m buffer (this included a geophysical study area of the Order limits plus a 100m buffer zone).
- 3.15.27. The relative locations of heritage assets identified within these study areas can be found in Figure 14.1: Location of Designated Assets [\[APP-118\]](#), Figure 14.2: Non-Designated Heritage Assets [\[APP-119\]](#); Figure 15.2: Palaeogeographic features of archaeological potential [\[APP-122\]](#); Figure 15.4: Seabed features of archaeological potential [\[APP-124\]](#), updated as shown in paragraph 3.17.17 and 3.17.19 above.

Applicant's Assessment of Effects and Proposed Mitigation

Terrestrial Historic Environment

- 3.15.28. As identified in [\[APP-118\]](#), there were no designated heritage assets identified within the Order limits although within the 2km study area there was one Grade II Listed Building identified: the Immingham War Memorial located on the eastern edge of the town.
- 3.15.29. Due to the potential for their settings to be impacted by the Proposed Development, the following designated heritage assets that lie beyond the 2km study area were also considered for assessment:
- Scheduled Monument, Stallingborough Medieval Settlement (NHLE 1020423)
 - Grade I listed Church of St Andrew (NHLE 1310011)
 - Grade II* listed Church of St Peter and St Paul (NHLE 1346978)
 - Grade II listed Churchfield Manor (NHLE 1161630)
 - Grade II listed Iron Bungalow (NHLE 1391349).
- 3.15.30. As identified in [\[APP-119\]](#), within the 1.6km study area for non-designated heritage assets, two assets were identified from NELC's document "*Local List of Historic Assets of Special Interest*"; a high-status Roman settlement and industrial site, and the Immingham Police Station. A further 15 non-designated heritage assets including

the post medieval plantation known as Long Strip and various archaeological features with potential to contain deposits of geoarchaeological and palaeoenvironmental interest were recorded within the study area.

- 3.15.31. No designated heritage assets were identified as being subject to any physical impacts or effects on their settings.
- 3.15.32. Two non-designated heritage assets were assessed as being subject to physical impacts arising from the construction and/or operation of the Proposed Development. These were the identified peat deposits on the West Site and the Long Strip woodland; both assessed as having the potential to be subject to partial or complete permanent truncation/removal of below ground remains, which was classed as a significant effect.
- 3.15.33. In relation to the West Site the peat deposits, mitigation measures were proposed that included further analysis of the retained borehole samples obtained. The Applicant assessed that following this proposed mitigation the effects on the peat deposits would be reduced to not significant.
- 3.15.34. In relation to Long Strip, the potential for destruction of the below ground remains was considered to be because insufficient survey work that had been carried out prior to submission. However, after further discussion, NELC considered that the work already undertaken by the ecological and environmental teams provided sufficient historical data and a separate archaeological survey of the woodland would not be required. As such, the Applicant assessed that the effects on potential archaeology in Long Strip would not be significant.

Marine Historic Environment

- 3.15.35. Assessment of the geophysical data within the study area resulted in a total of four features of palaeogeographic interest. These comprised a partial channel and two possible peat outcrops assigned high archaeological potential and a channel ascribed medium archaeological potential [\[APP-122\]](#).
- 3.15.36. Maritime, aviation and intertidal archaeology receptors were separated into known receptors and features or anomalies recorded during assessment of existing data. Within the 1.6km study area (but outside the Order limits) there were nine known receptors that comprised wrecks and obstructions. None were noted as being covered by statutory protection [\[APP-124\]](#).
- 3.15.37. During the archaeological assessment, 162 seabed features of possible archaeological potential were identified within the Order limits. These were defined as either an anomaly of likely anthropogenic origin but of unknown date or an anomaly of possible anthropogenic origin where interpretation was uncertain [\[APP-124\]](#).
- 3.15.38. It was noted that direct impacts to known or unknown marine receptors would be most likely to occur during capital dredging and marine piling operations, and that these effects would be permanent and irreversible. As such, if they were to occur, the magnitude of direct impacts would be high, resulting in a significant adverse effect.
- 3.15.39. Proposed mitigation was included in the outline Written Scheme of Investigation (oWSI), submitted as Appendix 15.B of the ES [\[APP-204\]](#). This included measures aimed at avoiding, reducing or offsetting any damage/disturbance occurring on known receptors, and to establish the presence of unknown sites prior to relevant works commencing.

- 3.15.40. The Applicant's assessment stated that following the proposed mitigation, the effects would be reduced to negligible.

LOCAL IMPACT REPORT

- 3.15.41. The LIR from NELC [\[AS-146\]](#) stated that there were limited heritage assets within the context of the Proposed Development and that the NELC Heritage Officer had not raised any concerns on either above or below ground heritage.
- 3.15.42. Overall, the LIR concluded that the Proposed Development would accord with Local Plan Policy 39 (Conserving and enhancing the historic environment).

THE EXAMINATION

- 3.15.43. The main organisations with an interest in historic environment matters were Historic England (HE) and NELC.
- 3.15.44. HE [\[RR-012\]](#) noted that further assessment would be required to inform the avoidance and/or mitigation of impacts on potentially sensitive peat deposits, as well as interaction with unknown wrecks in the marine environment. It noted that this assessment should be secured under staged DCO requirements so that the results of investigations would inform subsequent phases of work. In response [\[REP1-021\]](#), the Applicant committed to provide further analysis of the peat samples obtained through retained borehole samples on the West Site; this was submitted at D5 [\[REP5-054\]](#).
- 3.15.45. The signed SoCG between the Applicant and Historic England [\[REP7-039\]](#) confirmed that HE were satisfied with the provisions within the oWSI [\[APP-204\]](#) and the information provided in respect of recording and dissemination of the results from the borehole analysis [\[REP5-054\]](#) and that there were no outstanding issues left unresolved by the close of the Examination.
- 3.15.46. Whilst NELC raised a query [\[RR-022\]](#) in relation to the archaeological recording of Long Strip, discussions between NELC and the Applicant during the Examination resolved this issue. The signed SoCG between the Applicant and NELC [\[REP7-023\]](#) confirmed that there were no outstanding issues relating to the historic environment left unresolved at the close of the Examination.
- 3.15.47. The ExA considered and agreed with the methodology, scope and baseline conditions for all receptors assessed and also agreed with the assessment of likely significant effects.
- 3.15.48. During the Examination, the Applicant submitted two change applications, outlined in section 1.7 of this Report. The first change application [\[REP2-027\]](#), accepted by the ExA on 14 May 2024 [\[PD-013\]](#) contained no alterations that would have the potential to affect the historic environment.
- 3.15.49. The second change application, submitted in the Proposed Further Changes Report [\[AS-042\]](#), accepted by the ExA on 12 July 2024 [\[PD-016\]](#) included two changes with the potential to affect heritage assets. Change 8 involved a change to the ground protection methodology for Work No. 9 to allow the installation of a geotextile layer and a layer of compacted fill material instead of the installation of ground matting. Change 9 involved a change to the terrestrial piling methodology to include the potential use of driven piling in Work Nos. 3, 5 and 7; of these, the changes within Work 7 were of particular interest due to the peat deposits that had been identified during the geophysical investigations.

- 3.15.50. At ISH8 [\[EV11-002\]](#), the proposed change from bored to driven piles at Work No.7 (change 9) was discussed, and in particular how this might affect any further mitigation. The Applicant indicated that further analysis on the retained cores had already been undertaken, which was the only mitigation proposed in accordance with NPSfP Paragraph 5.12.18 and NPPF Paragraph 211, and the results were submitted into the Examination [\[REP5-054\]](#).
- 3.15.51. At ExQ3 [\[PD-017\]](#), the ExA asked HE to confirm whether they were aware of changes 8 and 9 and whether these gave rise to any concerns. HE's response [\[REP6-028\]](#) confirmed that the changes were acceptable and did not alter their position on these matters. This was subsequently confirmed in the signed SoCG [\[REP7-039\]](#).

CONCLUSIONS

- 3.15.52. The ExA considers that the Applicant has adequately assessed the significance of the known terrestrial and marine heritage assets, in accordance with the NPSfP.
- 3.15.53. The ExA finds that there would be no impacts to designated heritage assets, either directly or through development in their setting. However, the Proposed Development could result in significant adverse effects to non-designated heritage assets including the known peat deposits on the West Site and identified and as-yet unidentified archaeology on the seabed.
- 3.15.54. The ExA agrees that the mitigation measures proposed within the oWSI, both prior to works commencing and during construction, would ensure that any harm to the significance of these non-designated assets would be minimised. The ExA considers that these mitigation measures are adequately secured within the rDCO (Appendix D).
- 3.15.55. The NPPF defines the term "heritage assets" as including designated and non-designated and as such, Paragraph 5.12.12 of the NPSfP requires the SoS to take account of the desirability of sustaining the significance of these heritage assets.
- 3.15.56. In relation to non-designated heritage assets, Paragraph 209 of the NPPF requires a balanced judgement to be made, having regard to the scale of any harm or loss and the significance of the non-designated heritage assets that may be affected.
- 3.15.57. The ExA considers that that sufficient information has been provided in the Application and during Examination to be able to understand the significance of the non-designated heritage assets and the scale of potential loss or harm.
- 3.15.58. Notwithstanding the fact that mitigation has been agreed between the parties and secured within the rDCO (Appendix D), the ExA considers that this will not completely remove the potential harm that could be caused to the significance of the non-designated heritage assets and that this harm weighs against the making of the Order.
- 3.15.59. However, given that with the implementation of the proposed mitigation any harm would be greatly reduced, the ExA have attributed this a little weight against making the Order in the planning balance.

3.16. OTHER ENVIRONMENTAL MATTERS

- 3.16.1. Other matters where no significant issues were identified are discussed in this section, including air quality; noise and vibration; materials and waste; ground conditions and land quality; and human health and well-being effects.

AIR QUALITY AND EMISSIONS

Introduction

- 3.16.2. Matters in relation to greenhouse gas emissions and climate change are considered in section 3.4.

National Policy Statement

- 3.16.3. Paragraph 5.7.6 of the NPSfP requires the decision-maker to give air quality considerations substantial weight where a project would lead to deterioration in air quality in an area or, results in a new area where the air quality breaches any national air quality limits. It continues; air quality considerations are also important where substantial changes in air quality are expected, even if this does not lead to any breaches of any national air quality limits.
- 3.16.4. In all cases, paragraph 5.7.7 requires the decision-maker to take account of relevant statutory air quality limits. Where a project is likely to lead to a breach of such limits, the developers should work with the relevant authorities to secure appropriate mitigation measures to allow the proposal to proceed. In the event that a project will lead to non-compliance with a statutory limit, the decision-maker should refuse consent. Consideration should be given to whether mitigation measures are needed both for operational and construction emissions, over and above any that may form part of the project application.
- 3.16.5. The policy requirements in NPS-EN1 in relation to air quality are largely consistent with those policy requirements of NPSfP.

The Application

- 3.16.6. The Applicant's assessment of air quality related issues was contained within ES Chapter 6 (Air Quality) [\[APP-048\]](#).
- 3.16.7. The Applicant's assessment identified several locations and receptors that were considered to be sensitive to changes in air quality. These included residential dwellings on Queens Road and properties on Kings Road in relation to the human health and amenity, and some designated nature conservation sites associated within the Humber Estuary. Further survey work identified that:
- Air Quality Management Areas have been declared adjacent to the A180 through Grimsby (North East Lincolnshire Council), and at Scunthorpe (North Lincolnshire Council), as pollutant concentrations in these areas are above the levels set by the Government.
 - Pollutant concentration levels at locations sensitive to changes in air quality near to the Proposed Development are generally within acceptable levels and are expected to improve in the future.
 - Existing dust levels in the area vary and are associated with industrial and commercial activities.
- 3.16.8. In relation to construction activity, the Applicant's assessment [\[APP-048\]](#), concluded that, without mitigation, activities could temporarily impact air quality at sensitive

locations as a result of dust from earthworks, along with emissions from construction traffic and equipment. To mitigate these impacts, measures such as dust suppression, controls on the operation and use of certain equipment, and managing construction traffic were identified in the oCEMP [AS-043] and the oCTMP [AS-045]. As a result of the implementation of these measures, including a Dust Management Plan (DMP), no significant air quality effects on sensitive receptors were identified during the construction phase.

- 3.16.9. Once operational, the Applicant considered there to be potential for emissions from ships and road traffic, combustion and process emissions, and odours which could affect locations sensitive to changes in air quality. In accordance with an Environmental Permit, to be regulated by the EA, the Applicant would implement process and management controls and monitoring of development-related emissions. Measures would also be put in place to manage odour and to prohibit unnecessary vehicle and ship movements. With these measures in place, the Applicant considered that no significant air quality effects would be likely during the operation of the Proposed Development.
- 3.16.10. The emissions standards for ships using the Port of Immingham are controlled through existing protocols enforced by the MCA who have the power to inspect vessels for compliance. The MCA also have powers of enforcement of relevant emission standards for ships servicing the Terminal, including those set by the International Convention for the Prevention of Pollution from Ships (MARPOL) for Marine Vessels with the Humber Estuary being part of the North Sea Emission Control Area for SOx and NOx.

Examination and Conclusions

- 3.16.11. Following ExA questions at ISH2, the Applicant confirmed [REP1-065] that the oCEMP [REP7-011] commits the contractor to the preparation of a DMP, which must accord with the outline DMP. In relation to air quality and emissions more generally, the Applicant confirmed that, during construction no control measures were proposed as their assessment concluded there would be no significant adverse effects in relation to emissions. However, the Applicant referred to the best practice guidance contained within the oCEMP which was aimed at encouraging the contractor to avoid unnecessary emissions. Matters in relation to vehicle emissions during construction would be addressed through the oCTMP [REP4-010].
- 3.16.12. The signed SoCG between the Applicant and the EA [REP8-006] confirmed that the Applicant had adequately considered the effect of emissions from the HPF and that importantly, these matters would be further reviewed through the operating permit required under the EPR 2016. The ExA has no reasons to doubt that this permitting process would not adequately deal with the matter and as such, the ExA had no additional questions.
- 3.16.13. In relation to emissions from vessels, the ExA considers that appropriate legislation and regulations already exists, compliance and enforcement of which is undertaken by the MCA. The ExA have no evidence to suggest that this will not continue to operate.
- 3.16.14. The ExA acknowledges that the Proposed Development, particularly during the construction phase, might give rise to some minor, localised effects on air quality. However, these would be temporary and not significant in EIA terms. The ExA are satisfied that emissions from the Proposed Development would be below air quality objectives, and the operation of the Proposed Development would not have

significant adverse long-term effects on air quality at the closest residential receptors. Furthermore, the ExA notes that the Applicant, by the close of the Examination had completed the voluntary acquisition of all the remaining residential properties on Queens Road.

- 3.16.15. The ExA therefore concludes that the requirements in respect of air quality as set out in NPSfP are met. The effect in the planning balance is neutral and does not weigh for nor against the making of the Order.

NOISE AND VIBRATION

National Policy Statement

- 3.16.16. The NPSfP at paragraph 5.10.8 states that developments demonstrate good design through selection of:

- the quietest cost-effective plant available;
- containment of noise within buildings wherever possible;
- optimisation of plant layout to minimise noise emissions; and
- where possible, the use of landscaping, bunds or noise barriers or other mechanisms to reduce noise transmission.

- 3.16.17. The NPSfP at paragraph 5.10.9 identifies that the decision-maker should be satisfied that the development would:

- avoid significant adverse impacts on the environment, human health and quality of life from noise;
- mitigate and minimise other adverse impacts on health and quality of life from noise; and
- where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

- 3.16.18. Paragraph 5.10.10 states that when preparing a DCO, the decision-maker should consider including measurable requirements or specifying the mitigation measures to be put in place to ensure that actual noise levels do not exceed those described in the assessment on which the decision-maker's decision was based. Paragraph 5.10.11 states that these should be considered for both operational and construction noise. Paragraph 5.10.12 identifies that any mitigation measures should be proportionate and reasonable.

- 3.16.19. The policy requirements in NPS-EN1 in relation to noise are largely consistent with those policy requirements of NPSfP.

The Application

- 3.16.20. The Applicant identified receptors that were potentially sensitive to changes in noise along Queens Road, and properties within the eastern part of Immingham, including Chestnut Avenue, Waterworks Street, Spring Street and Somerton Road. Existing noise sources that effect the areas are predominately from road traffic, industrial and commercial activities, port-related activities and occasional aircraft noise.

- 3.16.21. During construction, the Applicant identified that construction-related impacts from noise and vibration could occur from general operations within the development site, such as site clearance and plant installation, the movement of traffic on local roads, and from marine piling. These activities are expected to result in varying levels of noise and vibration at different stages of construction.

- 3.16.22. A range of mitigation measures are proposed to minimise and control construction noise and vibration including, use of acoustic covers and silencers on equipment, routing construction vehicles along access tracks to reduce traffic noise, and undertaking regular community engagement to notify residents of operations that may result in higher levels of noise and vibration. These would be delivered through the CEMP. With the implementation of these measures, the Applicant considered that no significant noise and vibration effects were likely during construction.
- 3.16.23. In relation to operational noise and vibration, the Applicant considered that effects on residential receptors would be experienced by those located on the eastern edge of Immingham and those located adjacent to routes used by operational development traffic.
- 3.16.24. To control and minimise operational effects, the Applicant proposed noise limits for certain plant and equipment, along with acoustic barriers and screening to contain operational noise. By installing these measures and controls, the Applicant concluded that no significant operational noise and vibration effects were likely to occur.

Examination and Conclusions

- 3.16.25. The issue of noise, including the Applicant's assessment and their approach to mitigation was an agreed matter in the SoCG between NELC and the Applicant [\[REP7-023\]](#).
- 3.16.26. In response to ExA questioning at ISH2 about mitigation of construction noise in particular, the Applicant highlighted that, in relation to terrestrial noise, the oCEMP [\[REP7-011\]](#) contained noise limits which would apply at the relevant noise sensitive receptors. In addition, Requirement 9 of the dDCO, imposed a limit on the construction hours, along with requiring works to not exceed the maximum permitted noise levels at each agreed monitoring location.
- 3.16.27. In relation to operational noise, the Applicant referred the ExA to Requirement 17, which requires the submission and agreement with NELC of a scheme for noise management in relation to Works Nos 3, 5 and 7.
- 3.16.28. In relation to noise receptors, at the end of the Examination, the Applicant confirmed that it had completed the purchase of all the existing residential properties along Queens Road [\[REP7-001\]](#). The effect of this would be the removal of these as sensitive noise receptors.
- 3.16.29. As part of the Applicant's Further Change Request, the Applicant proposed an amendment to the method of piling for Work Nos. 3, 5 and 7. The Applicant undertook further assessment work, and concluded that, with the embedded mitigation measures, driven piling could take place without introducing any new or different likely significant environmental effects from those already assessed in the ES. At ISH8 [\[EV11-002\]](#) the ExA explored this further with the Applicant.
- 3.16.30. The ExA considers that there would be noise arising, primarily during the construction phase, with this taking place for six days a week, with the entire construction process, lasting for up to 11 years [\[REP7-011\]](#). Although in this regard, the ExA recognises that the oCEMP [\[REP7-011\]](#) identifies that Phase 1, covering the first 3 years, is likely to represent the peak of construction activity.
- 3.16.31. The ExA considers that the Applicant has adequately assessed the effects of noise and vibration as required in NPSfP. The ExA is satisfied that, through embedded measures in the project design and measures contained in the oCEMP, and through

the requirement for the submission and approval of a scheme of operational noise management that is secured under R17 of the final dDCO [REP7-004], significant adverse effects have been avoided as required by NPSfP and that other adverse impacts have been mitigated and minimised.

- 3.16.32. As a result, the ExA considers that the policy tests of NPSfP have been met in this regard. The ExA therefore concludes that the noise and vibration effects are neutral and do not weigh for nor against the making of the Order.

MATERIALS AND WASTE MANAGEMENT

Introduction

- 3.16.33. Matters in relation to waste arising from the Applicant's proposed capital dredge and any future maintenance dredging is addressed in Section 3.8.

National Policy Statement

- 3.16.34. In relation to waste management, section 5.5 of the NPSfP identifies that developments are expected to ensure that sustainable waste management is in accordance with the established waste hierarchy of prevention; reuse; recycling; recovery; or, as a last resort disposal. Arrangements for managing any waste produced should be addressed through a Site Waste Management Plan (SWMP).
- 3.16.35. Applicants should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that the alternative is the best overall environmental outcome. The applicant should propose an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the proposed development.
- 3.16.36. The policy requirements in NPS-EN1 in relation to materials and waste are largely consistent with those policy requirements of NPSfP.

The Application

- 3.16.37. The Applicant confirmed [APP-062] that, during construction, the Proposed Development would follow the established waste hierarchy. As part of the oCEMP, a SWMP [REP7-001] would manage and control materials and waste. Whilst the various construction activities would generate different types of waste, with the implementation of appropriate measures the Applicant concluded [APP-062] that the effects would not be significant.
- 3.16.38. Once operational, the Applicant considered that any waste generated would principally be from sources including the operation of the hydrogen production units and liquefiers, along with general waste [APP-062]. Overall, the amount of waste generated was considered to be small and the operational effects were therefore considered not to be significant [APP-062].

Examination and Conclusions

- 3.16.39. There were no substantive concerns raised during the Examination on this specific matter, and the ExA did not consider it necessary to ask questions or examine the matter further. No objection in relation to this specific matter was recorded in the final SoCG [REP8-006] between the Applicant and EA.
- 3.16.40. The ExA is satisfied that the ES has adequately assessed the potential impacts of waste arisings during the construction and operational phases. The ExA is also

satisfied that any hazardous and non-hazardous waste arising from the construction and operation of the Proposed Development would be properly managed, that all necessary controls would be in place through the dDCO, and that the Proposed Development would comply with NPSfP section 5.5 in this respect.

- 3.16.41. The ExA therefore concludes that material and waste management matters are neutral and do not weigh for nor against the making of the Order.

GROUND CONDITIONS AND LAND QUALITY

National Policy Statement

- 3.16.42. Paragraph 5.1.4 of the NPSfP states that the applicant should ensure that any effects on internationally, nationally and locally designated sites of geological conservation importance are assessed. The NPSfP highlights the need to demonstrate, where possible, that opportunities have been taken to conserve and enhance geological conservation interests.
- 3.16.43. Paragraph 5.1.5 of the NPSfP highlights the need to demonstrate how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.
- 3.16.44. Paragraph 5.13.15 identifies that decision-makers should ensure schemes do not use best and most versatile agricultural land without justification and should give a little weight to the loss of poorer-quality agricultural land.
- 3.16.45. For developments on previously developed land, paragraph 5.13.8 of the NPSfP requires applicants to consider the risk posed by land contamination.
- 3.16.46. The policy requirements in NPS-EN1 in relation to ground conditions, land quality and agricultural land are largely consistent with those policy requirements of NPSfP.

The Application

- 3.16.47. The Applicant's oCEMP [\[REP7-011\]](#) proposes a number of measures to manage and control contamination risks during construction of the Proposed Development, including any pollution risk to groundwater and surface water. A Soil Resource Plan [\[REP7-011\]](#) would be prepared detailing the areas and type of topsoil/subsoil to be stripped, stripping method, haul routes and the management of the soil stockpiles. Construction works would be carried out in accordance with the oCEMP and best practice guidance to minimise potential spillages and mobilisation of contaminants. The final remediation strategies detailing the programme of groundwater and surface water monitoring would be approved through Requirement 15 of the dDCO [\[REP7-004\]](#).
- 3.16.48. With these measures and controls in place, the Applicant's assessment concluded that there would be no significant effects on sensitive geological, groundwater, surface water, soils or human receptors.
- 3.16.49. Once operational, the Applicant considered that any potential effects on geology, groundwater and surface water would be limited. The Proposed Development would be required to operate in accordance with the Environmental Permit and Hazardous Substances Consents process, both of which would limit potential effects on people and other environmentally sensitive receptors. As a consequence, the Applicant considered that the effects of the Proposed Development during the operational phase would not be significant.

- 3.16.50. In relation to agricultural land, the Applicant's Agricultural Land Classification Report [\[APP-215\]](#) concluded that no best and most versatile land fell within the Order limits.

Examination and Conclusions

- 3.16.51. There were no substantive concerns raised during the Examination on this specific matter, and the ExA did not consider it necessary to ask questions or examine the matter further.
- 3.16.52. The signed SoCG between the Applicant and EA [\[REP8-006\]](#) confirmed that the matter was agreed between the parties and that the EA were satisfied that Requirement 15 would be sufficient to manage the risks from contamination at the site, in so far as it relates to controlled waters. Furthermore, the EA welcomed the commitment [\[REP3-105\]](#) made by the Applicant during the Examination that, within Work Area 9, no temporary buildings, plant or materials would be located within the area of the fluvial floodplain or within 8m from the landward toe of the fluvial flood defence, whichever is further. At the request of the EA, the Applicant added this requirement to the Soil Management Plan.
- 3.16.53. In their WR [\[REP1-106\]](#) Polynt Composites sought further clarity on the extent of the ground investigation work and comfort that their land within Work No 9 would be remediated and restored to its current state (ie. suitable for agricultural use) once use as a temporary construction compound had ceased. In response [\[REP2-016\]](#) the Applicant confirmed that it was in the process of agreeing an option agreement for the lease of the relevant land, and these matters would all be covered by that agreement. Furthermore, the amount of land to be used as a temporary compound was reduced in the with the Applicant's Further Proposed Changes.
- 3.16.54. The ExA is satisfied that matters in relation to ground conditions and land quality would be properly managed, that all necessary controls would be in place through the dDCO, and that the Proposed Development would comply with NPSfP section 5.13 in this respect.
- 3.16.55. The ExA therefore concludes that ground condition and land quality matters are neutral and therefore weigh neither for nor against the making of the Order.

HUMAN HEALTH AND WELL-BEING

National Policy Statement

- 3.16.56. The impacts on health from new port developments are addressed in the NPSfP at section 4.16. This can be from direct effects from increasing traffic, air pollution, dust, odour, polluting water, hazardous waste and pests. New port developments may also affect the composition, size and proximity of the local population, and in doing so may have indirect health impacts – for example if they affect access to key public services, transport or the use of open space for recreation and physical activity. These impacts may affect people simultaneously, so the applicant and the decisionmaker should consider the cumulative impact on health. The applicant should identify any adverse health impacts and identify measures to avoid, reduce or compensate for these impacts as appropriate.
- 3.16.57. The policy requirements in NPS-EN1 in relation to human health and well-being are largely consistent with those policy requirements of NPSfP.

The Application

- 3.16.58. The Applicant anticipated adverse construction phase impacts to be associated with placing increased demands on healthcare services, increasing traffic and reducing accessibility to healthcare and community facilities, reducing air quality and increasing noise, and disruption to users of public rights of way and open spaces. The Applicant does however expect the Proposed Development to bring wider economic benefits through employment, training, income and supply chain opportunities.
- 3.16.59. Mitigation would be delivered to minimise impacts during the construction phase, such as best practice measures to control dust emissions, equipment noise and working hours which could adversely affect human health and wellbeing, along with measures contained within the CTMP to reduce and minimise the impact from construction traffic on local roads.
- 3.16.60. Overall, with the proposed mitigation in place, the Applicant concludes that no significant adverse effects would occur on human health and wellbeing during construction.
- 3.16.61. In terms of operational affects, the Proposed Development has taken account of sensitive receptors, such as positioning infrastructure in a way that avoids receptors such as residential properties and communities as far as possible. The Applicant's assessment identified no operational effects that would result in significant effects in relation to accessibility of healthcare and social infrastructure, traffic related air and noise emissions, social cohesion or climate change. Once operational, the Applicant does however consider that the development would have a significant beneficial effect on health and quality of life specifically around employment opportunities for local residents.

Examination and Conclusions

- 3.16.62. The ExA finds that the human health impacts of the Proposed Development have been considered, minimised and mitigated as much as possible.
- 3.16.63. The ExA finds that the majority of the adverse effects identified by the Applicant are likely to occur during the construction period and are therefore likely to be temporary. Conversely, the identified positive health benefits as a result of new employment opportunities would be delivered during both the construction and operational phases of the Proposed Development.
- 3.16.64. Consequently, the ExA concludes that due to the positive health benefits that would be delivered from new employment opportunities, the matter weighs positively in favour of making the Order, however given the temporary adverse effects that have been identified, the ExA have attributed it a little positive weight in the overall planning balance.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

INTRODUCTION

- 4.1.1. This Chapter sets out a summary of the Examining Authority's (ExA) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). The ExA's full analysis of matters relevant to the HRA is presented in Appendix C of this Report.
- 4.1.2. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European sites and no reasonable scientific doubt remains.
- 4.1.3. The ExA has been mindful throughout the Examination of the need to ensure that the Secretary of State (SoS) has such information as may reasonably be required to carry out their duties as the Competent Authority. We have sought evidence from the Applicant and relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and hearings.

REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES AND CONSULTATION

- 4.1.4. The ExA produced a Report on the Implications for European Sites (RIES) [\[PD-018\]](#) which compiled, documented, and signposted information relevant to the HRA provided in the Application and Examination representations. Consultation on the RIES took place between 17 July 2024 and 15 August 2024.
- 4.1.5. Our recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

PROPOSED DEVELOPMENT DESCRIPTION AND HRA IMPLICATIONS

- 4.1.6. The Proposed Development, as described in Chapter 1 of this Report, is not directly connected with, or necessary to, the management of a European site. Therefore, where making an appropriate assessment of the implications of the Proposed Development on potentially affected European sites, the SoS must do so in light of their Conservation Objectives.
- 4.1.7. During the Examination, the Applicant submitted two change requests. The first change application [\[REP2-027\]](#), accepted by the ExA on 14 May 2024 [\[PD-013\]](#), comprised changes one to four. Changes one and two led to an increase in the direct and indirect loss of intertidal and subtidal habitat compared to the original Application. These changes had implications for the HRA and the Applicant therefore updated the Shadow Habitats Regulations Assessment (sHRA) to reflect the new figures for habitat loss [\[REP3-032\]](#).
- 4.1.8. The Proposed Change Application Report [\[REP3-079\]](#) concluded that due to the scale of these changes, changes one and two would not result in any new impact pathways, nor would they change the significance outcome of any of the impact

pathways that were considered within the original assessment. No HRA matters relevant to these changes were raised by IPs during the Examination.

- 4.1.9. No relevant HRA matters arose from the second change application, submitted in the Proposed Further Changes Report [\[AS-042\]](#), accepted by the ExA on 12 July 2024 [\[PD-016\]](#).

SUMMARY OF FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

- 4.1.10. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have Likely Significant Effects (LSE) on a European site, either alone or in combination with other plans or projects.

European Sites within the UK National Site Network

- 4.1.11. The European sites and qualifying features considered in the Applicant's sHRA, [\[APP-238\]](#) were:

- Humber Estuary Special Area of Conservation (SAC). Qualifying features: H1110 - Sandbanks which are slightly covered by sea water all the time; Subtidal sandbanks; H1130 - Estuaries; H1140 - Mudflats and sandflats not covered by seawater at low tide; Intertidal mudflats and sandflats; H1150 - Coastal lagoons; H1310 - *Salicornia* and other annuals colonising mud and sand; Glasswort and other annuals colonising mud and sand; H1330 - Atlantic salt meadows (*Glaucopuccinellietalia maritimae*); H2110 - Embryonic shifting dunes; H2120 - Shifting dunes along the shoreline with *Ammophila arenaria* ("white dunes"); Shifting dunes with Marram; H2130 - Fixed dunes with herbaceous vegetation ("grey dunes"); Dune grassland; H2160 - Dunes with *Hippophae rhamnoides*; Dunes with sea-buckthorn; S1095 - *Petromyzon marinus*; Sea lamprey; S1099 - *Lampetra fluviatilis*; River lamprey; S1364 - *Halichoerus grypus*; Grey seal;
- Humber Estuary Special Protection Area (SPA). Qualifying features: A021 - *Botaurus stellaris*; Great Bittern (Non-breeding); A021 - *Botaurus stellaris*; Great Bittern (Breeding); A048 - *Tadorna tadorna*; Common Shelduck (Non-breeding); A081 - *Circus aeruginosus*; Eurasian Marsh Harrier (Breeding); A082 - *Circus cyaneus*; Hen Harrier (Non-breeding); A132 - *Recurvirostra avosetta*; Pied Avocet (Non-breeding); A132 - *Recurvirostra avosetta*; Pied Avocet (Breeding); A140 - *Pluvialis apricaria*; European Golden Plover (Non-breeding); A143 - *Calidris canutus*; Red Knot (Non-breeding); A149 - *Calidris alpina*; Dunlin (Non-breeding); A156 - *Limosa limosa islandica*; Black-tailed godwit (Non-breeding); A157 - *Limosa lapponica*; Bar-tailed Godwit (Non-breeding); A195 - *Sterna albifrons*; Little Tern (Breeding); Waterbird assemblage;
- Humber Estuary Ramsar. Criterion 1, 3, 5, 6 and 8;
- Greater Wash SPA. Qualifying features: A 001 - *Gavia stellata*; Red-throated Diver (Non-breeding); A065 - *Melanitta nigra*; Common Scoter (Non-breeding); A177 - *Hydrocoloeus minutus*; Little Gull (Non-breeding); A191 - *Sterna sandvicensis*; Sandwich Tern (Breeding); A193 - *Sterna hirundo*; Common Tern (Breeding); A195 - *Sternula albifrons*; Little Tern (Breeding); and
- The Wash and North Norfolk Coast SAC. Qualifying features: S1365 - Harbour seal *Phoca vitulina*.

- 4.1.12. In terms of the qualifying features assessed, NE [\[RR-019\]](#) questioned the Applicant's justification for screening only a selection of the component species of the Humber Estuary SPA waterbird assemblage. NE sought clarity on why these species alone had been selected, also requesting that the supporting bird survey data be presented more comprehensively.

- 4.1.13. The Applicant responded [\[REP1-021\]](#) and explained that all other assemblage species were screened out as they were considered rare or only occur infrequently and in low numbers in this area. The Applicant provided wider contextual data by updating Annex A.2 of the sHRA [\[REP1-012\]](#). Following these updates, NE considered this matter resolved [\[REP1-087\]](#).
- 4.1.14. No additional bird species (or any other qualifying features of European sites) were assessed for LSE.

Likely significant effects from the Proposed Development alone

- 4.1.15. The Applicant's conclusions in respect of screening were presented in Section 3.3 of the updated sHRA [\[REP5-021\]](#) and summarised in Appendix D of the sHRA [\[REP5-021\]](#).
- 4.1.16. The Applicant concluded that the Proposed Development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans, on all qualifying features of the Greater Wash SPA. NE confirmed that they agreed with this conclusion [\[RR-019\]](#).
- 4.1.17. The Applicant concluded that the Proposed Development would be likely to give rise to significant effects, either alone or in combination with other projects or plans, on one or more of the qualifying features of:
- Humber Estuary SAC;
 - Humber Estuary SPA;
 - Humber Estuary Ramsar; and
 - The Wash and North Norfolk Coast SAC.
- 4.1.18. The qualifying features and LSE pathways screened in by the Applicant were detailed in Tables 3 to 5 and Table B.1 of the sHRA [\[APP-238\]](#).
- 4.1.19. In relation to the LSE and on the basis of NE concerns [\[RR-019\]](#), during the Examination the ExA questioned the Applicant on lighting impacts, consistency with People Over Wind and Sweetman v Coillte Teoranta (Case C-323/17) judgement and air quality assessment methodologies. By the end of the Examination, these matters were satisfactorily resolved, evidenced in the signed SoCG between the Applicant and NE [\[REP7-033\]](#).

LSE from the Proposed Development in combination

- 4.1.20. Information relating to the in-combination assessment was provided in the original sHRA [\[APP-238\]](#) but the ExA considered it was not sufficiently explicit. This was also raised by NE [\[RR-019\]](#) who requested that consideration of in-combination effects should be presented at the screening stage and that the sHRA [\[APP-238\]](#) should be updated to show whether an effect would be 'alone and/ or in combination'. NE [\[RR-019\]](#) also advised that in-combination road traffic emissions should be assessed, and potential impacts considered at relevant sensitive habitat receptors, considering the calculated change in Annual Average Daily Traffic from cumulative developments identified within the Environmental Statement (ES) Appendix 11B, Traffic and Transport Cumulative Assessment [\[APP-190\]](#).
- 4.1.21. The Applicant updated the sHRA [\[REP1-012\]](#) to consider projects alone and in-combination, and provided further justification explaining that there were no European sites within 200m of any road used by project-related traffic so the impact of traffic-

derived air pollution (alone or in combination with other projects) would not need to be considered in the sHRA [REP1-012].

4.1.22. NE agreed [REP4-054] that the impact pathways screened out at this stage were unlikely to have LSE on any European site, either alone or in-combination with other plans and projects.

4.1.23. No in-combination LSE were identified by the Applicant for the sites and qualifying features where LSE were excluded from the Proposed Development alone, on the basis that potential impacts were not considered of a magnitude to cause LSE [REP7-015]. No additional plans or projects were highlighted by IPs in the Examination.

LSE Assessment outcomes

4.1.24. While NE raised concerns about the extent of the Applicant's screening for LSE, these were resolved during the course of the Examination. By the close of Examination, NE was in agreement with the Applicant's screening conclusions.

4.1.25. On the basis of the information provided, the ExA is satisfied that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination likely significant effects.

SUMMARY OF FINDINGS IN RELATION TO ADVERSE EFFECT ON INTEGRITY

4.1.26. The European sites and qualifying features screened positively in Tables 3 to 5 of the sHRA [APP-238] were assessed by the Applicant to determine if they could be subject to Adverse Effects on Integrity (AEol) from the Proposed Development, either alone or in-combination.

4.1.27. The Applicant's assessment of effects from the development alone was presented in sections 4.2 to 4.13 of the Applicant's sHRA [REP7-015]. The assessment of AEol was made in light of the conservation objectives for the European sites.

4.1.28. The Applicant concluded [REP7-015] that the Proposed Development would not result in AEol of all of the European sites and features assessed, either alone or in combination with other projects or plans, namely:

- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar site; and
- The Wash and North Norfolk Coast SAC.

4.1.29. In relation to the sites, features and pathways assessed, NE [RR-019] disputed various aspects of the in-combination assessment, and noted that the Applicant should identify where impacts would be fully avoided through mitigation and where a residual impact would remain. Where these residual impacts existed, the Applicant should consider the residual effects of developments together. NE also advised that an assessment of cumulative effects should also be provided in the sHRA, with reference to Conservation Objectives, in relation to loss and fragmentation of SAC habitats; impacts of operational vessel traffic on marine mammals; and impacts arising from an increase in maintenance dredging.

- 4.1.30. The Applicant responded to the concerns from NE and provided updates to the sHRA [REP4-014] and [REP5-021], adding information on the combination of residual effects of all relevant projects.
- 4.1.31. NE continued to have concerns relating to specific areas of the in-combination assessment in relation to potential impacts on grey seal, but confirmed that it considered other matters to be resolved at D3 [REP3-112].
- 4.1.32. NE [RR-019] also raised concerns regarding the presentation of mitigation measures and requested that a summary of each European site affected be provided, alongside a summary of mitigation measures, whether they will completely avoid or reduce impacts to an acceptable level, the certainty of this mitigation and a schedule of mitigation measures that describes how these would be implemented over the calendar year.
- 4.1.33. The Applicant updated Section 5 of the sHRA [REP1-012], including the provision of Table 38 which summarises the mitigation measures proposed. NE [REP3-112] welcomed the additional information and considered this matter resolved.
- 4.1.34. The Applicant also submitted a derogations case on a Without Prejudice basis [APP-235] to address the position in the event that the SoS's Appropriate Assessment of the effects of the Proposed Development on the European Sites cannot rule out AEol.
- 4.1.35. By the close of the Examination, the SoCG between the Applicant and NE [REP7-033] confirmed that there were no outstanding matters that would lead to a finding of AEol.

SUMMARY OF HRA CONCLUSIONS

- 4.1.36. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoS.
- 4.1.37. The methodology and outcomes of the Applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSE were identified were not disputed by any IP.
- 4.1.38. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 4.1.39. The ExA's findings are that, subject to the mitigation measures secured in the rDCO (Appendix D), AEol from the Proposed Development on the sites identified, when considered alone or in-combination with other plans or projects, can be excluded from the impact-effect pathways assessed.
- 4.1.40. The ExA therefore considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This Chapter sets out the Examining Authority's (ExA) overall assessment of the planning merits of the Proposed Development.
- 5.1.2. The National Policy Statement for Ports (NPSfP) provides the primary basis for the Secretary of State for Transport (SoS) to make decisions on development consent applications for the construction of harbour facility Nationally Significant Infrastructure Projects (NSIPs) in England. The ExA's conclusions on the case for development consent are therefore reached within the context of the policies contained within this National Policy Statement (NPS). In coming to the conclusions set out in this Chapter, the ExA has taken all other relevant law and policy into account. This includes relevant sections of the Overarching National Policy Statement for Energy (NPS EN-1) where these might be considered important and relevant.

5.2. SUMMARY OF MAIN PLANNING ISSUES

- 5.2.1. The ExA's findings in relation to the effects of the Proposed Development and its compliance against relevant policy and legislation are summarised below, drawing on the analysis of planning and Habitats Regulations Assessment (HRA) matters contained in Chapter 3 and Chapter 4 of this Report respectively.
- 5.2.2. In making our findings, the ExA has given full consideration to the Local Impact Report (LIR) submitted by North East Lincolnshire Council (NELC). The planning matters and potential effects raised in the LIR are considered in the relevant sections of Chapter 3.

Principle of Development

- 5.2.3. The Proposed Development would create additional port capacity for liquid bulks in accordance with the NPSfP and benefit from the presumption in favour of granting consent. Scarisbrick case law established the amount of weight that can be attached to the Proposed Development benefitting from a policy presumption would be considerable. Consequently, the ExA attaches great weight in favour of making the Order.
- 5.2.4. The Proposed Development would create additional port capacity for ammonia to produce low carbon hydrogen, and carbon dioxide for Carbon Capture Storage (CCS). This would be in accordance with NPS EN-1 and the Proposed Development would benefit from the policy support given to low carbon infrastructure that is deemed to be of Critical National Priority (CNP). NPS EN-1 establishes the weight that can be attached to the Proposed Development in this context would be substantial. Consequently, the ExA attaches additional great weight in favour of making the Order.
- 5.2.5. The Proposed Development would also accord with the NPSfP in relation to alternatives.

Environmental Impact Assessment

- 5.2.6. The ExA is content that the Environmental Statement (ES) and other information submitted by the Applicant during the Examination has provided an adequate assessment of the environmental effects of the Proposed Development and meets the requirements under the Environmental Impact Assessment (EIA) Regulations.
- 5.2.7. The ExA is satisfied that the Applicant's approach to the assessment of alternatives as described in the ES is comprehensive and complies with the EIA Regulations.
- 5.2.8. The ExA is also satisfied with the Applicant's methodology for assessing cumulative effects and their assessment of decommissioning.
- 5.2.9. The ExA has taken full account of all environmental information in our consideration of this Application.

Habitats Regulations Assessment

- 5.2.10. The Proposed Development is development for which a HRA Report has been provided. The ExA are satisfied, on the basis of the evidence provided, that there would be no likely significant effects on the qualifying features of European sites as a result of the Proposed Development, either alone or in combination with other plans and projects.
- 5.2.11. The SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and will make the definitive assessment. Having taken into account the advice from Natural England (NE), the ExA are satisfied that the SoS has sufficient information available to perform their duties under the Habitats Regulations.

Climate Change

- 5.2.12. The Applicant has addressed shipping related greenhouse gas emissions in accordance with UK international obligations on climate change under the Paris Agreement. The ExA agrees with the Applicant's approach, notwithstanding policies within the NPSfP, because the UK sixth carbon budget includes shipping related greenhouse gas emissions in its calculations.
- 5.2.13. The Applicant has addressed greenhouse gas emissions within the supply chain. The ExA is satisfied that the Applicant has used the reasonable worst-case scenario for shipping related greenhouse gas emissions. The ExA is satisfied that the replacement of low carbon imports with high carbon imports is an unlikely scenario because of market conditions and other mechanisms within the planning system and the rDCO. The ExA is satisfied that renewable energy sources have been considered to reduce operational greenhouse gas emissions.
- 5.2.14. The Applicant has addressed low carbon hydrogen within the supply chain. The ExA is satisfied that greenhouse gas emissions savings would not be materially tied to one particular sector. The ExA is satisfied that exporting low carbon hydrogen would be unlikely given the feasibility of transporting it abroad.
- 5.2.15. The Applicant has addressed downstream effects and upstream effects. The ExA is satisfied with the Applicant's assessment of downstream effects and that there would be a causal connection between the low carbon hydrogen and the greenhouse gas emissions savings from its use as an alternative to high carbon fuels, and that this could be meaningfully assessed.

- 5.2.16. However, the ExA is not satisfied with how the Applicant has assessed upstream effects. If the Proposed Development goes ahead, it will cause the facilities in Saudi Arabia to produce ammonia for its supply, and this would generate greenhouse gas emissions. There would be a sufficient causal connection between the Proposed Development and these upstream greenhouse gas emissions to justify assessing them as indirect effects under the EIA regulations. However, ultimately the ExA is satisfied that the lack of an assessment is not an impediment to the Proposed Development. This is because upstream emissions would be accounted for when complying with low carbon hydrogen standards. Consequently, there would still be a net benefit in terms of greenhouse gas emissions savings and the conclusions of the ES are reliable.
- 5.2.17. The Applicant has addressed compliance with low carbon hydrogen standards and certification. The ExA is satisfied that there is a substantial policy position creating compelling market conditions incentivising the Applicant to comply with relevant industry standards on low carbon hydrogen. Furthermore, additional layers of control in the planning system and the rDCO would ensure material changes to the Proposed Development, such as deviation away from low carbon hydrogen standards, could not occur without due consideration.
- 5.2.18. Overall, the ExA is satisfied that the Proposed Development would accord with the NPSfP in relation to climate change. Furthermore, with the Proposed Development having addressed shipping related greenhouse gas emissions, the ExA is satisfied that deciding the Application in accordance with the NPSfP would not breach the UK's international climate change obligations under the Paris Agreement. The ExA agrees that the Applicant's assessment demonstrates the scale of greenhouse gas emissions savings would result in significant beneficial effects on the environment. Given climate change legislation and policy, the ExA attaches this great weight in favour of making the Order.

Design

- 5.2.19. The ExA feels that the Applicant has provided the minimum level of information in relation to design development. Furthermore, the ExA considers that the Applicant is relying heavily on the discharge of Requirement 4 to finalise the design of the public-facing control buildings, which have the scope to make a difference to the appearance of the Proposed Development.
- 5.2.20. The ExA considers that following the proposed demolition of the residential buildings on Queens Road, more could have been done to secure enhancements that would improve the appearance of the area, in accordance with the principles of good design set out in the NPPF, without interfering with or constraining any future development proposals.
- 5.2.21. However, notwithstanding the lack of detail on design matters, the ExA acknowledges the existing context in which the Proposed Development would sit and accepts that the large structural elements proposed would not appear out of place. The ExA is therefore satisfied that the Proposed Development would accord with the relevant policies of the NPSfP.
- 5.2.22. The ExA also acknowledges matters of design will continue to be resolved between the Applicant and NELC, and that by the end of the Examination, the Applicant had provided the scope for NELC to control the external appearance of structures through Requirement 4 of the rDCO and the Hydrogen Production Facility Design Code.

5.2.23. As such, the ExA concludes that design matters are neutral and weigh neither for nor against the making of the Order.

Biodiversity (Terrestrial and Marine) and Ornithology

5.2.24. In relation to non-HRA biodiversity matters, the ExA are satisfied that the effects of the Proposed Development on terrestrial and marine biodiversity, and ornithology, have been adequately assessed and as such, the ExA consider that the Application meets the requirements of NPSfP.

5.2.25. Taking into account the embedded mitigation, the ExA considers that the Proposed Development would avoid significant harm to the majority of biodiversity interests, and where possible takes opportunities to conserve and enhance biodiversity.

5.2.26. However, the ExA has found moderate weight against making the Order in relation to the partial loss of Long Strip woodland and a little weight against making the Order in relation to marine piling operations.

5.2.27. The ExA has found that biodiversity enhancements, in respect of the limited planting within the Order limits and the 1Ha intertidal mudflats at the Oustrays to Skeffling Managed Realignment Scheme (OtSMRS), are found to have a little beneficial weight in favour of making the Order.

5.2.28. The ExA acknowledges the mitigation and compensatory measures proposed to address the harm identified, however the ExA considers that these measures would not completely remove the potential harm in relation to biodiversity matters.

5.2.29. Overall, the ExA concludes that some harm would remain, particularly in relation to the partial loss of Long Strip and marine piling operations, and the ExA therefore attributes it a little weight against making the Order.

Landscape and Visual

5.2.30. The ExA are satisfied that the effects of the Proposed Development on landscape, seascape and visual receptors have been adequately assessed and as such, the ExA consider that the Application meets the requirements of NPSfP.

5.2.31. The ExA finds that the Proposed Development will have no significant impact on seascape receptors, the Lincolnshire Wolds National Landscape or local landscape character areas.

5.2.32. However, the Proposed Development would introduce substantial structures into an area where medium and long-range views are currently available. As a result, the ExA finds a great adverse effect on views along the estuary, on the PRoW running through Long Strip and across the West Site. This would have a long-term effect on recreational users of the area.

5.2.33. The ExA acknowledges the Applicant's position that due to operational and security constraints, opportunities for effective mitigation are limited and that the Applicant has sought to reduce the impact through embedded mitigation.

5.2.34. On balance, the ExA considers that the harm to the landscape weighs against making the Order. However, the ExA acknowledges the heavily industrialised context, with several extant permissions for additional large scale industrial structures and developments nearby. Given this context, along with the mitigation that would be

delivered through the rDCO, the ExA has attributed this moderate weight against making the Order.

Flood Risk and Coastal Change

- 5.2.35. In relation to physical processes, existing dredging activities and the baseline physical processes within the Humber estuary are such that activities associated with the Proposed Development would be limited in comparison. Consequently, the Proposed Development would be in accordance with the relevant provisions of the NPSfP, including those within Section 5.3. As such, the issue is neutral and weighs neither for nor against the making of the Order.
- 5.2.36. In relation to climate change adaptation, the Proposed Development was assessed using the most recent climate change projections and would be constructed using relevant wind and wave design standards. Consequently, it would be in accordance with the relevant provisions of the NPSfP, including those within Section 4.13. As such, the issue is neutral and weighs neither for nor against the making of the Order.
- 5.2.37. In relation to flood risk, drainage and coastal protection, the Proposed Development passes the sequential test and the first two parts of the exception test and otherwise accords with the relevant provisions of the NPSfP. However, without a legal agreement or agreed protective provisions between the Applicant and the EA, the ExA considers that the Proposed Development would lead to the deterioration of tidal flood defences and increase flood risk elsewhere.
- 5.2.38. An increase in flood risk elsewhere would fail the third part of the exception test set out in Paragraph 5.2.16 of the NPSfP. Therefore, consent cannot be granted because not all three parts of the exception test have been passed. However, the ExA has considered Paragraph 55 of the NPPF and the use of a negatively worded requirement in the rDCO to secure a legal agreement containing development consent obligations to preserve the integrity of tidal flood defences. The ExA is satisfied that such a requirement is justified in this case and meets the six policy tests set out in Paragraph 56 of the NPPF.
- 5.2.39. Overall, subject to Requirement 21 in the rDCO securing a legal agreement containing requisite development consent obligations addressing tidal flood defence matters, the Proposed Development would not increase flood risk elsewhere or conflict with Paragraph 5.2.16 of the NPSfP and would pass the exception test in its entirety. Altogether, the Proposed Development would accord with the NPSfP and as such the issue is neutral and weighs neither for nor against the making of the Order.

Water Quality and resources

- 5.2.40. The ExA is satisfied that, subject to the mitigation measures identified in table 13 of the Schedule of Mitigation and Monitoring [[APP-234](#)], along with compliance of the Environmental Permitting Regulations (EPR) 2016 and the Control of Major Accident Hazards (COMAH) Regulations, the residual effects on water quality from the Proposed Development, would be negligible or minor adverse and would not be significant. As such, the ExA finds that the Proposed Development accords with the requirements of the Water Framework Directive Regulations 2017.
- 5.2.41. There is no evidence to suggest Anglian Water's impact assessment associated with water demand or supply as part of their Water Resource Management Plan 2024 (WRMP24) is no longer valid and that they will not renew their commercial offer of supplying non-potable water to the Applicant. On this basis the ExA finds that the Proposed Development would have no adverse impact upon water resources.

- 5.2.42. The ExA is satisfied the Applicant's assessment and the Proposed Development overall with regard to water quality and water resources, accords with the relevant policies of the NPSfP.
- 5.2.43. The ExA concludes that water quality and water resource matters are neutral in the planning balance and therefore weigh neither for nor against the making of the Order.

Traffic and Transport

- 5.2.44. Whilst the ExA acknowledges that there would be an increase in traffic from the Proposed Development at all stages of the project, we are satisfied that the Applicant's control and management measures would be sufficient to mitigate any negative impacts to an acceptable level. These control and management measures secured through R6, R7 and R8 of the rDCO (Appendix D), require the Applicant to gain approval from NELC before commencing highway works, ensuring mitigation identified in the ES is adequately carried out.
- 5.2.45. On this basis, the ExA is satisfied that no significant traffic or transportation effects are likely to arise from the Proposed Development.
- 5.2.46. The ExA finds the Applicant's assessment and the Proposed Development overall with regard to traffic and transport, accords with the relevant policies of the NPSfP.
- 5.2.47. The ExA therefore concludes that traffic and transport related matters are neutral in the planning balance and therefore weigh neither for nor against the making of the Order.

Marine Movement and operational safety

- 5.2.48. The ExA finds that marine movement and operational safety matters have been satisfactorily considered in the Application. The ExA considers that the proposed mitigation and measures set out in the rDCO, including the Protective Provisions, coupled with the existing operational controls, would ensure sufficient mechanisms and processes are in place to minimise the impact from additional marine movement and operational safety issues arising from the Immingham Green Energy Terminal (IGET). The ExA is satisfied there are no issues outstanding which would be likely to cause a danger to navigation and the ExA is therefore content that the Proposed Development would accord with the relevant policies of the NPSfP.
- 5.2.49. The ExA therefore concludes that marine movement and operational safety matters are neutral and therefore weigh neither for nor against the making of the Order.

Major Accidents and hazardous substances

- 5.2.50. The 2015 COMAH Regulations enforced by the Competent Authority, is the primary piece of legislation requiring environmental and safety mitigation measures for major hazard installations to be identified and implemented by the Applicant. These regulations require the Applicant to demonstrate at each of the development phases, that measures are in place to reduce risks to As Low As Reasonably Possible (ALARP).
- 5.2.51. The ExA accepts the Applicant's approach for reducing risks to ALARP. The ExA is therefore satisfied that the potential impacts on human health, welfare and the environment as a result of Major Accident and Disaster (MA&D) scenarios and hazardous substances, have been appropriately identified and mitigated.

5.2.52. Although final confirmation of the Health and Safety Executive (HSE)'s agreement with the findings of the Applicant's assessment [REP3-069] on the size and extent of COMAH zones was not presented by the close of the Examination, the ExA has assumed within their conclusions this is likely to be forthcoming shortly after the close of the Examination. With no evidence to suggest otherwise, we have assumed the HSE will arrive at the same conclusion to the Applicant with regard to COMAH zones. On this basis the ExA agrees with the Applicant's assessment [REP3-069] and is satisfied the impact of the Proposed Development on future land use planning, is not considered significant.

5.2.53. The ExA is satisfied the Applicant's assessment and the Proposed Development overall with regard to MA&D, accords with the relevant policies of the NPSfP.

5.2.54. The ExA therefore concludes that MA&D related effects are neutral in the planning balance and therefore weigh neither for nor against the making of the Order.

Socio-economic

5.2.55. The ExA finds that the closure of Public Bridleway 36 would have a minor adverse impact on existing users, however, the ExA acknowledge that this would only be for a temporary period and as such, has attributed this impact a little weight. The ExA also finds that whilst there is potential for adverse effects primarily during the construction phase on areas such as, primary healthcare and accommodation, mitigation measures would be implemented to minimise these. The ExA is satisfied that the proposed mitigation measures, as set out in the ES are adequately secured in the rDCO (Appendix D).

5.2.56. The ExA is satisfied the Applicant's assessment and the Proposed Development overall with regard to socio-economics, accords with the relevant policies of the NPSfP.

5.2.57. The ExA finds the Proposed Development would secure significant employment opportunities both during construction and operation, as well as bringing wider socio-economic benefits to North East Lincolnshire. The ExA therefore concludes that in the planning balance, socio-economic related matters have a positive weight in favour of making the Order. Given the emphasis contained within the NPSfP to the positive impacts associated with economic development, the ExA has attributed this benefit great weight.

Cumulative and in-combination

5.2.58. The ExA considers that the Applicant's assessment of both cumulative and combined effects, as amended during the Examination, is adequate and accords with the EIA Regulations and the relevant NPSs. Whilst the Proposed Development will be likely to cause effects particularly in relation to ecological, landscape and visual, socio-economic and transport-related matters, the ExA is satisfied that there are not likely to be any significant adverse cumulative or combined effects that are worse than the effects of the Proposed Development alone, and that the rDCO adequately provides and secures mitigation measures to minimise individual and cumulative effects.

5.2.59. The ExA therefore concludes that matters relating to cumulative and in-combination effects are neutral in terms of weighing for nor against the making of the Order.

Heritage

- 5.2.60. The ExA considers that the Applicant has adequately assessed the significance of the known terrestrial and marine heritage assets, in accordance with the NPSfP.
- 5.2.61. The ExA finds that there would be no impacts to designated heritage assets, either directly or through development in their setting. However, the Proposed Development could result in significant adverse effects to non-designated heritage assets including the known peat deposits on the West Site and identified and as-yet unidentified archaeology on the seabed.
- 5.2.62. The ExA agrees that the mitigation measures proposed within the outline Written Scheme of Investigation (oWSI), both prior to works commencing and during construction, would ensure that any harm to the significance of these non-designated assets would be minimised. The ExA considers that these mitigation measures are adequately secured within the rDCO.
- 5.2.63. The NPPF defines the term “heritage assets” as including designated and non-designated and as such, the NPSfP requires the SoS to take account of the desirability of sustaining the significance of these heritage assets.
- 5.2.64. In relation to non-designated heritage assets, Paragraph 209 of the NPPF requires a balanced judgement to be made, having regard to the scale of any harm or loss and the significance of the non-designated heritage assets that may be affected.
- 5.2.65. The ExA considers that sufficient information has been provided in the Application and during Examination to be able to understand the significance of the non-designated heritage assets and the scale of potential loss or harm.
- 5.2.66. Notwithstanding the fact that mitigation has been agreed between the parties and secured within the rDCO, the ExA considers that this will not completely remove the potential harm that could be caused to the significance of the non-designated heritage assets and that this harm weighs against the making of the Order.
- 5.2.67. However, given that with the implementation of the proposed mitigation any harm would be greatly reduced, the ExA has attributed this a little weight against making the Order in the planning balance.

Other environmental matters

- 5.2.68. The ExA has considered the Proposed Development in terms of its effects on: air quality; noise and vibration; materials and waste management; and ground conditions and land quality. In each case, the ExA are satisfied that the Proposed Development would be in conformity with the relevant provisions of the NPSfP and there are no matters which would weigh for nor against the Order being made.
- 5.2.69. In relation to human health impacts, the ExA concludes that the majority of the adverse effects identified by the Applicant are likely to occur during the construction period and are therefore likely to be temporary. The ExA finds there would be positive health benefits from new employment opportunities which would be delivered during both the construction and operational phases of the Proposed Development. Consequently, the ExA concludes that these health benefits weigh positively in favour of making the Order. However given the adverse effects that have been identified, the ExA attributes it a little positive weight in the overall planning balance.

5.3. THE OVERALL PLANNING BALANCE

- 5.3.1. This Section weighs the benefits and disbenefits of the Proposed Development to reach a recommendation as to whether or not the case is made for granting development consent.
- 5.3.2. As a matter of law s104(3) of Planning Act 2008 (PA2008), applications for construction of harbour facilities must be decided in accordance with the relevant NPSs, unless a relevant consideration arising from s104(4) to (8) applies.
- 5.3.3. In accordance with our duties under PA2008, the ExA has had regard to the submitted LIR, to prescribed matters and to all other important and relevant policies (including, NPS EN-1, Marine Policy Statement, East Inshore Marine Plan and the Development Plan) and to other important and relevant matters identified in this Report. The ExA has also considered whether the determination of this Application in accordance with the NPSfP would lead to the UK being in breach of any of its international obligations, be in breach of any statutory duty, be unlawful, or be contrary to regulations about how decisions are to be taken. The ExA are satisfied that in all respects, this would not be the case.
- 5.3.4. The ExA are also obliged to consider whether the adverse impacts of the Proposed Development would outweigh its benefits.
- 5.3.5. The ExA has found that the Proposed Development would meet relevant Government policy set out in the NPSfP, in that it would provide additional new port capacity in support of sustainable growth in the UK economy. This attracts great weight in favour of the Order being made.
- 5.3.6. The Proposed Development would also accord with NPS EN-1 and benefit from the policy support given to low carbon infrastructure of CNP. As such the Proposed Development would provide extensive benefits at the national scale in terms of enhancing energy security and resilience and supporting the decarbonisation of the economy. NPS EN-1 establishes that the weight to be attached to a Proposed Development in this context would be substantial. As a consequence, this attracts great weight in favour of the Order being made.
- 5.3.7. The ExA is satisfied that the Proposed Development would accord with the NPSfP in relation to climate change. Furthermore, with the Proposed Development having addressed shipping related greenhouse gas emissions, the ExA is satisfied that deciding the Application in accordance with the NPSfP would not breach the UK's international climate change obligations under the Paris Agreement. On this basis, given the scale of greenhouse gas emissions savings created, the ExA has attached great weight in favour of the Order being made.
- 5.3.8. In addition to this, the Proposed Development would make a significant contribution to the local economy, principally through the provision of additional jobs during both the construction and operational phases. This attracts great weight in favour of the Order being made. The ExA has also identified that the creation of additional jobs and opportunities would provide a benefit to health and well-being. The ExA has ascribed this benefit a little weight in favour of the Order being made.
- 5.3.9. On the other side of the balance, the Proposed Development would give rise to a number of adverse local effects, as identified in Chapter 3 of this Report.

- 5.3.10. The ExA ascribe moderate weight to harm which would be caused in relation to landscape and visual effects arising both during the construction and operation of the Proposed Development. To a lesser degree, the Proposed Development would also cause harm during the construction phase to biodiversity, principally to marine ecology. This matter attracts a little weight against the making of the Order, principally due to the mitigation measures secured within the rDCO (Appendix D).
- 5.3.11. The ExA has found no harm to any designated heritage assets but have found potential for harm to a number of non-designated heritage assets. The ExA has ascribed this harm a little weight on the basis of the proposed mitigation which would ensure this harm is minimised.
- 5.3.12. In relation to flood risk, the ExA found that without a legal agreement or agreed protective provisions between the Applicant and the EA, the Proposed Development would lead to the deterioration of tidal flood defences and increase flood risk elsewhere. An increase in flood risk elsewhere would fail the third part of the exception test set out in Paragraph 5.2.16 of the NPSfP. Therefore, consent cannot be granted because not all three parts of the exception test have been passed.
- 5.3.13. However, subject to the inclusion of the negatively worded Requirement 21 in the rDCO securing a legal agreement containing requisite development consent obligations addressing tidal flood defence matters, the Proposed Development would not increase flood risk elsewhere or conflict with Paragraph 5.2.16 of the NPSfP and would pass the exception test in its entirety. Therefore, the ExA has concluded this matter weighs neither for nor against the making of the Order.
- 5.3.14. All other matters discussed in this Report do not weigh for nor against the Order being made. The ExA acknowledges the adverse effects of the Proposed Development and finds that those effects are generally in conformity with the NPSfP. As a consequence, the ExA are therefore satisfied that the Proposed Development would be in general conformity with the NPSfP and NPS EN1.
- 5.3.15. The ExA has had regard to the findings of the Applicant's HRA Report and considers that the conclusions of no likely significant effects are supported and that an Appropriate Assessment is not required prior to making the DCO. The ExA can see no reason for HRA matters to prevent the making of the DCO.
- 5.3.16. In conclusion, taking all the above into account, we find that the matters in favour of the DCO being made, including urgency of need for the type of infrastructure proposed, the significant benefits to the UK economy and considerable improvements to energy security and supporting decarbonisation, clearly outweigh those against, including the potential harm to the non-designated heritage assets. Other matters bring both benefits and adverse effects, but none of those, either individually or cumulatively, lead the ExA to a different conclusion in terms of the overall balance of benefits and adverse impacts.
- 5.3.17. Consequently, the potential harm is substantially outweighed by the benefits of the Proposed Development in meeting the law and Government policy as set out in s104 of the PA2008 as amended and the NPSfP.

5.4. CONCLUSION

- 5.4.1. On the basis of all of the above considerations, the ExA conclude that there is a convincing case for development consent to be granted.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. This chapter of the Report deals with the compulsory acquisition (CA) of land and rights over land, and related matters including temporary possession (TP), human rights and the Public Sector Equality Duty (PSED). These were identified as a principal issue in the Rule 6 letter [\[PD-005\]](#) in terms of the following points:

- Strategic case for CA in relation to the principle of development;
- Effect of the construction programme on the time limit for exercise of CA powers;
- Lease of Crown land and approach to seeking Crown consent;
- Approach and justification for the acquisition of rights of properties on Queen's Road;
- Approach to reaching negotiated agreements as an alternative to CA; and
- Effects on Statutory Undertakers and individual landowners.

6.2. LEGISLATIVE REQUIREMENTS

PLANNING ACT 2008

6.2.1. The development consent regime for NSIPs is created by Planning Act 2008 (PA2008). Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the Secretary of State (SoS) is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent application relates or is required to facilitate or is incidental to it.

6.2.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. This means that the public benefit to be derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. That does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

6.2.3. The relevant guidance is within "Guidance related to Procedures for the Compulsory Acquisition of Land, former Department for Communities and Local Government, September 2013" (the CA Guidance).

6.2.4. S123 requires that one of three conditions is met, namely:

- that the application for the Order includes a request for CA of the land to be authorised;
- that all persons with an interest in the land consent to the inclusion of the provision; or
- that the prescribed procedure has been followed in relation to the land.

6.2.5. The general considerations set out in paragraphs 8 to 10 of the CA Guidance have to be addressed:

- all reasonable alternatives to CA must have been explored;
- the Applicant must have a clear idea of how it intends to use the land;

- the Applicant must be able to demonstrate that there is a reasonable prospect of funds being available to meet the compensation liabilities which might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

NEIGHBOURHOOD PLANNING ACT 2017

- 6.2.6. The Neighbourhood Planning Act 2017 (NPA2017) includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions have not been brought into force and are described as technical changes in the explanatory notes that accompany the Act. Article 6 of the dDCO disapplies the provisions of the Act insofar as they relate to TP of land under Articles 29 (Temporary use of land for constructing the authorised development) and 30 (Temporary use of land for maintaining the authorised development).

HUMAN RIGHTS

- 6.2.7. Human rights have been considered by the ExA with reference to the European Convention on Human Rights (ECHR) and in particular:
- Article 6 (fair and public hearing);
 - Article 8 (respect for private and family life, home and correspondence); and
 - Article 1 of the First Protocol to the ECHR (peaceful enjoyment of possessions).

6.3. THE REQUEST FOR CA AND TP POWERS POWERS SOUGHT

- 6.3.1. The powers being sought by the Applicant and how they relate to the principal articles in the draft Development Consent Order (dDCO) are set out, described and explained in the following documents:

- Book of Reference [[APP-008](#)];
- Statement of Reasons [[APP-009](#)];
- Funding Statement [[APP-010](#)];
- Works Plans [[APP-012](#)];
- Work Areas [[APP-072](#)];
- Land Plans [[APP-015](#)];
- Draft Development Consent Order [[APP-006](#)];
- Explanatory Memorandum [[APP-007](#)]; and
- Planning Statement [[APP-226](#)].

- 6.3.2. A number of these documents were updated or amended and resubmitted during the Examination, the final versions being as follows:

- Book of Reference [[REP7-009](#)];
- Statement of Reasons [[AS-001](#)] & [[AS-008](#)];
- Works Plans [[REP3-012](#)];
- Land Plans [[REP6-008](#)];
- Draft Development Consent Order [[REP7-004](#)]; and
- Explanatory Memorandum [[REP7-007](#)].

- 6.3.3. At the request of the ExA in the first round of Written Questions [[PD-008](#)], and following the Applicant's response [[AS-023](#)], the Applicant provided regular updates

with regard to the progress of negotiations with Affected Persons (APs) by means of a Land Rights Tracker (LRT), the final version of which was submitted at Deadline 7 [REP7-018]; [REP7-019] and [REP7-020].

6.3.4. Proposed changes to the DCO Application were submitted by the Applicant and were accepted by the ExA for examination:

- The Applicant notified the ExA in March 2024 [REP2-027] of its intention to submit Proposed Changes 1 to 4. In response to a request from the ExA [PD-011], the Applicant explained [REP2-022] that whilst they did not consider the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 to apply to the Proposed Changes, they were seeking consent from the landowner of the land required for temporary possession to its inclusion in the Application site boundary in respect of Proposed Change 3.
- In May 2024 [AS-042] the Applicant notified the ExA of its intention to submit Proposed Further Changes 5 to 9 and considered that the CA Regulations were not engaged by these. Proposed Further Change 7 proposed a reduction in the area of Work No. 9 (currently comprising agricultural land), for which temporary possession and use were proposed.

6.3.5. The Applicant indicated in the Statement of Reasons (SoR) [AS-008] that acquisition by agreement would be sought wherever reasonably possible (where permanent acquisition was proposed) but that the power of CA was required to ensure that the project could be delivered.

6.3.6. The scope of powers sought by the Applicant comprises:

- Compulsory acquisition of land and rights over and under land;
- Overriding or extinguishing existing rights and interests in or over land;
- Creating new rights in or over land;
- The imposition of restrictive covenants over land; and
- Taking possession of and using land temporarily.

6.3.7. Whilst the Application for Development Consent is submitted by Associated British Ports Limited (ABP), ABP and Air Products Limited entered into an agreement on 13 September 2022 relating to matters including the obtaining of necessary consents for the project, the construction of the terminal by ABP and the grant of a lease and appropriate rights by ABP to Air Products to enable the latter to construct and operate the green hydrogen production facility. The definition of “the undertaker” in the dDCO includes ABP, and also includes Air Products in respect of certain powers relating to temporary use of land, authority to survey and investigate land and protective works. The definition of “undertaker” also includes “any person who has the benefit of the Order in accordance with section 156 (benefit of order granting development consent)” of the Planning Act 2008 (PA2008). Section 156 of the Act provides that a development consent order has effect for the benefit of the land and all persons for the time being interested in the land, subject to any contrary provision in the Order. Air Products would have the benefit of the Order by virtue of the lease and other rights it would be granted by ABP for those parts of the site on which the hydrogen production facility is to be located and associated works are to be undertaken.

Power to acquire land compulsorily

6.3.8. Article 20 of the dDCO [REP7-004] authorises the Applicant to acquire compulsorily so much of the Order land as is shaded pink on the Land Plans [REP6-008] or, as an alternative, acquire only rights over the land and/or impose restrictive covenants affecting it or take possession of and use the land temporarily. This includes

unregistered land and subsoil to highway which is proposed to be stopped up. The Application as originally submitted included in this category a number of residential properties in Queen's Road. These were subsequently acquired by the Applicant or Air Products Limited, as explained later in this chapter of the Report.

Power to acquire permanent rights over or under land

- 6.3.9. The main power authorising the acquisition of interests in and/or rights over land is contained in Article 24 of the dDCO. These areas are shown shaded blue (or hatched blue in relation to subsoil rights only) on the Land Plans [\[REP6-008\]](#) and the intention is to acquire rights or to impose restrictive covenants in order to protect apparatus. The precise plots and land within each plot over which such power would ultimately be exercised and restrictive covenants imposed would be identified following the installation of the pipeline (under powers of temporary possession and use) to ensure that the restrictive covenant applies to the specific location of the pipeline and does not cover any excess land.
- 6.3.10. The Applicant therefore envisages that possession of land within the Pipeline Corridor would first be taken on a temporary basis to install below-ground utilities and pipelines so as to minimise the area over which permanent rights and restrictive covenants would be imposed.

Powers to use and possess land temporarily

- 6.3.11. The main powers authorising the temporary use of land during construction and for maintenance are contained in Articles 31 and 32 respectively. Such land is shaded green on the Land Plans [\[REP6-008\]](#). However, the Applicant and/or Air Products Limited could, if necessary, take temporary possession (TP) over land shaded pink or blue, rather than acquiring the land or a right, or ahead of acquiring that land or a right.

Powers to interfere with private rights

- 6.3.12. Article 26 of the dDCO permits the extinguishment, suspension or cessation of private rights and restrictive covenants as applicable in the case of CA of land, CA of rights and temporary use of land. In addition, all private rights or restrictive covenants over land owned by the undertaker which is within (a) the Order limits and (b) is required for the purposes of the Order, cease to have effect insofar as their continuance would be inconsistent with any activity authorised by the dDCO being commenced which interferes with or breaches such rights or restrictive covenants. Such land is shaded purple on the Land Plans [\[REP6-008\]](#). This does not apply to land shaded yellow, which is land within the Applicant's ownership where no existing rights are to be interfered with.
- 6.3.13. Article 27 would give the power to override easements and other rights, allowing any activity authorised by the dDCO to be carried out on land within the Order limits by the undertaker or any person deriving title from the undertaker or any servants or agents of the undertaker, despite any such activity interfering with an interest or right or breach of a restriction as to user of land arising under a contract. "Authorised activity" for this purpose means the erection, construction or maintenance of the authorised project the exercise of any power authorised by the dDCO and the use of any land including temporary use.

OTHER RIGHTS AND POWERS

- 6.3.14. The dDCO includes other rights and powers which may interfere with existing property rights and private interests in land, relating to:
- Powers to undertake street works (Articles 7, 9, 10, 15 and 16);
 - Permanent stopping up of streets listed in Schedule 6 of the dDCO (Article 11);
 - Permanent stopping up of public rights of way (Article 12);
 - Temporary stopping up and prohibition of restriction of use of streets and public rights of way (Article 13);
 - Use of private roads for construction (Article 14);
 - Apparatus and rights of Statutory Undertakers in stopped up streets (Article 17);
 - Discharge of water (Article 18);
 - Authority to survey and investigate land (Article 19);
 - Protective works (Article 20);
 - Rights over or under streets (Article 28);
 - CA of land or rights or imposition of restrictive covenants over land belonging to statutory undertakers and the operators of any electronic communications code network (Article 33); and
 - Works to trees and hedgerows within the Order limits (Articles 53 and 54).

STATUTORY UNDERTAKERS' LAND

- 6.3.15. If a Statutory Undertaker (SU) makes a representation about the CA of land or a right over land which would be required for the purpose of its undertaking, and this is not withdrawn, s127 of PA2008 applies. In these circumstances, the Order can only include a provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by alternative use of land.
- 6.3.16. S138 of PA2008 applies where a SU has a relevant right or relevant apparatus in the CA land. In those circumstances, the Order can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.
- 6.3.17. The land affected by the Proposed Development includes land, rights or other interests owned by several SUs, as set out in the SoR [\[AS-008\]](#) and BoR [\[REP7-009\]](#) and the Land Plans [\[REP6-008\]](#). Most SU objections and concerns were successfully addressed by the Applicant during the course of the Examination, however those that were not withdrawn or resolved by the end of the Examination were from:
- Anglian Water Services Limited;
 - Environment Agency; and
 - Network Rail Infrastructure Limited.

CROWN LAND

- 6.3.18. The Applicant has a leasehold interest over areas of Crown Land, which are shaded in orange on the Land Plans [\[REP6-008\]](#). No powers to acquire interests in land, create rights or impose restrictive covenants are sought in respect of this land, however in accordance with s135(2) of PA2008 the consent of the appropriate Crown authority to inclusion of land within the Order limits has been sought by the Applicant.
- 6.3.19. Article 60 (Crown Rights) of the dDCO confirms that the estates and rights of the Crown are not affected by the DCO and that the undertaker is not authorised to take

or use any land or rights forming part of the Crown Estate (CE) without the necessary consent specified in that Article.

- 6.3.20. The Applicant submitted to the Examination [[AS-023](#)] a letter from the CE advising that the Crown Estate Commissioners were giving consent for:

“...work to the demise within the lease dated 1st January 1869, being the Immingham Green Energy Terminal...This consent is subject to any changes to the scheme being communicated to and agreed with the Crown Estate and reflected in the commercial terms agreed thereafter.”

Further, “Associated British Ports is to indemnify the Crown Estate against all liabilities, actions, proceedings, costs, claims and demands arising from the exercise of the consent hereby given.”

SPECIAL CATEGORY LAND

- 6.3.21. There is no Special Category Land (as defined by sections 130 to 132 of PA2008) within the Order limits.

6.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

- 6.4.1. The Application is for development consent for the construction, operation and maintenance of a multi-user liquid bulk terminal located on the eastern side of the Port of Immingham. It seeks authorisation for the alteration of the existing harbour facility (i.e. the Port) for the construction of a new terminal for the import and export of liquid bulks, together with associated development which includes the construction and operation of a green hydrogen production facility to produce green hydrogen from imported ammonia.
- 6.4.2. Whilst Air Products will be the first customer to use the new terminal, other proposed uses for and users of the terminal are expected to come forward in due course, and separate consents will be obtained as required for associated landside works. It is anticipated that future users are likely to include customers in the carbon capture sector. This is described more fully in Chapter 3 of the Environmental Statement (ES) [[APP-045](#)] and the Planning Statement [[APP-226](#)].
- 6.4.3. The proposed jetty, topside infrastructure (including the associated pipework on the jetty) and related landside infrastructure (including jetty access ramp) would comprise the Nationally Significant Infrastructure Project (NSIP) (i.e. the principal development). The jetty access road and landside development (including pipeline and storage tank) for the transfer and storage of the ammonia, and the hydrogen production, storage and distribution facilities would comprise “associated development” for the purpose of section 115 of the PA2008.
- 6.4.4. In the Planning Statement the Applicant explains that the Proposed Development would help meet the clear and compelling need for new port infrastructure as set out in the National Policy Statement for Ports (NPSfP). The need for port infrastructure depends not only on overall demand for port capacity but also on the need to retain flexibility to ensure facilities are located where required, and the need to ensure effective competition and resilience in port operations.

6.5. EXAMINATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSSESSION CASE

THE EXAMINATION PROCESS

- 6.5.1. The ExA's approach to considering whether it should recommend to the SoS that the requested CA and TP powers should be granted has been guided by the relevant sections of the PA2008, notably s122 and s123, the CA Guidance and the Human Rights Act 1998. The ExA has considered, in light of the representations received and the evidence submitted, whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 6.5.2. In examining the Application, the ExA considered all written material in respect of CA and TP, including Statements of Common Ground (SoCG), and asked written questions (ExQs) regarding the justification of the need for CA/TP in:
- ExQ1 [\[PD-008\]](#); Applicant's response in [\[AS-023\]](#)
 - ExQ2 [\[PD-014\]](#); Applicant's response in [\[REP4-047\]](#)
 - ExQ3 [\[PD-017\]](#); Applicant's response in [\[REP6-022\]](#)
- 6.5.3. In addition, one Compulsory Acquisition Hearing (CAH1) was held, at which the issues were explored in further detail: [\[EV8-001\]](#); [\[EV8-002\]](#); [\[EV8-003\]](#); [\[EV8-004\]](#); and [\[EV8-005\]](#). The Applicant submitted a response to the CAH1 Action Points, and a summary of CAH1, at Deadline 3 ([\[REP3-067\]](#) and [\[REP3-074\]](#) respectively).
- 6.5.4. A number of objections/representations from Interested Persons (IPs) or Affected Persons (APs) were submitted via Relevant Representations (RRs) and Written Representations (WRs) in relation to CA/TP-related issues, however most issues were resolved during the course of the Examination. The progress of negotiations was recorded in updated versions of the LRT and BoR and at D6, in response to ExQ3 [\[PD-017\]](#) Question CATP3.1, the Applicant provided a summary of outstanding matters relating to CA and TP [\[REP6-022\]](#). The final position in respect of all such matters was presented in the final versions of the LRT [\[REP7-018\]](#); [\[REP7-019\]](#); and [\[REP7-020\]](#) and the BoR [\[REP7-009\]](#); [\[REP7-010\]](#); and [\[REP7-055\]](#).
- 6.5.5. The outstanding matters at the close of the Examination related to:
- Individual landowners: IP/AP 2; 3; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 35; 36; 39; 41; 45; 47; 52; 58; 59; 60; 61; 62; 63; 65; 66; 67; 68; 69; 70; 71;
 - Statutory undertakers: IP/AP 72; 73; 75; 76; 77; 78; and
 - Crown Land: IP/AP 80.
- 6.5.6. Of the above, the majority of IPs/APs are in the final stages of reaching agreement voluntarily with the Applicant. The remaining substantive issues, which are discussed further below, relate to:
- Anglian Water Services Ltd (AP72);
 - Environment Agency (AP78);
 - Network Rail Infrastructure Limited (AP75); and
 - Crown Land (AP80).

THE APPLICANT'S CASE

- 6.5.7. The Applicant's general case for TP and CA is set out in the SoR. Their conclusion is that:

- the Proposed Development is in accordance with the NPSfP which establishes that there is a compelling national need to deliver new port infrastructure to provide capacity, create competition and resilience in the port sector and deliver wider economic benefits in the public interest;
- there is a particular need for the import and export of bulk liquid energy products from the Humber to support the transition to net zero and the decarbonisation of the Humber industrial cluster; and
- the need for specific infrastructure (including port infrastructure) to support the production of low carbon hydrogen and carbon capture storage (CCS) (or other future low carbon renewable energy technology) is clearly demonstrated, as is the urgency of that need.

6.5.8. They consider that the Proposed Development would:

- provide new port capacity on the Humber to handle approximately 11 million tonnes of liquid bulks per annum. This includes considerable capacity for other future users beyond Air Products and therefore flexibility to serve the CCS market and other future liquid bulk energy products customers and markets which may emerge;
- make a significant contribution to achieving net zero through the provision of bespoke infrastructure to support the decarbonisation of the Humber industrial cluster, and other locations;
- meet (depending on market demand) up to 3% of the Government's hydrogen production capacity target;
- facilitate a reduction in annual road traffic emissions of carbon dioxide by up to 704,634 tonnes; and
- deliver substantial economic benefits through the creation of jobs and gross value-added during construction.

6.5.9. The Applicant therefore considers that there is a compelling case in the public interest for the land to be acquired compulsorily, and that the land over which they are seeking CA powers is required for the construction, operation and maintenance of the Proposed Development or is required to facilitate or is incidental to it.

ALTERNATIVES

6.5.10. Paragraph 8 of the CA Guidance requires that the Applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the scheme) have been explored.

6.5.11. The Applicant sets out in sections 3.5 to 3.10 of Chapter 3 of the Environmental Statement [[APP-045](#)] and in the SoR [[AS-008](#)] their full reasoning in terms of the alternatives they have considered, which included:

- Step 1: considering broad options for the Proposed Development, including a do-nothing approach, development outside the Humber, and alternative technologies for hydrogen production;
- Step 2: consideration of other port locations around the Humber Estuary;
- Step 3: consideration of the appropriate location for the Proposed Development within the Port of Immingham; and
- Step 4: design options for the Proposed Development, which evolved in response to feedback from statutory consultation and environmental assessment.

6.5.12. The Applicant's consideration of the sequential test is set out in detail in the Planning Statement [[APP-226](#)] and concluded that the appropriate area of search could only be the Humber in order to meet the objectives of the Proposed Development, and

that the appropriate location for it within the Humber was the Port of Immingham. The ExA is satisfied that, at a strategic level and at a local level, the Applicant has adequately considered alternatives to the Proposed Development in terms of location and site.

- 6.5.13. During the Examination, no IPs raised issues about alternatives to the Proposed Development, and those issues that did arise were derived from the ExA's written and oral questioning of the Applicant. These are discussed in paragraphs 3.3.28 to 3.3.31 of this Report.
- 6.5.14. The Applicant's Further Change Request submitted on 26 June 2024 [AS-047], described in paragraphs 1.7.8 to 1.7.11 above, reduced the extent of Work Area No. 9, therefore also reducing the area of land for which TP was sought.
- 6.5.15. Updated versions of the LRT were submitted throughout the Examination, demonstrating how the Applicant was progressing negotiations for the voluntary acquisition of property (for example, dwellings on Queen's Road) as an alternative to CA. The final positions were set out in [REP7-018], [REP7-019] and [REP7-020]. These demonstrate that, by the close of the Examination, there were no outstanding issues in relation to CA.
- 6.5.16. The ExA is satisfied that the Applicant has been progressing rights by negotiation during the Examination, and that they have explored all reasonable alternatives to CA and TP. Accordingly, the ExA concludes that there are no matters relating to the consideration of alternatives that would weigh for or against the Order being made.

FUNDING

- 6.5.17. The Applicant's Funding Statement [APP-010] indicates that appropriate and necessary financial resources would be available for the Proposed Development, including the cost of acquiring any rights and the payment of compensation, as applicable. Successive versions of the LRT and BoR submitted during the course of the Examination record the progress that has been made by the Applicant and Air Products Limited and the final versions of these documents [REP7-018]; [REP7-019]; [REP7-020]; [REP7-009]; [REP7-010]; and [REP7-055] record that most land subject to CA, including residential properties in Queen's Road, has already been purchased or is in the final stages of purchase.
- 6.5.18. In ExQ1 [PD-008] the ExA asked a question relating to the Funding Statement (Q1.17.2.1) and the Applicant responded in [AS-023], providing further information in relation to:
- ABP's and Air Product Limited's commitment to funding the Project;
 - Provision made to respond to potential blight claims;
 - How the 1% figure of total funding available for CA compensation payments was arrived at; and
 - A breakdown of project-related costs between the construction of the jetty and delivery of the hydrogen production facility.
- 6.5.19. During an accompanied site inspection (ASI) [EV1-003] the ExA viewed other port infrastructure within the Port of Immingham, including other recent developments by the Applicant providing specialist facilities for use by third parties. Funding for these development projects had been made available by the Applicant and successful, economically viable infrastructure had been delivered.

CONCLUSIONS IN RESPECT OF THE OVERALL CASE FOR CA AND TP

- 6.5.20. In overall terms the ExA agrees with the Applicant's conclusions on the generality of the case for using CA and TP powers and is satisfied that the necessary funding is available in order to fulfil its related obligations. Subject to the ExA's consideration below of individual plots/representations, the ExA considers that the tests set out in s122(2) and s122(3) of the PA2008 have been met.

6.6. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES ANGLIAN WATER SERVICES LIMITED

- 6.6.1. Anglian Water Services Ltd (AWS) (AP72) submitted a RR [\[RR-001\]](#) advising that they had significant assets within the Order limits and highlighting the need for Protective Provisions (PPs) to be agreed. The Applicant accordingly included PPs within the dDCO. Subsequent discussions took place, and by the close of the Examination the final version of the Land Rights Tracker [\[REP7-019\]](#) indicated that PPs in favour of the AP had been agreed. Heads of Terms remained as "Subject to negotiations" as they related specifically to the leasehold interest the AP has in relation to Plot 5/14.

ExA's Reasoning in relation to Anglian Water Services Limited

- 6.6.2. The ExA notes that the final agreed SoCG [\[REP7-046\]](#) shows that CA-related matters have been agreed between the Applicant and AWS, and is therefore satisfied that the tests in s127 and s138 of PA2008 have been met.

ENVIRONMENT AGENCY

- 6.6.3. The Environment Agency (EA) (AP78) submitted a RR [\[RR-010\]](#) and a WR [\[REP1-073\]](#) identifying various issues of concern in relation to flood defence assets. The Applicant engaged with the EA throughout the Examination and a majority of the matters were successfully addressed. By the close of the Examination, the Applicant reported in the Statement of Commonality [\[REP8-004\]](#) that 78% of matters had been agreed. The final SoCG [\[REP8-006\]](#) identified the following land or property-related matters as outstanding, and subject to ongoing discussions:

- G4: flood defence maintenance access;
- G5: emergency access – visual inspection and minor repairs;
- G6: changes to structure (flood defence);
- G7: changes to structure – crest height (flood defence wall);
- G8: hard surfacing in zones that cannot be maintained;
- W13: contingency measures for the construction of the proposed ramp and new section of flood defence;
- DCO1: Article 3 – PPs relating to Work No.1 where it crosses through existing flood management infrastructure;
- DCO2: Article 18 – PPs relating to monitoring outfall channels; and
- BoR1: reconstruction, future ownership, operation and maintenance of flood defence.

- 6.6.4. At D7 [\[REP7-065\]](#) the EA advised the ExA that agreement had been reached in principle with the Applicant to the effect that their concerns would be addressed in either a bespoke legal agreement and/or protective provisions. Whilst drafts of these had been supplied, it had not been possible to finalise them by the close of the Examination.

- 6.6.5. In the Statement of Commonality submitted at Deadline 8 [REP8-004] the Applicant stated that constructive discussions were still underway concerning drafting details and so they could not be marked “Agreed”, however they saw no particular impediment to reaching an agreed form of documentation after the close of the Examination.

ExA’s Reasoning in relation to the Environment Agency

- 6.6.6. Issues relating to flood risk and management *per se* are covered in section 3.8 of this Report. In relation to land-related matters, the ExA is satisfied that the proposed measures are sufficient to protect the EA’s land and assets and to meet the requirements of sections 127 and 138 of PA2008. The ExA therefore concludes that the tests in PA2008 are met. However, the SoS may wish to check if final agreement has been reached.

NETWORK RAIL INFRASTRUCTURE LIMITED

- 6.6.7. Network Rail Infrastructure Limited (NR) (AP75) submitted a RR [RR-020] and WR [REP1-101] and [REP1-102] raising a number of matters relating to their land, infrastructure and operations. With both parties having engaged throughout the Examination, PPs had been agreed for all matters except for those arising from Air Products’ need for a permanent easement under the railway line for the purposes of the pipeline corridor in Work No. 6. The parties’ positions were set out and explained in [REP2-018] and [REP5-053].

- 6.6.8. NR’s final position is set out in their response to the SoCG submitted at D7 [REP7-068] and is that they require the ability to compel Air Products to move or relocate (“lift and shift”) the development authorised by the dDCO to accommodate works by NR, and ultimately to terminate the easement where lift and shift is not possible. They consider this to be necessary in order to maintain a safe and reliable railway service and to avoid any risk of NR being in breach of its network licence.

- 6.6.9. Air Products’ response [REP7-043] and [REP8-004] was that they would be unable to “shift” the pipeline. Further, the termination of the easement in the absence of an alternative pipeline would render Work No. 7 and therefore the entire hydrogen production facility unusable.

ExA’s Reasoning in relation to Network Rail Infrastructure Limited

- 6.6.10. NR’s objection was not withdrawn by the close of the Examination, therefore the tests of s127 and s138 of PA2008 apply. The ExA is satisfied that the powers sought by the Applicant are necessary for the Proposed Development. It considers that the comfort already provided by the approvals that would be required from NR, whilst not going as far as NR would wish, does give it a role in assessing risk and taking precautionary measures to prevent any serious detriment to its undertaking. Further, the ExA agrees with the Applicant that it would not be feasible to “lift and shift” the pipeline once it is installed and operational. The ExA is therefore satisfied that the powers sought by the Applicant are necessary for the Proposed Development and consistent with ss127 and 138 of PA2008. Accordingly, no changes have been made to the Applicant’s final dDCO.

CROWN LAND

- 6.6.11. In the LRT submitted at D7 [REP7-020] the Applicant explained that the CE’s solicitors had requested certain details in relation to the dDCO to inform the wording of the s135(2) consent sought. The Applicant was preparing this to provide to the

CE's solicitors, but it was anticipated that Crown consent would follow the close of the Examination. The Applicant considered that there is no particular impediment to achieving the s135(2) consent sought.

- 6.6.12. In the Cover Letter submitted at D8 [\[REP8-001\]](#) the Applicant confirmed that the requested information had been provided to the CE, and the CE's solicitors had replied that they were reviewing the information provided and would respond in due course. The Applicant reiterated that they anticipated that the s135(2) consent would be achieved, albeit after the close of the Examination.

ExA's Reasoning in relation to Crown Land

- 6.6.13. Whilst the Applicant considers that achieving CE consent is unlikely to be an impediment which would prevent the Proposed Development from proceeding, that consent had not been granted by the close of the Examination and therefore the powers sought by the Applicant do not meet the tests in s135 PA2008.

QUEEN'S ROAD RESIDENTIAL PROPERTIES

- 6.6.14. As mentioned elsewhere in this chapter and in paragraphs 3.5.28 to 3.5.32 of this Report, a number of dwellings in Queen's Road were initially proposed for CA, with some having already been purchased by voluntary acquisition. The Order limits, accordingly, only included the properties not already purchased by the time the Application was submitted. The ExA was concerned that this approach, along with the lack of detail concerning the future use of the land subject to CA, and the lack of proposals for landscaping or biodiversity enhancement, did not demonstrate that the Applicant had a clear idea of how they intended to use the land which they were proposing to acquire. Potentially, this would not meet the CA Guidance, or the requirement in s122 PA2008 requiring there to be a compelling case in the public interest.
- 6.6.15. By the close of the Examination, all the properties in Queen's Road had been purchased, and this ceased to be a relevant issue in relation to the consideration of CA.

6.7. CONCLUSIONS

- 6.7.1. Having considered all the material submitted to the Examination, the ExA has reached the following conclusions:
- the Application site has been appropriately selected;
 - all reasonable alternatives to CA have been explored;
 - the land to be taken is no more than is reasonably required and is proportionate;
 - the Applicant would have access to the necessary funds and the dDCO provides a clear mechanism whereby the funding can be guaranteed;
 - there is a need to secure the land and rights required to construct, operate and maintain the Proposed Development within a reasonable timeframe, and the Proposed Development represents a significant public benefit to weigh in the balance;
 - that in all cases relating to individual objections and issues, CA and TP are justified in order to enable implementation of the Proposed Development;
 - the powers sought satisfy the conditions set out in sections 122, 123, 127 and 138 of the PA2008 as well as the CA Guidance; and
 - consent has not been granted by the relevant Crown authorities and therefore the powers sought do not meet the conditions in s135 of the PA2008.

6.7.2. Considering all of the above, and subject to the Crown authorities granting the appropriate consent, the ExA finds that there is a compelling case in the public interest for the CA and TP powers sought and the ExA recommends acceptance of the CA and TP powers proposed in the dDCO.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. The Application draft Development Consent Order (dDCO) [[APP-006](#)] and the Explanatory Memorandum (EM) [[APP-007](#)] were submitted by the Applicant as part of the Application for development consent. Both the dDCO and EM were updated throughout the Examination with the latest versions of the dDCO being [[REP7-004](#)] and the EM being [[REP7-007](#)].
- 7.1.2. The EM explains the purpose and effect of each Article and Schedule of the dDCO. It also identifies and explains departures from the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the model provisions). The EM describes how the drafting of the dDCO has drawn on drafting used in other made Orders under the Planning Act 2008 (PA2008). The submission version of the dDCO [[APP-006](#)] and subsequent iterations are in the form of a statutory instrument as required by section s117(4) of PA2008.
- 7.1.3. During the Examination, several further drafts of the DCO were submitted by the Applicant incorporating progressive changes arising from the Examining Authority's (ExA) written questions [[PD-008](#), [PD-014](#) and [PD-017](#)], points made by Interested Parties (IPs) and from the proceedings at Issue Specific Hearings (ISH) [[EV4-008](#)], [[EV5-008](#)], [[EV7-006](#)] and [[EV11-004](#)].
- 7.1.4. This Chapter provides an overview of the Examination of the dDCO including notable changes made to the dDCO during the Examination and considers changes made to the final dDCO in order to arrive at the Recommended DCO (rDCO) in Appendix D of this Report. Changes as a result of typographical or grammatical errors, or minor changes in the interests of clarity, consistency or updates to lists following discussion between the Applicant and relevant IPs, or as a result of written questions or comments made by the ExA, are not reported. Unless otherwise stated, all references to the dDCO in this Chapter are to the Applicant's final dDCO [[REP7-004](#)].

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. The Applicant's final dDCO [[REP7-004](#)] is structured as follows:
- Part 1 (Preliminary)
 - Article 1 sets out how the Order may be cited and when it comes into force;
 - Article 2 defines the meaning of the various terms used in the Order;
 - Article 3 relates to the disapplication and modification of certain legislative provisions; and
 - Article 4 relates to the incorporation of the Harbours, Docks, and Piers Clauses Act 1847.
 - Part 2 (Works Provisions)
 - Article 5 provides for the grant of development consent for the Proposed Development, with Article 6 setting out the extent of certain works;
 - Articles 7 to 17 provide powers for the undertaker to carry out works to and within streets. These include matters relating to street works; the application of the New Roads and Street Works Act 1991; powers to alter the layout of streets; construction and maintenance of new, altered or diverted streets;

- permanent stopping up of streets and public rights of way; the temporary stopping up of rights of way; use of private roads for construction; access to works; agreements with street authorities; and apparatus and rights of statutory undertakers in stopped up streets; and
 - Articles 18 to 21 set out four supplemental powers relating to discharge of water, authority to survey land, protective works and removal of human remains.
- Part 3 (Acquisition and Possession of land)
 - Articles 22 to 39 provide powers in relation to the compulsory acquisition (CA) and temporary possession (TP) of land. This includes the extinguishment and suspension of private rights; power to override easements; modification of the Compulsory Purchase Act 1965; and temporary use of land for the carrying out of works and their maintenance. It also provides for powers in relation to the land and apparatus of Statutory Undertakers (SUs).
- Part 4 (Operational Provisions)
 - Articles 40 to 41 provide the powers to operate the Proposed Development. This includes the authorisation and use, along with its maintenance; the limit of the dock master's jurisdiction; the area of jurisdiction to form part of the undertaking and application of byelaws; the power to appropriate; and the powers to dredge.
- Part 5 (Miscellaneous and General)
 - Articles 46 to 65 provide various general provisions including benefits of the Order; deemed marine licence; saving for Trinity House; provision against danger to navigation; lights during construction and permanent lights on tidal works; application of landlord and tenant law; felling or lopping of trees and removal of hedgerows; trees subject to Tree Preservation Orders; planning legislation; traffic regulations; statutory nuisance; procedure in relation to appeals under the Control of Pollution Act 1974; protection of interests; Crown Land; application of 1990 Act; arbitration; procedure regarding certain approvals; certification of documents; and serving of notices.

7.2.2. There are 17 Schedules to the Order:

- Schedule 1 provides a description of the Proposed Development, including the ancillary works;
- Schedule 2 sets out the 21 Requirements (R) which apply to it;
- Schedule 3 provides the Deemed Marine Licence (DML);
- Schedules 4 to 10 relate to matters in relation to streets, accesses and rights of way; and traffic regulation matters, including speed limits, temporary parking and road closures and priority of vehicular traffic;
- Schedules 11 to 13 are concerned with land rights, temporary possession and compensation. Schedule 11 relates to the creation of new rights and imposition of new restrictive conditions. Schedule 12 refers to land in which only new rights and restrictive covenants may be acquired. Schedule 13 relates to land which may be used temporarily for the Proposed Development;
- Schedule 14 provides Protective Provisions (PP) for Statutory Undertakers (SUs) and their apparatus;
- Schedule 15 lists the documents and plans to be certified;
- Schedule 16 provides the arbitration rules; and
- Schedule 17 sets out the procedure regarding certain approvals.

7.3. EXAMINATION OF THE DEVELOPMENT CONSENT ORDER EVOLUTION OF THE dDCO

7.3.1. The Applicant updated the dDCO several times throughout the Examination, responding to issues raised in written questions, to Written Representations (WR) and as a consequence of the hearing process. At each revision, the Applicant supplied a clean copy of the updated dDCO, a copy showing changes from the previous version as tracked changes and a Schedule of Changes made to the dDCO. As requested in our Rule 6 letter [PD-005], the Applicant also submitted four composite versions, showing all the changes made to that point. The changes made to the dDCO and the reasons for these changes can be found in the Schedule of Changes to Development Consent Order submitted at Deadline (D)1, D3, D4, D5, D6 and D7. These are detailed in Table 7.1 below.

Table 7.1 dDCO documentation submitted into the Examination

dDCO version	Deadline	Examination Library (EL) Reference
1		APP-006 (Application DCO) APP-007 (EM)
2	Procedural Deadline A	PDA-004 (dDCO Clean) PDA-005 (dDCO Tracked) PDA-006 (EM Clean) PDA-007 (EM Tracked)
3	Deadline 1	REP1-016 (dDCO Clean) REP1-017 (dDCO Tracked) REP1-018 (dDCO Composite) REP1-004 (EM Clean) REP1-005 (EM Tracked) REP1-014 (Schedule of Changes)
4	Deadline 3	REP3-004 (dDCO Clean) REP3-005 (dDCO Tracked) REP3-006 (dDCO Composite) REP3-007 (EM Clean) REP3-008 (EM Tracked) REP3-034 (Schedule of Changes)
5	Deadline 4	REP4-004 (dDCO Clean) REP4-005 (dDCO Tracked) REP4-006 (EM Clean) REP4-007 (EM Tracked)

dDCO version	Deadline	Examination Library (EL) Reference
		REP4-016 (Schedule of Changes)
6	Further Change Application	AS-050 (dDCO Clean) AS-051 (dDCO Tracked)
7	Deadline 5	REP5-004 (dDCO Clean) REP5-005 (dDCO Tracked) REP5-006 (dDCO Composite) REP5-007 (EM Clean) REP5-008 (EM Tracked) REP5-023 (Schedule of Changes)
8	Deadline 6	REP6-004 (dDCO Clean) REP6-005 (dDCO Tracked) REP6-006 (EM Clean) REP6-007 (EM Tracked) REP6-015 (Schedule of Changes)
9	Deadline 7	REP7-004 (dDCO Clean) REP7-005 (dDCO Tracked) REP7-006 (dDCO Composite) REP7-007 (EM Clean) REP7-008 (EM Tracked) REP7-017 (Schedule of Changes)

ExA's EXAMINATION OF THE dDCO

Issue Specific Hearings 2 and 3

7.3.2. The ExA held Issue Specific Hearing 2 (ISH2) in relation to a number of issues, including the dDCO on 21 February 2024 [[EV4-002](#)]. The Applicant provided an explanation of the main provisions of the Application dDCO [[PDA-004](#)] and the ExA asked questions about the Articles and Schedules.

7.3.3. At ISH3, held on 22 February 2024, the ExA asked questions and sought clarification on matters relating to Schedule 3, DML [[EV5-002](#)].

ExA's First Written Questions (ExQ1)

7.3.4. On 28 January 2024, the ExA issued their ExQ1 [[PD-008](#)]. Section 1.18 covered questions directed to a range of parties in respect of the dDCO [[PDA-004](#)] and EM [[PDA-006](#)].

ISH4, ISH5 and ISH6

- 7.3.5. The ExA held ISH4 on 9 April 2024 [EV6-002]. Whilst the focus was on marine-side issues, the ExA discussed revisions to Schedule 3, DML [REP1-016].
- 7.3.6. ISH5 [EV7-002] was held on 10 April 2024 and the ExA asked questions and invited submissions about the Articles and Requirements of the dDCO v3 [REP1-016] and considered the EM [REP1-004]. ISH5 was attended by a range of IPs, including North East Lincolnshire Council (NELC). The ExA discussed matters relating to PP at ISH5.

ExA's Second Written Questions (ExQ2)

- 7.3.7. On 17 May 2024, the ExA issued ExQ2 [PD-014]. Questions relating to dDCO v4 [REP3-004] and EM [REP3-007] were contained in Section 18.

ISH8

- 7.3.8. ISH 8 [EV11-002] was held 2 July 2024 which covered dDCO v5 [REP4-004] and EM [REP4-006] together with environmental matters. The ExA raised questions on specific Articles and Requirements and sought an update on PP.

ExA's Third Written Questions (ExQ3)

- 7.3.9. On 17 July 2024, the ExA issued ExQ3 [PD-017]. Questions relating to dDCO v7 [REP5-004] and EM [REP5-007] were contained in Section 18.

ExA's Schedule of Proposed Changes to the dDCO

- 7.3.10. On 17 July 2024, the ExA issued its Schedule of Proposed Changes to the dDCO [PD-019] with proposed changes focused on Version 7 of the dDCO [REP5-004] and EM [REP5-007]. The Applicant provided their comments on the Schedule at D6 [REP6-026].

NOTABLE CHANGES TO THE dDCO DURING EXAMINATION

- 7.3.11. The Applicant's final Schedule of Changes to the dDCO [REP7-017] identifies all the changes made within each revision of the dDCO. A composite version of the final dDCO showing all the amendments made to the dDCO since submission as tracked changes was provided at the final Deadline [REP7-006].
- 7.3.12. The ExA does not report on every change made to the dDCO during the Examination, as some were minor changes resulting from typographical or grammatical errors or made to improve clarity or consistency. In the interests of conciseness, we focus on the notable changes made to the dDCO in Table 7.2 below.

Table 7.2 Notable changes made to the dDCO

Version/Deadline	Notable changes made
v3 Deadline 1 REP1-016	<ul style="list-style-type: none">Amendment to the definition of 'the Order land' to confirm that all land in the definition is contained within the Book of Reference (BoR).Amendment to Article 3 (Disapplication of legislative provisions) heading to provide clarity.

Version/Deadline	Notable changes made
	<ul style="list-style-type: none"> ▪ Updates to Articles 49 (Provision against danger to navigation), 50 (Lights on tidal works during construction), 51 (Permanent light on tidal works) to reflect comments from Trinity House that its direction must also be complied with. ▪ Clarification to the definition of ‘commence’, in Schedule 2 (Requirements), paragraph 1 that it should be read in respect of parts of the authorised project as well as the whole. ▪ Deletion of archaeological investigations from definition of ‘commence’ in Schedule 2, paragraph 1, as these have already occurred. ▪ In Schedule 2, paragraph 1, exclusion of Work No. 9 from receipt and erection of construction plant and equipment and erection of temporary contractor and site welfare facilities to ensure it is clear that no significant environmental effects will arise from these limited operations. ▪ Clarification in Schedule 3 (Deemed Marine Licence) that the cold weather construction restriction document is a “strategy” and at paragraph 11(2) that it must be complied with. ▪ Amendment to Schedule 3 to capture errors, refine wording and provide explicit wording, remove reference to ‘percussive’ piling and reflect Marine Management Organisation (MMO) comments. ▪ Update to PP for the protection of the Statutory Conservancy and Navigation Authority for the Humber.
<p>v4 Deadline 3 REP3-004</p>	<ul style="list-style-type: none"> ▪ Addition of new Article 19 (6) (Authority to survey and investigate land) to reflect request by ExA at ISH5. ▪ Correction of error in Article 43 (Area of jurisdiction to form part of the undertaking and application of byelaws) to ensure reference to Company rather than the undertaker. ▪ Amendment to Article 46 (Benefit of the Order) to clarify that the various powers conferred upon the Company, dock master or statutory harbour authority alone, do not have effect for other bodies. ▪ Amendments to Article 46 to address comments submitted by the MMO. ▪ Amendments to Article 63 (Procedure regarding certain approvals, etc.) to make the relationship between Articles 63(4) and (5) and Schedule 17 (Procedure regarding certain approvals, etc.) clearer. ▪ Updates to R8 (Highway Works) and R9 (Construction Hours). ▪ Addition of new R19 on Operational Travel Plan. ▪ Amendment to Paragraph 11(a) 6, and 7 of Schedule 3 in response to consultation with NE in relation to management of 200m buffer. ▪ Amendment to Paragraph 14 of Schedule 3 to address comments from EA.

Version/Deadline	Notable changes made
	<ul style="list-style-type: none"> ▪ Additional square brackets to paragraph 27 of Schedule 3, to reflect ongoing discussions with MMO on process for transfer of DML. ▪ Amendment to PP with NELC as relevant LLFA to reflect agreed wording. ▪ Inclusion of draft PP for the North East Lindsey Drainage Board (NELDB). ▪ Various changes to Articles and Schedules in connection with the Applicant's Change Application.
v5 Deadline 4 REP4-004	<ul style="list-style-type: none"> ▪ Amendment to the definition of '<i>commence</i>' in Schedule 2 (Requirements) paragraph 1, to respond to changes sought by the EA. ▪ Amendment to Schedule 3 (DML), paragraphs 1 and 16 to improve consistency between the DML and CEMP. ▪ Additional provision provided in Schedule 14, Part 1 for the protection of the Statutory Conservancy and Navigation Authority for the Humber. ▪ Various changes to Articles and Schedules following the ExAs acceptance of Applicant's Change Application.
v7 Deadline 5 REP5-004	<ul style="list-style-type: none"> ▪ Addition of new definitions relating to '<i>existing early works planning permission</i>' and '<i>new early works planning permission</i>' into Article 2 (Interpretation). ▪ Addition of new provision in Article 46 (Benefit of Order) to address issues raised by MMO. ▪ Amendment to Article 55 (Planning legislation) to reflect the Applicant's Early Works Application Note [REP4-043]. ▪ Addition of new definition in Schedule 2, Paragraph 1 relating to '<i>hydrogen production facility building design code</i>'. ▪ Amendments to Schedule 14, Protective Provisions, Part 4, for the Protection of Anglian Water, (paragraphs 39, 40, 45 and 46) to reflect their agreed form. ▪ Amendments to Schedule 14, Protective Provisions, Part 4, for the Protection of Network Rail (NR), (paragraphs 53, 55, 62, 66, 69, 71) to reflect those required by NR, along with insertion of text in square brackets to show differing positions. ▪ Amendments to Schedule 14, PP, Part 9, for the Protection of the NELDB to reflect their agreed form. ▪ Amendments to Schedule 14, PP, Part 10, for the Protection of CLdN Ports Killingholme Limited, to reflect their agreed form. ▪ Amendments to Schedule 15 (Documents to be certified) to reflect the latest document revisions. ▪ Amendment to Schedule 17 (Procedure Regarding Certain Approvals, etc.) Paragraph 5 to reflect agreed wording with NELC.

Version/Deadline	Notable changes made
	<ul style="list-style-type: none"> ▪ Various changes to Articles and Schedules in connection with the Applicant's Second Change Application.
<p>v8 Deadline 6</p> <p>REP6-004</p>	<ul style="list-style-type: none"> ▪ Deletion of definition of '<i>main river</i>' as no longer used in dDCO. ▪ Amendments to Article 7 (Street works), Article 10 (Construction and maintenance of new, altered or diverted streets), Article 11 (Permanent stopping up of streets), Article 20 (Protective works) and Article 32 (Temporary use of land for maintaining the authorised project) to reflect agreement with NELC. ▪ Amendment to Schedule 2 (Requirements), paragraph 1 (Interpretation), to reflect timeline for clearance works in Long Strip. ▪ Amendments to Schedule 2, paragraph 6 (Construction environmental management plan) and paragraph 7 (Construction Traffic Management Plan) to reflect updated approach towards clearing works in Long Strip. ▪ Amendment to Schedule 2, paragraph 8 (Highway works) to reflect agreement with NELC. ▪ Amendment to Schedule 2, paragraph 11 (Woodland compensation plan) to reflect the Applicant's intention that this is agreed in advance of the determination of the Order. ▪ Amendment to Schedule 2, paragraph 12 (Surface water drainage) and paragraph 15 (Contaminated land) to carve out works in relation to Long Strip. ▪ Wording provided, should it be needed, for new Requirement dealing with Construction Phase Flood Emergency Response Plans, although included within square brackets as Applicant considered addressed in dDCO. ▪ Insertion of new Requirement 21 dealing with Operational Phase Flood Emergency Response Plans. ▪ New wording provided, should it be needed, in Schedule 3, (DML) Part 1 (General), Paragraph 1 (Interpretation) and Paragraph 14 (Flood Risk Assessment) to mirror wording in potential for new R21 dealing with Construction Phase Flood Emergency Response Plans, although included within square brackets as Applicant considered addressed in dDCO. ▪ Amendment to Schedule 14, PP, Part 3, for the protection of Northern Powergrid to reflect ongoing discussions. ▪ Amendment to Schedule 14, PP, Part 7, for the protection of Cadent Gas Limited as Gas Undertaker to reflect ongoing discussions. ▪ Various changes to Articles and Schedules following ExAs acceptance of Applicant's Second Change Application.

Version/Deadline	Notable changes made
v9 Deadline 7 REP7-004	<ul style="list-style-type: none"> ▪ Addition made to Article 8 (Application of the 1991 Act) at request of NELC. ▪ Amendment made to Article 13 (Temporary stopping up and prohibition or restriction of use of streets and public rights of way) at request of NELC. ▪ Amendment made to Article 19 (Authority to survey and investigate land) in relation to works in the highway. ▪ Amendment to Article 41 (Maintenance of authorised project) to ensure consistency with other articles. ▪ Amendments made to Article 46 (Benefit of Order) to reflect comments from MMO. ▪ Amendments made to Article 53 (Felling or lopping of trees and removal of hedgerows) to reflect comments from NELC. ▪ Amendment to Article 57 (Defence to proceedings in respect of statutory nuisance) to reflect Applicant's approach to early work in Long Strip. ▪ Amendment to Article 65 (Service of notices) to reflect SoS for Transport. ▪ Amendment to Schedule 3 (DML) paragraph 1 to ensure consistency of definitions. ▪ Amendment to Schedule 3 (DML) paragraph 11 to include additional mitigation measure. ▪ Amendment to Schedule 3 (DML) paragraph 16 to respond to comments from the MMO. ▪ Update to Schedule 14, PP, Part 2, for the Protection of the EA to reflect latest position. ▪ Amendments to Schedule 14, PP, Part 3, for the Protection of Northern Powergrid to reflect their agreed form. ▪ Amendment to Schedule 14 to reflect the most recent versions of documents. ▪ Various footnote and typographical corrections.

7.4. MAIN ISSUES ARISING AND ExA CONSIDERATIONS

7.4.1. As evidenced in v9 of the dDCO [\[REP7-004\]](#) and Table 7.2 above, many of the matters raised by the ExA and IPs in relation to the provisions of the dDCO were addressed through drafting amendments during the Examination. In general, the Applicant was responsive to the matters raised in submissions and questions and sought to revise provisions accordingly. Where changes were not made to the provisions of the dDCO, the Applicant explained the reasons for this and in some cases added wording to the EM or relevant management plans secured by the dDCO to achieve the desired outcome.

7.4.2. This Section considers the main issues arising in the Examination relating to the dDCO [\[REP7-004\]](#), including provisions which were not agreed between specific IPs and the Applicant by the end of the Examination.

7.4.3. The main issues arising in or outstanding at the end of the Examination were:

- Whether the 14 day notice period in Article 19 (Authority to survey and investigate the land) is adequate and whether the powers would allow works additional to those assessed in the DCO Application to be carried out;
- The need for Article 21 (Human Remains);
- The wording of Article 46 (Benefit of Order);
- The need for a new Requirement in relation to Low Carbon Hydrogen Certification;
- The need for a new Requirement in relation to Construction Phase Flood Emergency Response Plan;
- The need for a new Requirement requiring the completion and agreement of a Water Resources Assessment; and
- The use of ‘tailpieces’ within the Requirements contained in Schedule 2.

ARTICLE 19 (AUTHORITY TO SURVEY AND INVESTIGATE THE LAND)

- 7.4.4. Article 19 of the dDCO [REP7-004] enables the undertaker, should it be necessary, to enter land both within and adjacent to, but outside the Order limits for the purpose of testing and surveying. The power is subject to a number of conditions, including a requirement for give 14 days’ notice on every owner and occupier of the land, the requirement to remove equipment following completion of any survey and the payment of compensation in the event that any loss or damage arises.
- 7.4.5. In v4 of the dDCO [REP3-004] the Applicant added Paragraph (6) which requires the undertaker, after completion of activities for the purpose of surveys or investigations, to remove any apparatus used in connection with such activities and restore the land to the reasonable satisfaction of the landowners.
- 7.4.6. In ExQ1 [PD-008], the ExA sought clarification on a number of matters in relation to Article 19, in particular the potential for effects upon land outside of the Order limits, the adequacy of a 14 day notice period and its relationship with other Articles in the dDCO. At ISH5 [EV7-006], the ExA also questioned the Applicant in more detail about the notice period.
- 7.4.7. In response [REP1-039], the Applicant submitted that they had included all land that it considered necessary within the Order limits to deliver the Proposed Development. However, in the context of the urgent imperative of nationally significant infrastructure projects, they felt it reasonable to provide for circumstances where it could be necessary to carry out surveys outside the Order limits to facilitate the delivery of the Proposed Development. The Applicant cited examples such as surveys of ecological receptors in land adjacent to the Order limits, or the monitoring of ground water or noise at appropriate receptors.
- 7.4.8. In relation to the 14-day period, the Applicant submitted that, to ensure delivery could be carried out efficiently and speedily following the making of the Order, it was right to have a provision to cater for any unexpected need to investigate or survey land arising throughout construction. If such a need arose, there would be an urgent need to address it. The Applicant also considered that the 14-day period to be well-established and provided precedents from other made DCOs to support their position.
- 7.4.9. At D7 [REP7-067], NE re-iterated their concerns that the power could enable the Applicant to carry out works additional to those assessed in the DCO Application, within or in close proximity to the Humber Estuary Site of Special Scientific Interest

(SSSI) without appropriate permissions. NE considered that the dDCO should be clear that any works which may impact on the SSSI, Special Area of Conservation (SAC) or Special Protection Area (SPA) should be subject to the usual consenting provisions in the Wildlife and Countryside Act 1981 and the Habitats Regulations, excepting the works that have been assessed as part of the DCO Application.

- 7.4.10. In response, the Applicant [REP8-001] confirmed that the dDCO was not seeking to disapply the provisions of the Wildlife and Countryside Act 1981 or the Habitats Regulations, and therefore those relevant statutory provisions would continue to apply and would be complied with by the undertaker exercising those powers under the dDCO.

ExA's Considerations

- 7.4.11. Having regard to the responses to written and oral questions, the ExA is satisfied that Article 19 of the final dDCO [REP7-004] sets out a reasonable and proportionate approach towards the surveying and investigation of land. The final EM [REP7-007] also provides adequate justification for and explanation of the approach taken. Furthermore, the ExA is satisfied the concerns expressed by NE would remain to be addressed through other legislation. As a consequence, the ExA do not recommend any further amendments to this Article.

ARTICLE 21 (REMOVAL OF HUMAN REMAINS)

- 7.4.12. Following the removal of similar Articles during the Examination of recently made DCOs, the ExA asked the Applicant at ISH 5 to justify its inclusion. Further questions were asked by the ExA at ISH8 [EV11-004] and in ExQ3 [PD-017].
- 7.4.13. The Applicant's response [REP3-071] acknowledged that there was a low probability of finding human remains within the Order limits and that there was no evidence from the baseline surveys to suggest otherwise. The Applicant did however refer to the Thames Tideway Tunnel development [REP3-071 – Appendix 1], where unexpected remains were discovered.
- 7.4.14. The Applicant outlined [REP3-071] that whilst there was alternative legislation in place to allow for the removal of remains, due to its disparate nature, these could be slow and had the potential to delay the delivery of the Proposed Development. In their view [REP3-071], Article 21 was needed to allow for a clear, consolidated, efficient and acceptable process for handling the removal of remains, in the unlikely event it should prove necessary. The Applicant's position was that if no human remains were found, the process would simply not be used.
- 7.4.15. Overall, the Applicant's position [REP3-071] was that Article 21's inclusion was intended to guard against unnecessary delay, difficulty and obstruction to implementation. In their view there was therefore potentially significant public interest benefit from its inclusion, and no public interest harm. No person would benefit and no public interest benefit would be realised by its removal [REP3-071].
- 7.4.16. In response to the deletion from recently made DCOs [REP3-071], the Applicant submitted that, in their view, the two decision letters (Hynet Carbon Dioxide Pipeline Order 2024 and National Grid (Yorkshire Green Energy Enablement Project) DCO 2024) did not provide any real assistance for the purposes of this examination and were of very limited utility as precedents. In neither case was the matter considered in the Examiner's Report, nor was there any attempt to solicit the views and representations of the Applicants or IPs as to whether the provision ought to be retained during the post-examination stage for both projects. The Applicant

considered the reasoning from the SoS to be extremely brief and, in any event, did not engage with the points that the Applicant made at ISH5 [\[EV11-004\]](#) in support of the inclusion of Article 21.

ExA's Considerations

- 7.4.17. Whilst the ExA note that similar Articles have been deleted during the Examination of recently made DCOs, by the relevant SOS, there appears to have been very little discussion as to the need or justification for those Articles during the Examination of the relevant NSIP. In this case however, the matter has been the subject of questioning by the ExA and the Applicant has provided additional detail and explanation to justify why Article 21 is needed.
- 7.4.18. The ExA agrees with the Applicant's submissions that the chances of encountering human remains would appear to be low, however we accept that this cannot be ruled out in its entirety. In this regard, the ExA notes that there are alternative procedures in place, through other legislation, for dealing with any unexpected discoveries. The ExA also agrees with the Applicant on the limitations of this legislation and the potentially negative effects this could have upon the delivery of the Proposed Development. The ExA finds that the process set out in Article 21 would mitigate this risk. Furthermore, the ExA notes the Applicant's point that this process would only be engaged should human remains be encountered.
- 7.4.19. Given the nature of the Proposed Development, and in particular the contribution it would make to the overall aims of delivering wider climate change ambitions, the ExA agrees with the Applicant that there is a need, in this instance, for a consolidated approach, as presented in Article 21. As a consequence, the ExA do not recommend any further amendments to this Article.

ARTICLE 46 (BENEFIT OF ORDER)

- 7.4.20. While the MMO initially raised an objection to the wording proposed by the Applicant in Article 46, it became clear during the Examination that the issues raised also impacted upon the drafting of a number of other parts of the dDCO. These were:
- Article 46 paragraphs (12) – (16);
 - Article 63(5)(b);
 - Paragraphs 24-27 of the DML; and
 - Paragraph 3(1) of Schedule 17.
- 7.4.21. It was made clear to the ExA early in the Examination by both the Applicant and the MMO that, despite on-going discussions, it was unlikely that the issue would be resolved by the end of the Examination and that it would fall to the SoS to make a final determination on the wording to be included in the DCO, should it be made. This was the final position in the SoCG between the parties [\[REP7-031\]](#).
- 7.4.22. Both parties made submissions on the matter throughout the Examination:
- MMO – [\[RR-016\]](#), [\[REP4-052\]](#) and [\[REP6-029\]](#); and
 - Applicant – [\[REP1-021\]](#), [\[REP2-012\]](#), [\[REP3-070\]](#), [\[REP4-047\]](#) and [\[REP5-049\]](#).
- 7.4.23. To aid the consideration of the issue, the Applicant included additional text within the dDCO [\[REP7-004\]](#) within square brackets, along with footnote explanations, to identify which parts were needed to be included or removed, depending on the decision of the SoS. The different wording was set out by the Applicant at D5 [\[REP5-049\]](#).

- 7.4.24. The ExA raised the matter in ExQs [\[PD-014\]](#) and [\[PD-017\]](#). The matter was also raised at a number of ISHs [\[EV6-004\]](#) and [\[EV11-004\]](#), however the MMO was not in attendance, therefore the ExA only sought updates from the Applicant and requested written updates from the parties.
- 7.4.25. Both parties agreed to provide their final positions by the end of the Examination, and summaries of these are provided below.

Position of MMO

- 7.4.26. The MMO identified [\[RR-016\]](#) and [\[REP4-052\]](#) that s72(7)(a) of the Marine and Coastal Access Act 2009 (MCAA) already permits a licence holder to make an application for the transfer of a marine licence. The purpose of the application is to ensure that the MMO have a record of the person who has the benefit of the licence.
- 7.4.27. The MMO confirmed that it would be them, as the regulatory authority who would be responsible for the enforcement of the provisions of the DML. As a result, it has to retain a record of the DML and who holds the benefit of that licence in order to be able to fulfil its statutory responsibilities, include enforcement, as it does in respect of any other marine licence.
- 7.4.28. The MMO identified the s72 application process to be relatively quick and that, whilst the MMO officially can take up to 13 weeks, given it is an administrative task and requires no consultation, in practice it is often much quicker, with the MMO quoting around 6 weeks [\[REP4-052\]](#). The MMO was not aware of having refused an application to transfer a marine licence.
- 7.4.29. In contrast, the MMO considered the procedure established in the dDCO to be decidedly more complex, to be a greater administrative burden for all parties and would therefore take longer. Their position was that it had no material procedural or administrative advantages over the existing statutory process, therefore, the existing s72 should be used.
- 7.4.30. Furthermore, the MMO were concerned that the power sought for the undertaker to grant a DML would confuse and usurp its statutory function, and the ability to transfer licences, grant licences for a limited time without providing a power for the MMO to amend its records, would give rise to significant enforcement difficulties.
- 7.4.31. In response to further submissions from the Applicant at D5 [\[REP5-049\]](#), the MMO accepted [\[REP6-029\]](#) that the PA2008 does provide that a DCO may apply, modify or exclude statutory provision. The MMO's position was however that this did not mean that such action should or must be taken, highlighting that Planning Inspectorate Advice Note 15: Drafting Development Consent Orders (AN15), does identify that there may be operational difficulties with such an approach.
- 7.4.32. In their submissions at D6 [\[REP6-029\]](#) the MMO sought the inclusion of a 28 day notice period prior to the date on which the transfer or grant would take effect. This was accepted by the Applicant and included in the dDCO [\[REP7-004\]](#) at Article 46 (13)(b).

Position of Applicant

- 7.4.33. The Applicant's position was that the process included in Articles 46(12) – (14) was straightforward, time-efficient and contained no gaps or deficiencies in terms of protection of the public interest. It would require only a letter of approval from the SoS, who in the view of the Applicant, would be no less well-placed to make a

decision in respect of the transfer of the DML than they are in respect of other elements of the DCO, especially as the SoS, informed by the ExA's report and recommendations, would have decided whether to grant the DML in the first place.

- 7.4.34. In contrast, using the s72 approach would mean that the SoS would have no involvement in any decision to transfer the benefit of the DML. This would mean that a transfer of the whole of the dDCO would be in the hands of two different decision makers. Even if the SoS thought it appropriate for the DCO as a whole to be transferred, the MMO could withhold its consent for the transfer. It was the Applicant's view that this outcome would be contrary to the public interest.
- 7.4.35. The Applicant submitted [REP1-021] that approval of the transfer of DMLs by the SoS in the way envisaged by Article 46 is a well-established practice, often with the MMO specified as a consultee. This approach has evolved because of the imperative for limiting the number of duplicated regimes engaged in the context of NSIP. The Applicant was also of the view that there appeared to be no scope for appealing an MMO decision under s72(7) MCAA. As a result, the Applicant considered the SoS to be the more appropriate arbiter of such matters having determined the original application for development consent.
- 7.4.36. In terms of the process, the Applicant identified it would involve a letter to the SoS, consultation with the MMO, a response from the SoS and a notice to the MMO. Only two of those steps are borne by a public body and both involve an administrative decision. The Applicant did not consider the process to be an administrative burden. Even if there was additional administration, the Applicant considered limited burden to be preferable in the public interest to the alternative of having the issues of transfer in the hands of two different decision makers. Furthermore, when the two processes are compared, the only additional step involved in an application to the SoS would be consultation with the MMO.
- 7.4.37. The Applicant acknowledged the MMO's point about needing to have a record of who is the relevant person and proposed a new Paragraph (13) to Article 46 (Benefit of Order) to address this.
- 7.4.38. In relation to the MMO's concern about needing to change the form of the DML itself, the Applicant considered this was based on a misconception. S72(7) of the MCAA provides that following an application to the MMO for a transfer of a marine licence, the MMO must vary the licence to reflect that transfer. However, DCOs which provide for the transfer of a DML specifically disapply s72(7) as part of aligning the DCO transfer process with the 2009 Act process. The dDCO does this in Article 46(14).
- 7.4.39. The Applicant was also of the view that the MMO had mistakenly assumed that this provision enables the undertaker to "grant a DML", rather than to grant to a third party the benefit of the existing DML for a limited period.

ExA's Considerations

- 7.4.40. In considering the Applicant's approach, the ExA has had regard to AN15 and in particular paragraph 6.3.28, which provides advice in relation to the transfer of provisions. It identifies that there is no legal reason to prevent a DCO from allowing part of a DML to be transferred. The ExA acknowledges that there may be operational difficulties with such an approach including monitoring compliance and taking enforcement action.

- 7.4.41. In terms of precedent, the ExA agree with the MMO that this does not necessarily mean that such measures should be included as a matter of course, but that each case should be considered on its own merits and specific requirements. The ExA does however consider that both AN15 and the provided precedents, demonstrate that the approach proposed by the Applicant is in no way novel and that it is an accepted alternative process for dealing with the transfer of benefits as opposed to the use of s72.
- 7.4.42. The ExA does not consider that either process would be demonstrably quicker than the other. However, the ExA agrees with the Applicant that there is an obvious benefit to having a single approach for the transfer of benefits as opposed to the dual system that would result from the use of s72. The ExA are not persuaded by the submissions of the MMO that such a route would be any better than the one laid out in the dDCO. Even if it was more administrative, the ExA consider the overall effect to be limited and outweighed by the advantage of having matters of transfer in the hands of a single body. Therefore, given this, and the fact that the approach is not dismissed in AN15 and has been accepted in other made DCOs, in this case, the ExA considers the approach adopted by the Applicant to be a suitable method for dealing with the issue.
- 7.4.43. The ExA also do not see any reason as to why the SoS is not sufficiently competent to make a decision on the transfer, especially if this decision was undertaken in consultation with the MMO. Whilst this consultation may be an additional step in the process, given the administrative nature of the transfer as explained by the MMO, the ExA do not consider this would materially affect the process. In the ExA's view such consultation would allow the MMO additional time, in advance of any transfer, to ensure that they are in a position to amend their records once any transfer is confirmed, addressing the MMOs concerns in relation to enforcement.
- 7.4.44. For these reasons, the ExA is content with the approach proposed by the Applicant and our rDCO includes the Applicant's wording. For completeness, we have identified those elements that are retained in Table 7.3.
- 7.4.45. In relation to the wording of 46 (12) the MMO is seeking the inclusion of the words '*and have due regard to any response received*' in relation to any consultation with the MMO. In this respect, the ExA agrees with the Applicant that such wording is inappropriate and would introduce a substantial obligation upon the SoS. The ExA has therefore not accepted this suggested wording.

NEW REQUIREMENT IN RELATION TO LOW CARBON HYDROGEN CERTIFICATION

- 7.4.46. In Section 3.4 of this Report, the ExA reports on the discussions that took place during the Examination over the potential need within the dDCO of a Requirement to secure Low Carbon Hydrogen Certification that would be produced from the facility. The ExA set out draft wording for this in the Proposed Schedule of Changes to the dDCO [\[PD-019\]](#). The Applicant, in response considered that such a Requirement was not necessary [\[REP6-026\]](#).

ExA's Considerations

- 7.4.47. The ExA's consideration of this matter in hearings and written questions is contained in Section 3.4 of this Report and not repeated here. In summary, for the reasons set out in that Chapter, we have concluded that a new Requirement in relation to Low

Carbon Hydrogen Certification is not required and therefore no amendments have been made to the rDCO in this respect.

NEW REQUIREMENT IN RELATION TO CONSTRUCTION PHASE FLOOD EMERGENCY RESPONSE PLAN

- 7.4.48. In Section 3.8 of this Report, the ExA reports on the discussions which took place during the Examination in relation to the inclusion of a new Requirement for the submission of Construction Phase Flood Emergency Response Plan.

ExA's Considerations

- 7.4.49. The ExA's consideration of this matter is provided in Section 3.8 and is therefore not repeated here. In summary, it is clear from the Applicant's submissions that provisions were contained in the detail of the submitted dDCO that would already secure a Flood Emergency Response Plan during construction. As such, the ExA is satisfied with the Applicant's proposed approach, and a new Requirement dealing with Flood Emergency Response Plan during construction is not considered to be necessary. The Applicant provided draft wording for such a Requirement if we recommended that one was necessary. As result of our conclusions, we have deleted this draft wording from the rDCO.

NEW REQUIREMENT IN RELATION TO WATER RESOURCES ASSESSMENT

- 7.4.50. In Section 3.9 of this Report, the ExA reports on the discussions which took place during the Examination in relation to Anglian Water's request that a new Requirement for the submission of a Water Resources Assessment should be included.

ExA's Considerations

- 7.4.51. The ExA's consideration of this matter is provided in Section 3.9 and is therefore not repeated here. In summary, it is clear to the ExA that the matters which would be covered by a Water Resources Assessment are covered by other permits required by the Applicant, prior to commencement of operations. As such, the ExA is satisfied with the Applicant's proposed approach, and a new Requirement is not considered to be necessary, therefore no amendments have been made to the rDCO in this respect.

USE OF TAILPIECES WITHIN THE REQUIREMENTS

- 7.4.52. In ExQ2 [[PD-014](#)], the EXA questioned the Applicant about the appropriateness of the use of tailpieces, that is to say Requirements which include wording such as "*unless otherwise agreed by the discharging authority*". The matter was also discussed at ISH5.
- 7.4.53. In response [[REP3-071](#)], the Applicant referred to paragraphs 17.1 – 17.5 of AN15. The Applicant submitted that it had only included tailpieces where it allowed amendment of details and mitigation measures approved after the DCO is made but did not allow for the amendment of the parameters of matters approved under the DCO itself. The Applicant considered that Article 63(2) to be key in this regard, which operates to constrain the lawful scope of any approval under any Requirement so that it cannot be taken outside the scope of that which has been assessed. As a result, the Applicant's position [[REP3-071](#)] was that the use of tailpieces in the dDCO was consistent with AN15. The Applicant also referred to precedent from made DCOs to support their position.

7.4.54. In ExQ2 [PD-014] the ExA sought specific clarity on the tailpiece attached to R13 as the drafting appeared to allow changes to the approved Flood Risk Assessment (FRA). In response [REP4-047] the Applicant submitted that R13 means that the onshore authorised project must be carried out and operated in accordance with the FRA, unless NELC agree otherwise. The Applicant's position was that there was no plausible reading of R13 and no implication that would enable changes to be made to the FRA itself. In support of this position, the Applicant referred again to Article 63(2)(b) which, in this instance significantly limits the extent to which NELC can agree that the onshore authorised project need not be carried out and operated in accordance with the FRA. Such agreement could only be given if it would not give rise to any materially new or materially different significant effects on the environment to those which have been assessed in the ES.

ExA's Considerations

7.4.55. The ExA notes that AN15 recognises that tailpieces are not unacceptable in principle but should not be used to circumvent the statutory arrangements to make a change to an authorised development and must not be used to approve something which has not been assessed.

7.4.56. Having considered the relationship between the Requirements and Article 63, the ExA agrees with the Applicant that the limitations in Article 63 would prevent development being approved which went beyond the scope of what had already been assessed. In addition, we note that Article 63 obliges the Undertaker to demonstrate to the discharging authority's satisfaction that the subject matter of the approval does not give rise to materially new or significant effects. As a consequence, the ExA do not recommend any further amendments to the Requirements.

7.5. DEEMED MARINE LICENCE

7.5.1. Schedule 3 of the dDCO [REP7-004] incorporates the text for a DML pursuant to the provisions of the MCAA. The DML includes conditions that would apply to licensable activities under the MCAA. Throughout the Examination, it was the subject of discussions between the MMO and the Applicant throughout the Examination.

7.5.2. The SoCG [REP7-031] identifies that, whilst the DML is identified as being not agreed, the ExA notes that the matters listed as not being agreed relate to those matters discussed above in Section 7.4.20 in relation to Article 46 (Benefit of Order) and the process for transferring the DML as set out in that Article. Given the ExA's conclusions on the matter in Section 7.4.40, and the recommended changes outlined in Table 7.3 below, the ExA is satisfied that the DML included in the Applicant's dDCO would adequately address the requirements of the MCAA.

7.6. PROTECTIVE PROVISIONS

7.6.1. By the end of the Examination, there was no outstanding disagreement in relation to the following Protective Provisions (PP) contained within Schedule 14:

- Part 1: For the protection of the Statutory Conservancy and Navigation Authority for the Humber;
- Part 3: For the protection of Northern Powergrid;
- Part 4: For the protection of Anglian Water;
- Part 6: For the protection of North East Lincolnshire Council (as Lead Local Flood Authority);
- Part 7: For the protection of Cadent Gas Limited as gas undertaker;
- Part 8: Protection for operators of electronic communications code networks;

- Part 9: For the protection of the North East Lindsay Drainage Board; and
- Part 10: For the protection of CLDN Ports Killingholme Limited.

7.6.2. Two PP remained to be agreed at the end of the Examination:

- Part 2: For the protection of the Environment Agency; and
- Part 5: For the protection of Network Rail.

Environment Agency

7.6.3. By the close of the Examination, the PP between the parties had not been agreed. The final position of the EA was set out in their D7 submissions [REP7-065], with the Applicant's provided in their covering letter [REP8-001] which accompanied their D8 submissions. The lack of agreement also meant that the EA were unable to agree the drafting contained in Articles 3 and 18, as they were interrelated with the wording of the PP.

7.6.4. From the submissions made by the parties throughout the Examination, the ExA has no reason to believe that there are any areas of significant disagreement between the parties, and therefore considers the Applicant's view [REP8-001], that there is no particular impediment to reaching an agreed form of documentation, to be an accurate reflection of the position at the time of close of the Examination. The text in the SoCG [REP8-006] between the parties, which identified the item as 'Under Discussion', also appears to support this conclusion. In any event, the ExA note that both parties [REP7-065] and [REP8-001] undertook to update the SoS on progress during the Recommendation period.

7.6.5. Section 127 of PA2008 requires the EA to be protected from serious detriment in undertaking its functions. Whilst the ExA acknowledge that the PP between the parties have not been agreed, having reviewed those drafted in the Applicant's final dDCO [REP7-004], the ExA are content that these are satisfactory and would provide sufficient protection for the EA.

7.6.6. Consequently, the ExA finds that the drafting contained within the dDCO [REP7-004] is appropriate and the ExA concludes the PPs proposed by the Applicant are appropriate and have been included in the rDCO (Appendix D).

Network Rail

7.6.7. These matters are reported in detail in Chapter 6 of this Report and are therefore not repeated in this Chapter. However, Table 7.3 of this Chapter summarises all of the changes to Parts 2, 5 and 7 of Schedule 14 recommended by the ExA.

7.7. EXAMINING AUTHORITY'S PROPOSED CHANGES

7.7.1. In light of the ExA's conclusions above, it does not consider any substantive changes are necessary to address issues that have come to light during the Examination. However, the ExA does recommend a small number of changes, primarily to achieve correctness and consistency with other DCOs. These can be found in Table 3 below. The rDCO, which can be found at Appendix D, incorporates all these amendments. Recommended insertions are shown in bold, with deletions shown in bold, but with a line through.

Table 7.3 DCO Provisions Recommended to be changed

Provision	Recommendation	ExA reasoning
Title p1	The [Draft] Associated British Ports (Immingham Green Energy Terminal) Order 202*	Text
Article 46 (Benefit of the Order)	<p>Article 46 is amended as follows:</p> <p>(12) [An undertaker with the benefit of any provision of the deemed marine licence may pursuant to this sub-paragraph, with the consent of the Secretary of State—</p> <p>(a) transfer to any person any or all of the benefit of the provision and such related statutory rights as may be agreed between the undertaker and that person;</p> <p>(b) grant to any person for a period agreed between the undertaker and that person any or all of the benefit of the provision and such related statutory rights as may be so agreed between the undertaker and that person,</p> <p>but the Secretary of State must consult the MMO [and have due regard to any response received](a) before giving such consent to the transfer or grant to another person of the benefit of the provision and such related statutory rights.</p> <p>(13) Any transfer or grant under paragraph (12) does not take effect until the undertaker has given notice to the MMO stating—</p> <p>(a) the name and contact details of the person to whom the benefit of the provision will be transferred or granted;</p> <p>(b) the date on which the transfer or grant will take effect (which must be at least 28 days after the date on which the notice is given); and</p> <p>(c) the provision to be transferred or granted,</p> <p>and providing a copy of the consent given by the Secretary of State to the transfer or grant and a copy of the transfer or grant itself; and the MMO may update its records in respect of the deemed marine licence accordingly.</p> <p>(14) Paragraphs (7) and (8) of section 72 of the 2009 Act do not apply to a transfer or grant of the benefit of any provision of the deemed marine licence pursuant to paragraph (12).</p> <p>(15) Paragraph (12) does not prevent an application to the MMO pursuant to section 72(7)</p>	See ExA's discussion in 7.4.40 to 7.4.45 above.

Provision	Recommendation	ExA reasoning
	<p>of the 2009 Act to transfer the deemed marine licence to another person and vary it accordingly. (a)</p> <p>16) [Paragraphs (7) and (8) of section 72 of the 2009 Act apply to any transfer of the deemed marine licence.] (b)</p>	
<p>Article 63 (Procedure regarding certain approvals etc.)</p>	<p>Article 63 is amended as follows:</p> <p>(5) Schedule 17 (procedure regarding certain approvals, etc.) does not apply—</p> <p>(a) in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 14 (protective provisions) or any difference or dispute under article 20(6) (protective works) to which, in each case, article 62 (arbitration) instead applies; or</p> <p>(b) [in respect of the MMO;] (a) or</p> <p>(c) in respect of the Statutory Conservancy and Navigation Authority.</p>	<p>See ExA's discussion in 7.4.40 to 7.4.45 above.</p>
<p>R20 Construction phase flood emergency response plan</p>	<p>[Construction phase flood emergency response plans]</p> <p>20.—(1) [No part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (except the clearance of trees or other vegetation from Long Strip) may be commenced until a flood emergency response plan to apply during construction of that part has been submitted to and approved by the relevant planning authority, following consultation with North East Lincolnshire Council in its capacity as lead local flood authority (within the meaning of the Flood and Water Management Act 2010) and the Environment Agency on matters related to their respective functions.</p> <p>(2) Any flood emergency response plan submitted and approved under sub-paragraph (1) must (so far as applicable) be in general accordance with the flood risk assessment contained in appendix 18.A of the environmental statement.</p> <p>(3) Any works forming part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 and Work No. 7 (except the clearance of trees or other vegetation from Long Strip) must be carried out in accordance with the approved flood</p>	<p>See ExA's discussion in 7.4.49.</p>

Provision	Recommendation	ExA reasoning
	emergency response plan for that part, unless otherwise approved by the relevant planning authority.](a)	
New R21 Flood Defence Agreement	21.—(1) No part of the authorised project shall be commenced until a Flood Defence Agreement between the Applicant and the Environment Agency regarding the reconstruction, future ownership, operation and maintenance of the flood defence that will be impacted by the authorised project, has been submitted to and approved by the Local Planning Authority. The authorised project must be carried out in accordance with the approved agreement.	See ExA's discussions in Chapter 3.8.
Schedule 3 DML, paragraph 14 (2-4)	<p>Flood risk assessment</p> <p>14.—(1) All licensed activities must be carried out in accordance with the flood risk assessment, unless otherwise approved by the MMO.</p> <p>(2) [No part of the licensed activities may be commenced until a flood emergency response plan to apply during construction of that part has been submitted to and approved by the MMO, following consultation with the Environment Agency on matters related to its functions.</p> <p>(3) Any flood emergency response plan submitted and approved under sub-paragraph (2) must (so far as applicable) be in general accordance with the flood risk assessment.</p> <p>(4) Any licensed activities must be carried out in accordance with the approved flood emergency response plan for that part, unless otherwise approved by the MMO.](a)</p> <p>(25) No part of the licensed activities may be brought into operational use until a flood emergency response plan to apply during operation of that part has been submitted to and approved by the MMO, following consultation with the Environment Agency on matters related to its functions.</p> <p>(36) Any a flood emergency response plan submitted and approved under sub-paragraph (25) must (so far as applicable) be in general accordance with the flood risk assessment.</p> <p>(47) Each part of the licensed activities must be operated in accordance with the plan approved</p>	See ExA's discussion in 7.4.49.

Provision	Recommendation	ExA reasoning
	under sub-paragraph (25) for that part, unless otherwise approved by the MMO.	
Schedule 3, Part 3 (Procedure for the discharge of certain conditions)	<p>Schedule 3. Part 3 is amended as follows:</p> <p>Meaning of “application”</p> <p>24. In this Part, “application” means a submission by the undertaker for approval by or agreement of the MMO in respect of any document, strategy, information, plan, protocol or statement under this Schedule.</p> <p>Further information regarding application</p> <p>25. The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider an application.</p> <p>Determination of application</p> <p>26.—(1) In determining the application the MMO may have regard to—</p> <p>(a) the application and any supporting information or documentation;</p> <p>(b) any further information provided by the undertaker; and</p> <p>(c) such other matters as the MMO thinks relevant.</p> <p>(2) Having considered the application the MMO must—</p> <p>(a) grant the application unconditionally;</p> <p>(b) grant the application subject to the conditions as the MMO thinks fit; or</p> <p>(c) refuse the application.</p> <p>Notice of determination</p> <p>27.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable after the application is received by the MMO.</p> <p>(2) Where the MMO has made a request under paragraph 25 the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable once the further information is received.</p>	See ExA’s discussion in 7.4.40 to 7.4.45 above.

Provision	Recommendation	ExA reasoning
	<p>(3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.](a)</p> <p>[Approvals and appeals</p> <p>28. 24. Schedule 17 (procedure regarding certain approvals, etc.) of the Order has effect in relation to any submission by the undertaker for approval by or agreement of the MMO in respect of any document, strategy, information, plan, protocol or statement under this Schedule.](b)</p>	
<p>Schedule 14 Protective Provisions, Part 5 for the Protection of Network Rail</p>	<p>61.—(1) [The undertaker must not exercise the powers conferred by—</p> <p>(a) article 5 (development consent etc. granted by the Order);</p> <p>(b) article 6 (extent of certain works);</p> <p>(c) article 19 (authority to survey and investigate the land),</p> <p>in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.</p> <p>(2) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or article 26 (private rights), article 27 (power to override easements and other rights) or article 33 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.</p> <p>(3) The undertaker must not under the powers of this Order acquire or use or acquire new rights over or seek to impose any restrictive covenants over, any railway property, or vary any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.](a)</p> <p>(4) [The undertaker must not exercise the powers conferred by article 33(1)(b) (extinguishment of rights of statutory undertakers) in respect of any</p>	<p>See ExA's discussion in Chapter 6.</p>

Provision	Recommendation	ExA reasoning
	<p>railway property unless the exercise of such powers is with the consent of Network Rail. (a)</p> <p>(25) The undertaker must not under the powers of this Order do anything—</p> <p>(a) which would result in railway property being incapable of being used or maintained except where the incapability of such use and maintenance is temporary and is with the consent of Network Rail; or</p> <p>(b) which would affect the safe running of trains on the railway but, for the avoidance of doubt, this does not apply where Network Rail upon prior written request by the undertaker has consented not to run trains on the railway temporarily.</p> <p>(6) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.</p> <p>(37) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it will never be unreasonable to withhold consent [on reasonable operational or railway safety grounds] [for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion)](b).</p>	
<p>Schedule 17 (Procedure regarding certain approvals, etc.), Article 3 (Further information and consultation)</p>	<p>Schedule 17 is amended as follows:</p> <p>3.—(1) In relation to any application submitted pursuant to a requirement in Schedule 2 (requirements) [or condition in schedule 3 (deemed marine licence)](a), the relevant authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.</p>	<p>See ExA's discussion in 7.4.40 to 7.4.45 above.</p>
<p>Schedule 17 (Procedure regarding certain approvals, etc.) Article 5, Fees</p>	<p>(2) The fee payable for each application under sub-paragraph (1) is as follows—</p> <p>(a) a fee of £2,535 for the first application for the discharge by the relevant planning authority of each of the requirements in paragraphs 4 (detailed approval), 5(1) (phasing), 6 (construction environmental management plan), 7 (construction traffic management plan), 8 (highway works), 10 (landscape and ecology management plan), 12 (surface water drainage), 15 (contaminated land), 16 (external lighting), 17</p>	<p>See ExA's discussion in 7.4.49.</p>

Provision	Recommendation	ExA reasoning
	(control of noise during operational use), 18 (decommissioning environmental management plan), 19 (operational travel plan), 20 (construction phase flood emergency response plans)(a) and 21 (operational phase flood emergency response plans);	
General	Deletion of all footnotes in square brackets beginning [Note to the Examining Authority...].	

7.8. CONCLUSIONS

- 7.8.1. The ExA has considered all iterations of the dDCO as set out in Table 7.1 above and the degree to which the Applicant’s final version has addressed matters arising during the Examination.
- 7.8.2. The ExA is satisfied that the requirements set out in Version 9 of the dDCO provide mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the Examination. No substantive amendments to the dDCO are recommended and only a small number of changes as shown in Table 7.3 above are included in the rDCO in Appendix D of this report.
- 7.8.3. Taking all matters raised in this Chapter and all matters relevant to the dDCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended that the DCO should be made in the form set out in the rDCO (Appendix D).

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. This Chapter summarises the Examining Authority's (ExA) conclusions and sets out our recommendation to the Secretary of State (SoS) for Transport.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. In respect of s104 of the Planning Act 2008 (PA2008), the ExA concludes that making the recommended Development Consent Order (rDCO) would be in accordance with the National Policy Statement for Ports (NPSfP).

8.2.2. This Report also considers relevant elements of Overarching National Policy Statement for Energy (NPS EN-1). Whilst the Immingham Green Energy Terminal (IGET) is essentially a piece of transport infrastructure, given the proposed materials that would be imported, along with the proposed Hydrogen Production Facility (HPF) to be developed by Air Products alongside the Immingham Green Energy Terminal (IGET), the ExA considers NPS EN-1 to be important and relevant. The ExA has identified no conflict with this NPS which, the ExA has found to lend support to the need case for the Proposed Development.

8.2.3. Furthermore, making the rDCO would not substantially conflict with the Marine Policy Statement, the East Inshore Marine Plan, relevant development plan policy or any other identified relevant policy, all of which have been taken into account in this Report. In reaching our conclusions, the ExA has also had regard to the Local Impact Report (LIR) submitted by North East Lincolnshire Council.

8.2.4. The ExA has concluded that the Proposed Development is not likely to have a significant effect on the qualifying features of any European sites, when considered alone or in combination with other plans or projects. The ExA considers that there is sufficient information before the SoS to enable them to conclude that an Appropriate Assessment is not required.

8.2.5. The ExA has considered whether the determination of this Application, in accordance with the NPSfP, would lead the UK to be in breach of any of its international obligations where relevant. The ExA is satisfied, in all respects, that this would not be the case because, among other things, shipping emissions have been assessed as part of the Proposed Development pursuant to net zero and the UK's international obligations on climate change under the Paris Agreement. Neither does the ExA find that it would lead to the SoS being in breach of any duty imposed upon them by or under any enactment or be otherwise unlawful by virtue of any enactment.

8.2.6. With regard to designated heritage assets for the purposes of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (the Decision Regulations), the ExA has found the Proposed Development would not be likely to result in harm to any designated assets.

8.2.7. Taking account of the mitigation secured through the rDCO in Appendix D of this Report, the ExA finds there are no adverse impacts arising from the Proposed Development that would outweigh its benefits. For these reasons, we find that the Proposed Development would meet the tests in s104 of PA2008.

8.2.8. The ExA has considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights in order to implement the Proposed Development.

We are satisfied that the legal interests in all plots of land included in the final Book of Reference [REP7-009] and indicated on the final Land Plans [REP6-008] would be required for the Proposed Development with regard to both CA and TP powers. In relation to land subject to CA, the ExA is satisfied that the land to be taken is no more than is reasonably required and is proportionate. The Applicant has a clear idea of how it intends to use the land and funds are available for the implementation of the Proposed Development.

- 8.2.9. The ExA has had regard to the provisions of the Human Rights Act 1998, in particular Article 6 (Acts of public authorities), Article 8 (Judicial remedies) and Article 1 of the First Protocol (Protection of property). The ExA considers that the Examination has ensured a fair and public hearing, that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest. The ExA is satisfied that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.
- 8.2.10. In producing this Report and throughout the Examination, the ExA has had due regard to the Public Sector Equality Duty (PSED). The PSED is principally considered in Chapter 6 and Appendix D of this Report. The Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.
- 8.2.11. In respect of all other matters and representations received, the ExA is satisfied that there are no important or relevant matters that would individually or collectively lead to a different recommendation from that set out below. We are satisfied that the Proposed Development meets the tests in s104 of PA2008.

8.3. MATTERS WHICH THE SoS MAY WISH TO CONSIDER FURTHER

- 8.3.1. At the Examination's close, matters in relation to Crown consent remained outstanding. The ExA does not consider there to be any obvious barrier or reason why consent from the relevant Crown authority would not be forthcoming. However, the SoS cannot grant the Order without the consent of the relevant Crown authority and therefore they must obtain such a consent if they are minded to make the Order.
- 8.3.2. Additionally, the ExA notes that if agreement has been reached during the recommendation period on any matters left unresolved at the end of the Examination (including in relation to PPs for the benefit of EA and Network Rail Infrastructure Ltd as reported in Chapters 6 and 7 of this Report), then the SoS may reach different findings on those matters from those of the ExA. Nonetheless, we do not anticipate that any such matters would alter our overall recommendation as set out below.

8.4. RECOMMENDATION

- 8.4.1. For all of the above reasons, and in light of the ExA's findings and conclusions on important and relevant matters set out in this Report, the ExA recommends that the SoS makes the Immingham Green Energy Terminal Development Consent Order in the form recommended at Appendix D of this Report.

APPENDICES

APPENDIX A: REFERENCE TABLES	A.1
APPENDIX B: LIST OF ABBREVIATIONS.....	B.1
APPENDIX C: HABITAT REGULATIONS ASSESSMENT	C.1
APPENDIX D: THE RECOMMENDED DCO	D.1

APPENDIX A: REFERENCE TABLES

Table A1 – Change Request Documents

Document	EL Reference			
Applicant's First Change Application				
Change Request Cover Letter	REP3-081			
Proposed Changes Application Report	REP3-079			
Change Request Figures				
Change Request Appendices	REP3-080			
Updated Application Documents Following Acceptance of Change Request	REP3-002	REP3-004	REP3-006	REP3-007
	REP3-008	REP3-009	REP3-010	REP3-011
	REP3-012	REP3-013	REP3-014	REP3-015
	REP3-016	REP3-017	REP3-018	REP3-019
	REP3-020	REP3-021	REP3-022	REP3-023
	REP3-024	REP3-025	REP3-026	REP3-027
	REP3-028	REP3-029	REP3-030	REP3-031
	REP3-032	REP3-033	REP3-034	REP3-037
	REP3-038	REP3-039	REP3-082	REP3-083
	REP3-084	REP3-085	REP3-086	REP3-087
	REP3-088	REP3-089	REP3-090	REP3-091
	REP3-092	REP3-093	REP3-094	REP3-095
	REP3-096	REP3-097	REP3-098	REP3-099
REP3-100	REP3-101	REP3-102	REP3-103	
Applicant's Further Change Application				
Change Request Cover Letter	AS-047			
Proposed Changes Application Reports	AS-042	AS-143	AS-144	
Change Request Figures	AS-033	AS-034	AS-035	AS-036
Change Request Appendices	AS-038	AS-039	AS-040	
Updated Application Documents Following Acceptance of Change Request	AS-043	AS-045	AS-048	AS-050
	AS-052	AS-054	AS-056	AS-057
	AS-058	AS-059	AS-060	AS-061

Document	EL Reference			
	AS-062	AS-063	AS-064	AS-065
	AS-067	AS-069	AS-071	AS-073
	AS-074	AS-075	AS-076	AS-077
	AS-078	AS-079	AS-080	AS-081
	AS-082	AS-083	AS-084	AS-085
	AS-086	AS-087	AS-088	AS-089
	AS-090	AS-091	AS-092	AS-093
	AS-094	AS-095	AS-096	AS-097
	AS-098	AS-099	AS-100	AS-101
	AS-102	AS-103	AS-104	AS-105
	AS-106	AS-107	AS-108	AS-109
	AS-110	AS-111	AS-112	AS-113
	AS-114	AS-115	AS-116	AS-117
	AS-118	AS-119	AS-120	AS-121
	AS-122	AS-123	AS-124	AS-125
	AS-126	AS-127	AS-128	AS-129
	AS-130	AS-131	AS-132	AS-133
	AS-134	AS-135	AS-138	AS-139
	AS-140	AS-141	AS-142	

Table A2 – Summary of National Policy Statements

National Policy Statements
<p>National Policy Statement for Ports (NSPfP)</p> <p>NPSfP (January 2012) sets out general principles and generic impacts to be taken into account in considering applications for port Nationally Significant Infrastructure Projects (NSIP). For port developments the NPSfP provides the primary basis for determining if development consent should be granted.</p> <p>Paragraph 1.2.4 states: <i>“The NPS sets out the Government’s conclusions on the need for new port infrastructure, considering the current place of ports in the national economy, the available evidence on future demand and the options for meeting future needs. It explains to planning decision-makers the approach they should take to proposals, including the main issues which, in the Government’s view, will need to be addressed to ensure that future development is fully sustainable, as well as the weight to be given to</i></p>

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the need for new port infrastructure and to the positive and negative impacts it may bring.”

Part 3 of the NPSfP sets out the Government policy and the need for new infrastructure. Paragraph 3.1.4 explains that for an island economy there are limited alternatives available to the use of sea transport for the movement of freight and bulk commodities, with shipping being the only effective means of moving the vast majority of freight in and out of the United Kingdom (UK). “... *Providing sufficient sea port capacity will remain and essential element in ensuring sustainable growth in the UK economy*”.

Paragraph 3.1.5 states that “*Ports have a vital role in the import and export of energy supplies, including oil, liquefied natural gas and biomass, in the construction and servicing of offshore energy installations and in supporting terminals for oil and gas pipelines. ... Ensuring security of energy supplies through our ports will be an important consideration, and ports will need to be responsive both to changes in different types of energy supplies needed ...*”.

Paragraph 3.1.7 explains “*Ports continue to play an important part in local and regional economies, further supporting our national prosperity ...*”.

The Government’s policy for ports is explained in section 3.3 of the NPSfP and in paragraph 3.3.1 it is stated:

In summary, paragraph 3.3.1 states that the Government seeks to:

- “*encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long term economic growth and prosperity;*
- *allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment; and*
- *ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations.”*

Paragraph 3.3.3 explains that new port infrastructure should also:

- *“contribute to local employment, regeneration and development;*
- *ensure competition and security of supply;*
- *preserve, protect and where possible improve marine and terrestrial biodiversity;*
- *minimise emissions of greenhouse gases from port related development;*
- *be well designed, functionally and environmentally;*
- *be adapted to the impacts of climate change;*
- *minimise use of greenfield land;*
- *provide high standards of protection for the natural environment;*
- *ensure that access to and condition of heritage assets are maintained and improved where necessary; and*
- *enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged.”*

Paragraph 3.3.5 identifies that the Government wishes to see port development wherever possible:

- “*being an engine for economic growth;*

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- *supporting sustainable transport by offering more efficient transport links with lower external costs; and*
- *supporting sustainable development by providing additional capacity for the development of renewable energy.”*

Paragraph 3.3.6 advises that the underlining policies for ports are: “... *intended to support the fundamental aim of improving economic, social and environmental welfare through sustainable development. They recognise the essential contribution to the national economy that international and domestic trade makes. Economic growth is supported by trade but must be aligned with environmental protection, social enhancement and improvement wherever possible. The policies set out below aim to ensure that future port development supports all these objectives.*”

In relation to climate change considerations, Paragraph 3.3.7 states that: “*In addition to the Government’s priority of supporting economic growth, this statement takes full account of the Government’s wider policy relating to climate change, both through mitigation and adaptation. It does so by recognising the contribution that port developments can make through good environmental design and by their position in the overall logistics chain. International and domestic shipping and inland transport will be subject to other policies and measures, addressing the issues more directly than planning decisions for new development. Section 4.12 discusses mitigation of impacts from port development, while 4.13 addresses adaptation.*”

On matters of design considerations, Paragraph 3.3.8 states: “*The importance of achieving good design in port development is underlined at various points in the statement, with reference to various types of impacts discussed in section 5. Good design is fundamental to mitigating the adverse effects of development, as well as a means to deliver positive aesthetic qualities in an industrial setting.*”

In Section 3.4, the Government’s assessment of the need for new infrastructure is set out, with total need for port infrastructure depending not only on overall demand for port capacity but also a need to retain flexibility, to ensure capacity is provided where it is required. Paragraphs 3.4.11 and 3.4.12 states capacity will be required at a “*wide range of facilities and locations*” and therefore “*the Government does not wish to dictate where port developments should occur ... Port development must be responsive to changing commercial demands, and the Government considers that the market is the best mechanism for getting this right, with developers bringing forward applications for port developments where they consider them to be commercially viable.*”

Paragraph 3.4.15 identifies that: “*Spare capacity also helps to assure the resilience of the national infrastructure. Port capacity is needed at a variety of locations and covering a range of cargo and handling facilities, to enable the sector to meet short-term peaks in demand, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties, without causing economic disruption through impediments to the flow of imports and exports. Given the large number of factors involved, the Government believes that resilience is provided most effectively as a by-product of a competitive ports sector.*”

In conclusion on need, paragraph 3.4.16 states: “...*the Government believes that there is a compelling need for substantial additional port capacity over the next 20–30 years, to be met by a combination of development already consented and development for which applications have yet to be received. Excluding the possibility of providing additional capacity for the movement of goods and commodities through new port development would be to accept limits on economic growth and on the price, choice and availability of goods imported into the UK and available to consumers. It would also limit the local and*

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regional economic benefits that new developments might bring. Such an outcome would be strongly against the public interest.”

Having set out the need case, Paragraph 3.5.1 identifies: “.....when determining an application for an order granting development consent in relation to ports, the decision-maker should accept the need for future capacity to:

- *cater for long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by the demand forecast figures set out in the MDST forecasting report accepted by Government, taking into account capacity already consented;*
- *support the development of offshore sources of renewable energy;*
- *offer a sufficiently wide range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns and to facilitate and encourage coastal shipping;*
- *ensure effective competition among ports and provide resilience in the national infrastructure; and*
- *take full account of both the potential contribution port developments might make to regional and local economies.”*

Paragraph 3.5.2 states: “Given the level and urgency of need for infrastructure of the types covered as set out above, the IPC should start with a presumption in favour of granting consent to applications for ports development. That presumption applies unless any more specific and relevant policies set out in this or another NPS clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008.”

Section 4 sets out the assessment principles for new port development, including need to take account of other relevant UK policies and plans, including the Marine Policy Statement and any marine plans adopted pursuant to Marine and Coastal Access Act 2009. Paragraph 4.2.2 states: “Where the decision-maker reaches the view that a proposal for port infrastructure is in accordance with this NPS, it will then have to weigh the suggested benefits, including the contribution that the scheme would make to the national, regional or more local need for the infrastructure, against anticipated adverse impacts, including cumulative impacts.”

Part 4 goes onto provide decision-maker guidance for the following topics:

- Economic impacts;
- Commercial impacts;
- Competition;
- Tourism;
- Environmental Impact Assessment;
- Habitats and Species Regulations Assessment;
- Alternatives;
- Good design for port infrastructure;
- Pollution control and other regulatory regimes;
- Climate change mitigation;
- Climate change adaptation;
- Common law nuisance and statutory nuisance;
- Hazardous substances;
- Health; and
- Security considerations.

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Part 5 of the NPS lists the following generic impacts relating to port development to be taken account of:

- Biodiversity and geological conservation;
- Flood risk;
- Coastal change;
- Traffic and transport impacts;
- Waste management;
- Water quality and resources;
- Air quality and emissions;
- Dust, odour, artificial light, smoke, steam and insect infestation;
- Biomass/waste impacts – odour, insect and vermin infestation;
- Noise and vibration;
- Landscape and visual impacts;
- Historic environment;
- Land use including opens space, green infrastructure and Green Belt; and
- Socio-economic impacts.

Overarching National Policy Statement for Energy (NPS EN-1)

NPS EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy Nationally Significant Infrastructure Projects (NSIP). All other energy NPSs sit under the policy framework provided by this NPS. It provides the primary basis for determining if development consent should be granted. All other energy NPSs are used together with this NPS.

NPS EN-1 addresses the need for low carbon hydrogen infrastructure stating at paragraph 3.4.12 that *“There is an urgent need for all types of low carbon hydrogen infrastructure to allow hydrogen to play its role in the transition to net zero.”*

Paragraph 3.4.18 highlights the wider opportunities provided by hydrogen infrastructure stating that *“in the future, low carbon hydrogen may become an internationally traded energy vector, piped or shipped from areas of low-cost production to areas of demand. While the development of this market is uncertain, the UK could become both an exporter and importer of low carbon hydrogen, potentially necessitating current gas infrastructure to be configured or for new infrastructure to be put in place”*.

Paragraph 3.4.22 identifies that: *“To support the urgent need for low carbon hydrogen infrastructure, hydrogen distribution, pipelines and storage, are considered to be CNP Infrastructure.”*

UK Marine Policy Statement

UK Marine Policy Statement (“MPS”) sets out a series of high-level marine objectives in order to achieve clean, healthy, safe, productive and biologically diverse oceans and seas. Chapter 3 of the MPS sets out the policy objectives for the key activities that take place in the marine environment.

Ports and shipping are addressed in section 3.4. Paragraph 3.4.11 states: *“When decision makers are advising on or determining an application for an order granting development consent in relation to ports.....they should take into account the contribution that the development would make to the national, regional or more local need for the infrastructure, against expected adverse effects including cumulative impacts. In considering the need for port developments in England and Wales, reference should be made to interpretations of need as set out in the Ports National Policy Statement.”*

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In terms of marine dredging and disposal, section 3.6 identifies that consideration should be given any adverse effects of dredging activity and applications must demonstrate that with respect to the disposal of dredgings, consideration has been given to the waste hierarchy (re-use, recycle or treat waste) without undue risk to human health or the environment. Consideration should also be given to the potential marine habitats from dredging activity.

Table A3 – Summary of other relevant national policies for the Proposed Development

Relevant Policies

The National Planning Policy Framework

The National Planning Policy Framework (NPPF), December 2023, and the accompanying Planning Practice Guidance contain the Government's planning policies and guidance for England. The NPPF sets out how these policies are expected to be applied for the purposes of making Development Plans and determining applications for planning permission under the Town and Country Planning Act 1990 (as amended).

Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the PA2008 and the relevant NPSs, but the NPPF is a relevant consideration on decision-making for the Application. Both the NPPF and the PPG are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that project.

Net Zero: The UK's Contribution to Stopping Global Warming Emissions

In May 2019, the Committee on Climate Change (CCC) published a report 'Net Zero: The UK's contribution to stopping global warming' (CCC, 2019).

The executive summary states that industry must be largely decarbonised and where there are remaining emissions "...these must be fully offset by removing CO₂ from the atmosphere and permanently sequestering it...." It also states that in order to achieve UK Net Zero by 2050, CCS is a necessity not an option.

Ten Point Plan for a Green Industrial Revolution

In November 2020, the Government published 'The Ten Point Plan for a Green Industrial Revolution' (HM Government, 2020). The plan seeks to ensure that the UK's recovery from the coronavirus pandemic "*will be green, generate jobs and bolster the economy, whilst continuing to drive down emissions both now and in the future.*" (p.30)

Energy White Paper: Powering our Net Zero Future

The Energy White Paper, 'Powering our Net Zero Future', December 2020 stated that: "The UK has set a world-leading net zero target, the first major economy to do so, but simply setting the target is not enough – we need to achieve it. Failing to act will result in natural catastrophes and changing weather patterns as well as significant economic damage, supply chain disruption and displacement of populations."

Figure 3.2 of the Energy White paper contained a Department for Business, Energy and Industrial Strategy analysis of potential future energy demand. This predicted that electricity demand could double from 2020 to 2050.

Relevant Policies

In relation to hydrogen, the White Paper states (p12) *“Working with industry the UK is aiming for 5GW of low-carbon hydrogen production capacity by 2030.”*

The White Paper identifies hydrogen as a potential clean heat technology (p112) and identifies that *“Clean hydrogen could potentially provide a way to decarbonise our gas supplies on a much larger scale than reliance on biomethane alone.”* It goes onto identify (p127) that *“The production and use of clean hydrogen will be important in achieving net zero emissions by 2050. As a gas that can be used as a fuel without emitting harmful greenhouse gasses, hydrogen will be critical in reducing emissions from heavy industry, as well as in power, heat and transport. When heavy goods transport or a process such as steel production relies on fuel for energy, hydrogen can provide a crucial, low-carbon alternative to fossil fuels.”*

The White Paper commits to the publication of a dedicated Hydrogen Strategy in early 2021 (p127).

UK Hydrogen Strategy

The UK Hydrogen Strategy (August 2021) sets out the Government's approach to developing a thriving low carbon hydrogen sector in the UK and the ambition for 5GW of low carbon hydrogen production capacity by 2030.

Paragraph 1.2 of the Hydrogen Strategy emphasises the need for hydrogen infrastructure recognising that hydrogen can only be considered as a decarbonisation option if it is readily available. Paragraph 1.3 builds on this, stating *“as a result of its geography, geology, infrastructure and capabilities, the UK has an important opportunity to demonstrate global leadership in low carbon hydrogen”*.

Section 2.2 of the Hydrogen Strategy outlines how hydrogen development can be delivered and scaled up, and states *“Investors, developers and companies across the length and breadth of the UK are ready to build if the policy environment is in place”*, further stating at 2.4.2 that *“developing and scaling hydrogen power during the 2020s can reduce the burden on other technologies such as renewables, CCUS and nuclear”*

The Strategy recognises that hydrogen comprises a low carbon solution that is critical to the UK's transition to net zero.

Industrial Decarbonisation Strategy (HM Government, 2021)

In March 2021, the Government published the Industrial Decarbonisation Strategy which considers how the full range of the UK's industrial sectors can reflect the Net Zero target.

The indicative roadmap to Net Zero UK industry includes carbon capture clusters in the next decade.

Net Zero Strategy: Build Back Greener

The Net Zero Strategy sets out the Government's plans for reducing emissions from each sector of the economy. The Strategy states that a clean reliable, power system would be the foundation of a productive net zero economy and it references the intention of fully decarbonising the UK's power system by 2035.

The Net Zero Strategy was found to be unlawful by the High Court in its judgement on the case of *R. (on the application of Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin). Whilst the Net Zero Strategy was not quashed, a report that addresses the concerns identified within the

Relevant Policies

strategy was required to be prepared and submitted, with compliance required by 31 March 2023 (refer to Powering up Britain (2023) below).

British Energy Security Strategy (2022)

In April 2022, the Government published the British Energy Security Strategy (BESS) in response to the rising global energy costs, which has ultimately resulted in an increase in the cost of living in the UK. The policy paper sets out how the UK Government is *“going to bring clean, affordable, secure power to the people for generations to come”* and *“build a British energy system that is much more self-sufficient.”*

It considers that the UK is well-placed to exploit all forms of low carbon hydrogen production and commits to 10GW of hydrogen production by 2030. The BESS seeks up to 1GW electrolytic ‘green’ hydrogen and up to 1GW of CCS-enabled ‘blue’ hydrogen to be operational or in construction by 2025. It recognises that to accelerate our supply of low carbon hydrogen, it requires *“designing, by 2025, new business models for hydrogen transport and storage infrastructure, which will be essential to grow the hydrogen economy”*

Powering up Britain (DESNZ, 2023)

In March 2023, the Government published the Powering Up Britain policy paper. It sets out the Government’s plans to enhance energy security, seize the economic opportunities of the energy transition, and deliver on the Government’s Net Zero commitments.

The ‘Powering Up Britain – Energy Security Plan’ sets out the steps by which the Government will enhance the country’s energy security following the publication of the BESS in April 2022.

The ‘Powering Up Britain – Net Zero Growth Plan’ sets out how the UK will achieve its climate targets following the High Court’s conclusion that the Government’s Net Zero Strategy lacked the sufficient level of detail on how the UK would reduce its emissions (refer to Net Zero Strategy above).

Carbon capture, usage and storage net zero investment roadmap, 2023

In April 2023, the Government published the ‘Carbon capture, usage and storage net zero investment roadmap’, which outlines Government and industry commitments to the deployment of CCUS in the UK and sets out the approach to delivering four CCUS low carbon industrial clusters, capturing 20- 30 MtCO₂ per year across the economy by 2030 to help meet the UK’s 2050 Net Zero target.

Table A4 – Summary of relevant legislation for the Proposed Development

Relevant Legislation

- Ambient Air Quality Directive (2008/50/EC)
- Environmental Impact Assess (EIA) Directive (2011/92/EU) (as amended by EIA Directive 2014/52/EU)
- Habitats Directive (92/43/EEC)
- Priority Substances Directive (2008/105/EC) Revision of the Priority Substances Directive (2013/39/EU)
- The Air Quality (Amendment) (England) Regulations 2002
- The Air Quality (England) Regulations 2000
- The Air Quality Standards (Amendment) Regulations 2016

Relevant Legislation

- The Air Quality Standards (England) Regulations 2010
- The Ancient Monuments and Archaeological Areas Act 1979
- The Birds Directive (2009/147/EC)
- The British Transport Docks Act 1972
- The Burial Act 1857
- The Climate Change Act 2008 (as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019) (CCA2008) - established the world's first long-term, legally binding framework to tackle the dangers of climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets GHG emission reductions in the UK of at least 100% by 2050 ("Net Zero", increased from 80% by the June 2019 amendment order).
- The Climate Change Act 2008 (2050 Target Amendment) Order 2019
- The Conservation of Habitats and Species Regulations 2017
- The Construction Design and Management (CDM) Regulations 2015
- The Control of Major Accidents Hazards (COMAH) Regulations 2015
- The Control of Pollution Act 1974 (COPA) (as amended)
- The Countryside and Rights of Way Act 2000
- The Electricity Act 1989
- The Energy Act 2023
- The Environment Act 1995
- The Environment Act 2021
- The Environmental Protection Act 1990 (as amended)
- The Equality Act 2010 - Section 149 of the Equality Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decisionmaking. The ExA had particular regard to the PSED in terms of holding blended in-person/ virtual meetings, producing guidance on holding those meetings, ensuring participants were provided with hard copy correspondence, where requested, and in our conduct of site inspections to ensure full appreciation of the potential impacts of the Proposed Development on persons with protected characteristics.
- The EU Floods Directive (2007/60/EC)
- The Flood and Water Management Act 2010
- The Flood Risk Regulations 2009
- The Harbours Act 1964
- The Harbour Docks and Piers Clauses Act 1847
- The Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- The Hedgerow Regulations 1997
- The Highways Act 1980
- The Humber Commercial Railway and Dock Act 1904
- The Human Rights Act 1998 - the Compulsory Acquisition of land can engage various relevant articles under the Human Rights Act 1998. The implications of this are considered in Chapter 6 of this Report.
- The Immingham Dock byelaws 1929
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (EIA Regulations)
- The Kyoto Protocol
- The Land Drainage Act 1991

Relevant Legislation

- The Land Drainage Act 1994
- The Marine and Coastal Access Act 2009
- The Merchant Shipping (Safety of Navigation) Regulations 2020 (S.I. 2020/0673)
- The Natural Environmental and Rural Communities Act 2006 (NERC) (as amended)
- New Roads and Street Works Act 1991
- The Noise and Statutory Nuisance Act 1993 c.40
- The Paris Agreement
- The Pilotage Act 1987
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Planning Act 2008
- The Protection of Badgers Act 1992
- The River Humber Conservancy Act 1852
- The Traffic Management Act 2004
- The Treasure Act 1996
- The Water Act 2003
- The Water Act 2014 (B:10)
- The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2015
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- The Water Resources Act 1991
- The Wildlife and Countryside Act 1981 (as amended)
- Water Framework Directive (2000/60/EC)

Table A5 – Relevant local policies

Plan	Identified documents and/or relevant policies
North East Lincolnshire Local Plan 2013-2032 adopted March 2018	<ul style="list-style-type: none"> • Policy 1: Employment land supply • Policy 5: Development boundaries • Policy 6: Infrastructure • Policy 7: Employment Allocations • Policy 8: Existing employment areas • Policy 9: South Humber Bank Mitigation • Policy 11: Skills and training • Policy 22: Good design in new development • Policy 31: Renewable and low carbon infrastructure • Policy 32: Energy and low carbon living • Policy 33: Flood Risk • Policy 34: Water Management • Policy 36: Promoting sustainable transport • Policy 38: Parking • Policy 39: Conserving and enhancing the historic environment • Policy 40: Developing a green infrastructure network • Policy 41: Biodiversity and Geodiversity • Policy 42: Landscape • Policy 43: Green space and recreation

Plan	Identified documents and/or relevant policies
East Inshore and East Offshore Marine Plan	<ul style="list-style-type: none"> • Policy SOC2: Heritage Assets • Policy SOC3: Terrestrial and Marine Character • Policy ECO1: Cumulative Effects • Policy ECO2: Release of Hazardous Substances • Policy BIO1: Biodiversity Protection • Policy BIO2: Biodiversity and Geological Enhancement • Policy MPA1: Marine Protected Area network • Policy CC1: Climate Change • Policy CC2: Minimising Carbon Emissions • Policy GOV1: Provision of supporting onshore infrastructure • Policy GOV2: Co-existence in the Marine Environment • Policy GOV3: Displacement and Mitigation • Policy DEF1: Ministry of Defence Danger and Exercise Areas • Policy OG1: Consideration of oil and gas production areas • Policy TIDE1: Consideration of tidal energy areas • Policy CCS1: Consideration of CCS areas • Policy PS1: Consideration of static, sea surface infrastructure • Policy PS2: Consideration of static, sea surface infrastructure • Policy PS3: Ports and Shipping • Policy DD1: Dredging and Disposal Areas • Policy AGG1: Consideration of aggregate extraction areas • Policy AGG2: Consideration of aggregate extraction areas • Policy AGG3: Consideration of aggregate extraction areas • Policy FISH1: Fishing Activity • Policy FISH2: Impacts on Fish Population • Policy TR1: Tourism and Recreation during construction and operation

Table A6 – Made Development Consent Orders (DCO)

Other made DCO's identified by the Applicant
<p>The following made Development Consent Orders have been referred to by the Applicant and in relation to their cumulative assessment:</p> <ul style="list-style-type: none"> • South Humber Bank Energy Centre • Able Marine Energy Park including Material Changes 1 and 2 • Immingham Eastern Ro-Ro Terminal (IERRT)
<p>The following Development Consent Order projects have been referred to by the Applicant and in relation to their cumulative assessment:</p> <ul style="list-style-type: none"> • Humber Low Carbon Pipelines • Viking CCS Pipeline
<p>The following made Development Consent Orders have been referred to by the Applicant in relation to the dDCO:</p>

Other made DCO's identified by the Applicant

- The A12 Chelmsford to A120 Widening Development Consent Order 2024
- The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016
- The A428 Black Cat to Caxton Gibbert Development Consent Order 2022
- The A47 Wansford to Sutton Development Consent Order 2023
- The Able Marine Energy Park Development Consent Order 2014
- The Boston Alternative Energy Facility Order 2023
- Cleve Hill Solar Park Order 2020
- The HyNet Carbon Dioxide Pipeline Order 2024
- Great Yarmouth Third River Crossing Development Consent Order 2020.
- The Immingham Open Cycle Gas Turbine Order 2020
- The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016
- The M20 Junction 10a Development Consent Order 2017
- The Millbrook Gas Fired Generating Station Order 2019
- The National Grid (Hinkley Point C Connection Project) Development Consent Order 2016
- The National Grid (Richborough Connection Project) Development Consent Order 2017
- The Network Rail (Cambridge South Infrastructure Enhancements) Order 2022
- The Norfolk Vanguard Offshore Wind Farm Order 2022
- The Port of Tilbury (Expansion) Order 2019
- The Riverside Energy Park Order 2020,
- The Rookery South (Resource Recovery Facility) Order 2011
- The Silvertown Tunnel Order 2018
- The Sizewell C (Nuclear Generating Station) Order 2022
- The Southampton to London Pipeline Development Consent Order 2020
- The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014
- The Thurrock Flexible Generation Plant Development Consent Order 2022
- The West Midlands Rail Freight Interchange Order 2020

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation	Definition
AA	Appropriate Assessment
AEP	Annual Exceedance Probability
AEol	Adverse Effect on Integrity
AIA	Arboricultural Impact Assessment
ALC	Agricultural Land Classification
ALARP	As Low As Reasonably Possible
AN15	Advice Note 15: Drafting Development Consent Order
ANCB	Appropriate Nature Conservation Body
AOD	Above Ordnance Datum
AP	Affected Person
Applicant	Associated British Ports
AS	Additional Submission
ASI	Accompanied Site Inspection
BMV	Best and most versatile
BNG	Biodiversity Net Gain
BoR	Book of Reference
BS	British Standard
CA	Compulsory Acquisition
CA Guidance	Former) Department for Communities and Local Government's 'Guidance related to procedures for the compulsory acquisition of land'
CA Regulations	The Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CAH	Compulsory Acquisition Hearing
CCA2008	Climate Change Act 2008
CCO2019	Climate Change Act (2050 Target Amendment) Order 2019
CCS	Carbon Capture Storage
CEMP	Construction Environment Management Plan
CIL	CIL Community Infrastructure Levy
CL:AIRE	Contaminated Land: Applications in Real Environments
CNP	Critical National Priority
CoCP	Code of Construction Practice
COMAH	Control of Major Accident Hazards
CO ₂	Carbon Dioxide
CTMP	Construction Traffic Management Plan
CWTP	Construction Workers Travel Plan
D	Deadline
dB	Decibels
DC1	Examining Authority's Commentary and Questions on the dDCO
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DML	Deemed Marine Licence
DMP	Dust Management Plan
EA	Environment Agency
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/572)
EIMP	East Inshore Marine Plan
EL	Examination Library
EM	Explanatory Memorandum

Abbreviation	Definition
EMF	Electromagnetic Field or Electric and Magnetic Field
EMI	Electromagnetic interference
ERYC	East Riding of Yorkshire Council
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ1	First Written Questions
ExQ2	Second Written Questions
ExQ3	Third Written Questions
FRA	Flood Risk Assessment
GEART	Guidance for the Environmental Assessment of Road Traffic
GHG	Greenhouse gas
GI	Green Infrastructure
GLVIA3	Guidelines for Landscape and Visual Impact Assessment
ha	Hectare
Habitats Regulations	Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017
HE	Historic England
HGV	Heavy Goods Vehicle
HPF	Hydrogen Production Facility
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IDB	Internal Drainage Board
IEMA	Institute of Environmental Management and Assessment
IERRT	Immingham Eastern Ro-Ro Terminal
IGET	Immingham Green Energy Terminal
IOT	Immingham Oil Terminal
IP	Interested Party
ISH	Issue Specific Hearing
km	Kilometre(s)
LCA	Landscape Character Area
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LPA	Local Planning Authority
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
m	Metre(s)
MCAA	Marine and Coastal Access Act
MMO	Maine Management Organisation
MOD	Ministry of Defence
MPS	Marine Policy Statement
NCN	National Cycle Network
NE	Natural England
NELC	North East Lincolnshire Council
NELLP	North East Lincolnshire Local Plan 2018
NH	National Highways
NH ₃	Ammonia
NPA2017	The Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

Abbreviation	Definition
NPS	National Policy Statement
NPS EN-1	NPS EN-1 Overarching National Policy Statement for Energy (EN-1)
NPSfP	National Policy Statement for Ports
NPSE	Noise Policy Statement for England
NRIL	Network Rail Infrastructure Limited
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
NVMP	Noise and Vibration Management Plan
OFH	Open Floor Hearing
oCEMP	Outline Construction Management Plan
oCTMP	Outline Construction Traffic Management Plan
oLEMP	Outline Landscape and Ecology Management Plan
OtSMRS	Outstrays to Skeffling Managed Realignment Scheme
oWCS	Outline Woodland Compensation Strategy
oWCP	Outline Woodland Compensation Plan
oWSI	Outline Written Scheme of Investigation
PA2008	Planning Act 2008
PD	Procedural Decision
PM	Preliminary Meeting
PP	Protective Provision
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R	Requirement
rDCO	Recommended Development Consent Order
RIES	Report on the Implications for European Sites
RR	Relevant Representation
Rule 17	Planning (Examination Procedure) Rules 2010
s	Section
SAC	Special Area of Conservation
sHRA	Shadow Habitats Regulations Assessment
SI	Statutory Instrument
SINC	Site of Importance for Nature Conservation
SLA	Service Level Agreement
SNS	Statutory Nuisance Statement
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	SoS Secretary of State for Transport
SPA	Special Protection Area
SRN	Strategic Road Network
SU	Statutory Undertaker
SWDS	Surface Water Drainage System
TCO	Traffic Coordination Officer
TP	Temporary Possession
UK	United Kingdom
USI	Unaccompanied Site Inspection
VP	Viewpoint
WFD	Water Framework Directive
WR	Written Representation
WSI	Written Scheme of Investigation
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

APPENDIX C: HABITATS REGULATION ASSESSMENT

C. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

C.1. INTRODUCTION

- C.1.1. This Appendix sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Transport (SoS), as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- C.1.2. This Appendix is structured as follows:
- Section C.2: Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites;
 - Section C.3: Conservation Objectives for sites and features;
 - Section C.4: Findings in relation to Adverse Effects on Integrity;
 - Section C.5: HRA conclusions.
- C.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (Case Law CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij).
- C.1.4. The term "European sites" includes Special Areas of Conservation (SAC), proposed SACs, Special Protection Areas (SPA), potential SPAs, Ramsar, proposed Ramsar and sites identified or required as compensatory measures for adverse effects on any of these sites. The "UK National Site Network" refers to the network of European sites within the UK.
- C.1.5. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 2 (section 2.5) of this Report.
- C.1.6. The ExA has been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the Competent Authority. We have sought evidence from the Applicant and the relevant Interested Parties (IPs), including Natural England as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.
- C.1.7. Biodiversity matters not covered by HRA Regulations are covered in section 3.7 of this report.

RIES and Consultation

- C.1.8. The ExA produced a Report on the Implications for European Sites (RIES) [\[PD-018\]](#) which compiled, documented, and signposted HRA-relevant information provided in

the DCO application and Examination representations up to Deadline 5 (11 July 2024). The RIES was issued to set out ExA understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. Consultation on the RIES took place between 17 July 2024 and 15 August 2024. Comments were received from the Applicant [REP6-024]. NE did not explicitly provide a response to the RIES, but they did provide updated advice following the RIES consultation at D6 [REP6-030]. These comments have been taken into account in the drafting of this Appendix.

- C.1.9. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

Proposed Development Description and HRA Implications

- C.1.10. The Proposed Development is described in Chapter 1 (section 1.3) of this Report.
- C.1.11. The spatial relationship between the Order limits of the Proposed Development and European sites is depicted on Plate 2 of the Shadow Habitats Regulations Assessment (sHRA) [REP7-015].
- C.1.12. The Proposed Development is not directly connected with, or necessary to, the management of a European site. Therefore, where likely significant effects (LSE) on European sites cannot be excluded, the SoS must make an 'appropriate assessment' of the implications of the Proposed Development.
- C.1.13. The Applicant's assessment of effects is presented in the sHRA [APP-238], updated at D1 [REP1-012], D3 [REP3-032], D4 [REP4-014], D5 [REP5-021], D6 [REP6-013] and D7 [REP7-015].
- C.1.14. Additionally, the Applicant submitted a (without prejudice) Report to inform Habitats Regulations Assessment (HRA) Derogation ('the Derogations Report') [APP-235], updated at D1 [REP1-008] and D3 [REP3-030] (see the RIES for further details [PD-018]).
- C.1.15. The Applicant did not identify any LSE on non-UK European sites in European Economic Area (EEA) States in its sHRA [REP7-015] and/or within its ES. No transboundary matters relevant to HRA were raised for discussion by any IPs during the Examination. Only UK European sites are addressed in this Report.
- C.1.16. During the Examination, the Applicant made a series of changes to the application, as described in Chapter 1 (section 1.7) of this Report. The ExA issued procedural decisions accepting all of the Applicant's proposed changes for Examination on 14 May 2024 [PD-013] and 12 July 2024 [PD-016].
- C.1.17. As described in the RIES [PD-018], changes 1 and 2 led to an increase in the direct and indirect loss of intertidal and subtidal habitat compared to the original application, with implications for the HRA. The Applicant therefore updated the sHRA at D3 to reflect the new figures for habitat loss [REP3-032]. The relevant Proposed Change Application Report [REP3-079] concluded that due to the scale of these changes, Proposed changes 1 and 2 would not result in any new impact pathways, nor would they change the significance outcome of any of the impact pathways that were considered within the original assessments. No HRA matters relevant to these change requests were raised by IPs during the Examination.

Summary of HRA Matters Considered During the Examination

- C.1.18. The main HRA matters raised by the ExA and NE and discussed during the Examination include:
- The adequacy of the methodologies used, in relation to disturbance impacts to birds, underwater noise impacts to marine mammals, and impacts to air quality.
 - The adequacy of mitigation, in relation to disturbance to birds, underwater noise impacts to marine mammals and qualifying fish species, and introduction of non-native species.
 - The Applicant's conclusion in relation to adverse effects on integrity (AEoI) on the Humber Estuary SAC and Ramsar site, disagreeing with the justification for conclusions relating to the loss of intertidal and subtidal habitat.
 - The Applicant's conclusion in relation to AEoI on the Humber Estuary SPA and Ramsar site, disagreeing with the justification for conclusions relating to changes to waterbird foraging and roosting habitat.
 - The Applicant's approach to assessing in-combination effects at screening and the AEoI stage.
- C.1.19. These matters are discussed in the sections below, as appropriate. Detailed issues raised by NE in their representations were presented in tabular format, giving each issue a unique ID number. This numbering system is applied in this Appendix to maintain coherence and aid understanding.
- C.1.20. Matters which were undisputed at the start and throughout the Examination by NE as the ANCB were:
- Humber Estuary SAC, SPA and Ramsar:
 - Direct loss of supporting intertidal habitat on qualifying species (NE5)
 - Changes to qualifying habitats as a result of the removal of seabed material during capital dredging (NE9)
 - Changes to qualifying habitats as a result of sediment deposition during capital dredging (NE10)
 - Changes to qualifying habitats as a result of sediment deposition during capital dredge disposal (NE11)
 - Indirect loss or change to qualifying habitats and species as a result of changes to hydrodynamic and sedimentary processes as a result of the marine works (NE14)
 - Indirect changes to qualifying habitats of changes to hydrodynamic and sedimentary processes during capital dredge disposal (NE15)
 - Direct changes to qualifying habitats beneath marine infrastructure due to shading (NE16)
 - Potential effects of elevated SSC during capital dredging on qualifying habitats and species (NE17)
 - Potential effects of the release of contaminants during capital dredging on qualifying habitats and species (NE18)
 - Effects of underwater noise and vibration during capital dredge and dredge disposal on qualifying fish during construction (NE26)
 - Effects of underwater noise and vibration during capital dredge and dredge disposal on qualifying marine mammals during construction (NE27)
 - Introduction of non-native species during construction (NE28)
 - Potential effects of maintenance dredging on water quality (NE50).
 - The Wash and Norfolk Coast SAC:
 - Underwater noise effects on marine mammals (NE24).

C.1.21. These areas of agreement are set out in NE’s Relevant Representation [\[RR-019\]](#).

C.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE)

C.2.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an ‘appropriate assessment’ (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

Sites and features

C.2.2. The Applicant’s original sHRA [\[APP-238\]](#) identified five European sites within the UK National Site Network for inclusion within the assessment. These are listed in Table 2 of the sHRA and are listed in Table A below. Section 3.1 of the sHRA [\[APP-238\]](#) describes how the Applicant identified sites and features for consideration, with the justification for scoping out features based on the relationship between the Proposed Development’s zone of influence and distribution of qualifying species/habitats (rather than applying any set criteria).

Table A: UK National Site Network European sites identified in the Applicant’s original HRA Report [\[APP-238\]](#)

Name of European Site	Distance from Proposed Development (km)
Humber Estuary SAC	Within the Order limits
Humber Estuary SPA	Within the Order limits
Humber Estuary Ramsar	Within the Order limits
Greater Wash SPA	20
The Wash and North Norfolk Coast SAC	75

C.2.3. Table 2 of the sHRA [\[APP-238\]](#) listed the qualifying features of the European sites and identified which are relevant to the screening for LSE. No additional European sites were suggested by IPs for inclusion in the screening assessment.

C.2.4. However, in terms of the qualifying features assessed, NE (ID NE7 [\[RR-019\]](#)) did question the Applicant’s justification for screening only a selection of the component species of the Humber Estuary SPA waterbird assemblage. Table 2 of the sHRA identified shelduck, redshank, godwit, teal, turnstone, oystercatcher and curlew for assessment, and NE sought clarity on why these species alone had been selected, also requesting that the supporting bird survey data be presented more

comprehensively (to include bird survey Sector B of the Immingham frontage) and clearly (by month, to demonstrate pattern of usage across the year).

C.2.5. In response to these concerns, the Applicant [REP1-021] explained that all other assemblage species were screened out as they are considered rare or only occur infrequently and in low numbers in this area (representing <1% of the estuary-wide Wetland Bird Survey (WeBS) five-year mean peak). The Applicant also explained that Survey Sector B is located 400m away from the construction zone and any birds in this area are out of the zone of influence of potential effects; however, to provide wider contextual data, Annex A.2 of the sHRA [REP1-012] was updated to provide data for Sector B. The sHRA was also updated to present survey results by month (Table 1 of Annex A.1), and to include the screening rationale for SPA assemblage species (Appendix B) [REP1-012]. Following these updates, NE considered this matter resolved at D1 [REP1-087].

C.2.6. To summarise, no additional bird species (or any other qualifying features of European sites) were assessed for LSE.

Impact pathways

C.2.7. The Applicant identified impacts of the Proposed Development considered to have the potential to result in LSE in Tables 3 to 5 of the sHRA [APP-238]. The potential impact pathways assessed by the Applicant include:

- direct loss of habitat;
- direct changes to habitats and species, including as a result of the removal of seabed material during capital and maintenance dredging and sediment deposition during dredge disposal;
- indirect loss or changes to habitats and species as a result of changes to hydrodynamic and sedimentary processes (including marine works and capital dredge disposal);
- introduction and spread of non-native species;
- physical change to habitats resulting from the deposition of airborne pollutants;
- changes in water and sediment quality on migratory fish species and marine mammals;
- underwater noise and vibration effects on migratory fish species and marine mammals;
- lighting effects on migratory fish and seals;
- collision risk to marine mammals; and
- visual disturbance.

C.2.8. At submission, the sHRA assessed the potential impacts during construction and operation and maintenance; it did not assess impacts during the decommissioning phase. Additional information was provided at D1 [REP1-012] to explain that no impacts during the decommissioning phase of the jetty, jetty head, jetty access ramp and the jetty access road were assessed as the dDCO does not make provision for the decommissioning of these elements of the Proposed Development, as the infrastructure is intended to become part of the fabric of the Port of Immingham and will continue to be maintained in the long-term.

C.2.9. In response to Question 1.6.2.4 at EXQ1 [PD-008] regarding decommissioning of the hydrogen production facility, paragraph 1.2.11 of the updated sHRA [REP1-012] explains that the majority of the landside decommissioning works are proposed to be in excess of 200m from the foreshore and there are no areas of terrestrial habitat within or adjacent to the Proposed Development boundary that are considered functionally linked land. However, the removal of pipe racks within Work Area 2 and

plant and equipment on the approach jetty topside associated with hydrogen production (within Work Area 1) are within 200m of the foreshore and have therefore been considered in the revised sHRA [REP1-012].

- C.2.10. Additionally, NE raised two further impact pathways for inclusion:
- potential mortality or injury to coastal waterbirds as a result of flare stack operation (see ID NE2 [RR-019]); and
 - physical changes to habitats resulting from accidental releases of ammonia (see ID NE54 [REP3-112]).
- C.2.11. NE (ID NE2 [RR-019]) requested that the potential impacts of the flare stacks on waterbirds should be assessed in the sHRA, for relevant qualifying features of the Humber Estuary Spa and Ramsar site. The sHRA [REP1-012] was updated to result of flare stacks and concluded no LSE. In response to the additional information provided in the revised sHRA [REP1-012], NE [REP3-112] considered the matter resolved and agreed with the conclusion reached.
- C.2.12. NE (ID NE54 [REP3-112]) advised that the Applicant address effects of the accidental release of ammonia from an ecological perspective, on habitat features of the Humber Estuary SAC and Ramsar site. The Applicant revised the sHRA to address this impact as part of the assessment of changes to habitats resulting from the deposition of airborne pollutants during operation (paragraph 4.7.24 [REP3-033]). In light of this information, NE considered this matter resolved at D4 [REP4-054].

LSE from the Proposed Development Alone

- C.2.13. The Applicant's conclusions in respect of screening are presented in Section 3.3 of the sHRA [REP7-015]. They are summarised in the Applicant's screening and matrices in Appendix D of the sHRA [REP7-015].
- C.2.14. The Applicant concluded that the Proposed Development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans, on all qualifying features of the Greater Wash SPA.
- C.2.15. NE confirmed it agreed with the Applicant's conclusion of no LSEs in respect of the above European site [RR-019]. This was confirmed within the final agreed SoCG with NE [REP7-033].
- C.2.16. The Applicant concluded that the Proposed Development would be likely to give rise to significant effects, either alone or in combination with other projects or plans, on one or more of the qualifying features of:
- Humber Estuary SAC;
 - Humber Estuary SPA;
 - Humber Estuary Ramsar; and
 - The Wash and North Norfolk Coast SAC.
- C.2.17. The qualifying features and LSE pathways screened in by the Applicant are detailed in Tables 3 to 5 and Table B.1 of the sHRA [APP-238]. These sites, qualifying features and the potential effects are presented in Table C below.
- C.2.18. The original sHRA [APP-238] concluded that lighting impacts during construction and operation would not lead to LSE on coastal waterbirds on the grounds that the jetty will only be lit for safety and operational purposes, and that artificial illumination

can improve foraging and have a positive impact on nocturnal foraging waterbirds. NE advised (ID NE2 [\[RR-019\]](#)) that the justification provided by the Applicant is insufficient to rule out LSE and further information should be provided. In response the Applicant updated the sHRA [\[REP1-012\]](#) with additional information to justify the conclusion, stating that the majority of construction activities will occur during daylight hours and that temporary lighting during construction will be arranged so that glare is minimised outside the construction areas with a Lighting Management Plan (LMP) incorporated into the Final CEMP that addresses the use of lighting around potentially sensitive areas including the Humber Estuary. Based on these updates, NE agreed [\[REP3-112\]](#) that the point had been addressed.

C.2.19. At ExQ2 (HRA 2.3 [\[PD-014\]](#)), the ExA asked that the Applicant explain how the use of mitigation (in the form of the LMP) to justify no LSE is consistent with the People Over Wind and Sweetman v Coillte Teoranta (Case C-323/17) judgement. In response, the Applicant updated the shadow HRA [\[REP4-014\]](#) to show that LSE would arise as a result of lighting effects on coastal waterbirds during construction, however it explained that this amendment would not alter the ultimate conclusion that lighting effects would not result in AEol.

C.2.20. NE has raised some points of clarification around the air quality assessment screening methodologies (ID NE30 and NE31 [\[RR-019\]](#)[\[REP1-087\]](#)[\[REP3-112\]](#)) regarding road traffic and marine vessel impacts. This is described in Table 2.2 of the RIES and following explanation/ confirmation from the Applicant, NE considered these issues were resolved [\[REP3-112\]](#).

LSE from the Proposed Development In Combination

C.2.21. Information relating to the in-combination assessment was provided in the original sHRA [\[APP-238\]](#), however this was embedded within the assessment of adverse effects on integrity (chapter 4 of the sHRA), and consideration of in-combination effects at the screening stage was not explicit. For example, the methodology applied, and the plans and projects identified to act in combination with the Proposed development, is described in paragraph 4.15.3 [\[REP7-015\]](#), explaining that these are based on the cumulative assessment provided in ES Chapter 25: Cumulative and In-Combination Effects [\[APP-067\]](#). The plans and projects identified within the ES which also overlap with the zone of influence of potential effects on marine ecology receptors were taken forward into the sHRA. Similarly, the projects and the impact pathways relevant to each are detailed in Table 35 of the sHRA (within Stage 2 – Appropriate Assessment) [\[REP7-015\]](#).

C.2.22. This was raised by NE (ID NE3 [\[RR-019\]](#)) who requested that consideration of in-combination effects should be presented at the screening stage and that Tables 3 to 5 should be updated to show whether an effect will be ‘alone and/ or in combination’. NE (ID NE40 [\[RR-019\]](#)) also advised that in-combination road traffic emissions should be assessed, and potential impacts considered at relevant sensitive habitat receptors, considering the calculated change in Annual Average Daily Traffic from cumulative developments identified within the ES Traffic and Transport Cumulative Assessment.

C.2.23. The Applicant agreed [\[REP1-021\]](#) to update Tables 3 to 5 in the sHRA [\[REP1-012\]](#) to consider projects alone and in-combination, and provided further justification explaining that there are no European sites within 200m of any road used by project-related traffic so the impact of traffic-derived air pollution (alone or in combination with other projects) does not need to be considered in the sHRA [\[REP1-021\]](#).

- C.2.24. NE [\[REP3-112\]](#) welcomed the updated sHRA [\[REP1-012\]](#) and considered the air quality issue (NE40) to have been resolved, however they requested further clarification regarding how the in-combination screening assessment (more generally) had been undertaken and highlighted the need to distinguish between small effects and where there is no effect at all.
- C.2.25. To move this issue forward, the ExA requested (ExQ2 HRA 2.5 [\[PD-014\]](#)) that NE highlight any specific impact pathways where it was concerned that the absence of this information is likely to make a material difference in the screening conclusion. Following further clarification regarding how the in-combination assessment was undertaken by the Applicant in the updated sHRA [\[REP3-032\]](#), NE agreed [\[REP4-054\]](#) that that the impact pathways screened out at this stage are unlikely to have a significant effect on any European site, either alone or in-combination with other plans and projects.
- C.2.26. No in-combination LSE were identified by the Applicant for the sites and qualifying features where LSE were excluded from the Proposed Development alone, on the basis that potential impacts are not considered of a magnitude to cause LSE [\[REP7-015\]](#).
- C.2.27. No additional plans or projects were highlighted by IPs in the Examination.

LSE Assessment Outcomes

- C.2.28. As noted above, while IPs raised concerns about the extent of the Applicant's screening for LSE, these were resolved in the course of the Examination. By the close of Examination, NE was in agreement with the Applicant's screening conclusions.
- C.2.29. The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is now satisfied with the approach to the assessment of alone and in-combination likely significant effects.
- C.2.30. Taking into account the reasoning set out above, the ExA considers that the Proposed Development is likely to have a significant effect from the impacts identified in Tables 3 to 5 of the sHRA [\[REP7-015\]](#) on the qualifying features of the Humber Estuary SAC, SPA and Ramsar site, and The Wash and North Norfolk Coast SAC identified in Table B below, when considered alone, or in combination with other plans or projects.

Table B: European sites and features for which the ExA considers LSE could not be excluded

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
Humber Estuary SAC	H1110: Sandbanks which are slightly covered by sea water all the time	<p>Construction</p> <ul style="list-style-type: none"> • Direct changes to qualifying habitats as a result of sediment deposition from dredge disposal. • Indirect loss or change to qualifying habitats as a result of changes to hydrodynamic and sedimentary processes from dredge disposal. • Changes in water and sediment quality on benthic habitats and species resulting from dredge disposal. • The potential introduction and spread of non-native species resulting from construction activities, dredging and dredge disposal. • The potential effects of the release of contaminants during capital dredge disposal on qualifying habitats and species. <p>Operation</p> <ul style="list-style-type: none"> • Non-native species transfer during vessel operations. • Physical change to habitats resulting from the deposition of airborne pollutants from operational marine vessel and road vehicle emissions.
	H1130: Estuaries	<p>Construction</p> <ul style="list-style-type: none"> • Direct loss of qualifying intertidal habitat resulting from marine piling. • Direct loss of subtidal habitat resulting from marine piling. • Changes to qualifying habitats as a result of the removal of seabed material during capital dredging.

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
		<ul style="list-style-type: none"> • Direct changes to qualifying habitats as a result of sediment deposition from capital dredging and dredge disposal. • Indirect loss or change to qualifying habitats as a result of changes to hydrodynamic and sedimentary processes from marine works (jetty structure and capital dredging) and dredge disposal. • Changes in water and sediment quality on benthic habitats and species from capital dredging and dredge disposal. • The potential introduction and spread of non-native species resulting from construction activities, dredging and dredge disposal. • The potential effects of elevated SSC during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredge disposal on qualifying habitats and species. <p>Operation</p> <ul style="list-style-type: none"> • Direct changes to qualifying habitats and species beneath marine infrastructure due to shading during operation. • Changes to qualifying habitats as a result of seabed removal from maintenance dredging. • Non-native species transfer during vessel operations. • Physical change to habitats resulting from the deposition of airborne pollutants from operational marine vessel emissions.

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
	H1140: Mudflats and sandflats not covered by seawater at low tide; intertidal mudflats and sandflats	<p>Construction</p> <ul style="list-style-type: none"> • Direct loss of qualifying intertidal habitat resulting from marine piling. • Changes to qualifying habitats as a result of the removal of seabed material during capital dredging. • Direct changes to qualifying habitats as a result of sediment deposition from capital dredging. • Indirect loss or change to qualifying habitats as a result of changes to hydrodynamic and sedimentary processes from marine works (jetty structure and capital dredging). • Changes in water and sediment quality on benthic habitats and species from capital dredging. • The potential introduction and spread of non-native species resulting from construction activities, dredging and dredge disposal. • The potential effects of elevated SSC during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredging on qualifying habitats and species. <p>Operation</p> <ul style="list-style-type: none"> • Direct changes to qualifying habitats and species beneath marine infrastructure due to shading during operation. • Changes to qualifying habitats as a result of seabed removal from maintenance dredging. • Non-native species transfer during vessel operations.

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
		<ul style="list-style-type: none"> Physical change to habitats resulting from the deposition of airborne pollutants from operational marine vessel emissions.
	H1310: Salicornia and other annuals colonising mud and sand; Glasswort and other annuals colonising mud and sand	<p>Operation</p> <ul style="list-style-type: none"> Physical change to habitats resulting from the deposition of airborne pollutants from operational marine vessel emissions.
	H1330: Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>)	<p>Operation</p> <ul style="list-style-type: none"> Physical change to habitats resulting from the deposition of airborne pollutants from operational marine vessel emissions.
	S1095: Sea lamprey <i>Petromyzon marinus</i>	<p>Construction</p> <ul style="list-style-type: none"> Changes in water and sediment quality on migratory fish species resulting from capital dredge and dredge disposal. Underwater noise effects on migratory fish species resulting from marine piling, capital dredging and dredge disposal. The potential effects of elevated SSC during capital dredging on qualifying habitats and species. The potential effects of the release of contaminants during capital dredging on qualifying habitats and species. The potential effects of the release of contaminants during capital dredge disposal on qualifying habitats and species.

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
	S1099: River lamprey <i>Lampetra fluviatilis</i>	Construction <ul style="list-style-type: none"> • Changes in water and sediment quality on migratory fish species resulting from capital dredge and dredge disposal. • Underwater noise effects on migratory fish species resulting from marine piling, capital dredging and dredge disposal. • The potential effects of elevated SSC during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredge disposal on qualifying habitats and species.
	S1364: Grey seal <i>Halichoerus grypus</i>	Construction <ul style="list-style-type: none"> • Underwater noise effects on marine mammals resulting from marine piling, capital dredging and dredge disposal.
Humber Estuary SPA	A048: Common Shelduck (Non-breeding) <i>Tadorna tadorna</i>	Construction <ul style="list-style-type: none"> • Direct loss or change to supporting intertidal habitat resulting from marine piling. • Indirect loss of supporting intertidal habitat as a result of changes to hydrodynamic and sedimentary processes from marine works (jetty structure and capital dredging). • Airborne noise and visual disturbance to coastal waterbirds within the SPA boundary resulting from marine construction activity (including capital dredging).
	A149: Dunlin <i>Calidris alpina</i> (Non-breeding)	

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
	<p>A156: Black-tailed Godwit <i>Limosa limosa islandica</i> (Non-breeding)</p> <p>A162: Common Redshank <i>Tringa totanus</i> (Non-breeding)</p> <p>Waterbird assemblage</p>	<ul style="list-style-type: none"> Lighting effects on coastal waterbirds during construction. <p>Operation</p> <ul style="list-style-type: none"> Changes to coastal waterbird foraging and rooting habitat as a result of marine infrastructure from berth operations. Airborne noise and visual disturbance to coastal waterbirds within the SPA boundary from berth operations. <p>Decommissioning</p> <ul style="list-style-type: none"> Airborne noise and visual disturbance to coastal waterbirds within SPA boundary from landside decommissioning of the removal pipe racks within Work Area 2 (the jetty access road) and plant and equipment on the approach jetty topside associated with hydrogen production (within Work Area 1).
Humber Estuary Ramsar	<p>Criterion 1 – natural wetland habitats that are of international importance:</p> <p>The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks, estuarine waters, intertidal mud and sand flats, saltmarshes, and</p>	<p>Construction</p> <ul style="list-style-type: none"> Direct loss of qualifying intertidal habitat resulting from marine piling. Direct loss of qualifying subtidal habitat resulting from marine piling. Direct changes to qualifying intertidal habitat as a result of seabed removal during dredging. Direct changes to qualifying habitats as a result of sediment deposition from capital dredging and dredge disposal. Indirect loss or change to qualifying habitats and species as a result of changes to hydrodynamic and sedimentary processes from marine works (jetty structure and capital dredging) and dredge disposal.

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
	coastal brackish/ saline lagoons.	<ul style="list-style-type: none"> • Changes in water and sediment quality on benthic habitats and species from capital dredging and dredge disposal. • The potential introduction and spread of non-native species resulting from construction activities, capital dredge and dredge disposal. • The potential effects of elevated SSC during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredge disposal on qualifying habitats and species. <p>Operation</p> <ul style="list-style-type: none"> • Direct changes to qualifying habitat beneath marine infrastructure due to shading. • Changes to qualifying habitat as a result of seabed removal during maintenance dredging. • Non-native species transfer during vessel operations. • Physical change to habitats resulting from the deposition of airborne pollutants (NOx and N deposition) from operational vessel movements.
	<p>Criterion 3 – supports populations of plants and/or animal species of international importance:</p> <p>The Humber Estuary Ramsar site supports a breeding colony of grey</p>	<p>Construction</p> <ul style="list-style-type: none"> • Underwater noise effects on marine mammals resulting from marine piling, capital dredging and dredge disposal.

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
	<p>seals <i>Halichoerus grypus</i> at Donna Nook. It is the second largest grey seal colony in England and the furthest south regular breeding site on the east coast.</p>	
	<p>Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl</p>	<p>Construction</p> <ul style="list-style-type: none"> • Direct loss of supporting intertidal habitat from marine piling. • Indirect loss of supporting intertidal habitat as a result of changes to hydrodynamic and sedimentary processes from marine works (jetty structure and capital dredging). • Airborne noise and visual disturbance to coastal waterbirds within the Ramsar boundary from marine construction activity (including capital dredging). • Lighting effects on coastal waterbirds during construction. <p>Operation</p> <ul style="list-style-type: none"> • Direct changes to coastal waterbird foraging and roosting habitat as a result of marine infrastructure berth operations. • Airborne noise and visual disturbance to coastal waterbirds within the Ramsar boundary from berth operations. <p>Decommissioning</p>

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
		<ul style="list-style-type: none"> Airborne noise and visual disturbance to coastal waterbirds within Ramsar boundary from landside decommissioning of the removal pipe racks within Work Area 2 (the jetty access road) and plant and equipment on the approach jetty topside associated with hydrogen production (within Work Area 1).
	<p>Criterion 6 – Bird Species/ Populations Occurring at Levels of International Importance:</p> <p>Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Redshank (passage).</p> <p>Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit (overwintering).</p>	<p>Construction</p> <ul style="list-style-type: none"> Direct loss of supporting intertidal habitat from marine piling. Indirect loss of supporting intertidal habitat as a result of changes to hydrodynamic and sedimentary processes from marine works (jetty structure and capital dredging). Airborne noise and visual disturbance to coastal waterbirds within the Ramsar boundary from marine construction activity (including capital dredging). Lighting effects on coastal waterbirds during construction. <p>Operation</p> <ul style="list-style-type: none"> Direct changes to coastal waterbird foraging and roosting habitat as a result of marine infrastructure berth operations. Airborne noise and visual disturbance to coastal waterbirds within the Ramsar boundary from berth operations. <p>Decommissioning</p> <ul style="list-style-type: none"> Airborne noise and visual disturbance to coastal waterbirds within Ramsar boundary from landside decommissioning of the removal pipe racks within Work

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
	<p>Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/ or migration path:</p> <p>The Humber Estuary acts as an important migration route for both river lamprey <i>Lampetra fluviatilis</i> and sea lamprey <i>Petromyzon marinus</i> between coastal waters and their spawning areas.</p>	<p>Area 2 (the jetty access road) and plant and equipment on the approach jetty topside associated with hydrogen production (within Work Area 1).</p> <p>Construction</p> <ul style="list-style-type: none"> • Changes in water and sediment quality on migratory fish species resulting from capital dredging and dredge disposal. • Underwater noise effects on migratory fish species from marine piling, capital dredging and dredge disposal. • The potential effects of elevated SSC during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredging on qualifying habitats and species. • The potential effects of the release of contaminants during capital dredge disposal on qualifying habitats and species.
The Wash and North Norfolk Coast SAC	S1365: Harbour seal <i>Phoca vitulina</i>	<p>Construction</p> <ul style="list-style-type: none"> • Underwater noise effects on marine mammals during marine piling, capital dredging and dredge disposal.

C.3. CONSERVATION OBJECTIVES

- C.3.1. The conservation objectives for all the European sites for which an LSE was identified by the Applicant at the point of the DCO application were included within the sHRA (Table 6) [\[REP7-015\]](#).
- C.3.2. ExQ1.6.2.2 [\[PD-008\]](#) requested that the Applicant confirm the conservation status of the Humber Estuary European sites. The Applicant [\[REP1-027\]](#) confirmed that it had been agreed with NE that the condition assessment for the Humber Estuary Site of Special Scientific Interest (SSSI) should be used where the SSSI features are the same as the European site features. On this basis, [\[REP1-027\]](#) provided the conservation status of the features, with certain waterbird features (curlew, redshank, turnstone and dunlin) in unfavourable status, and harbour (common) seal feature of The Wash and North Norfolk Coast SAC considered to being “Unfavourable-Inadequate” condition at a UK-wide scale.

C.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY

- C.4.1. The European site(s) and qualifying features identified in Table B above were further assessed by the Applicant to determine if they could be subject to AEol from the Proposed Development, either alone or in-combination. The Applicant’s assessment of effects from the development alone was presented in sections 4.2 to 4.13 of the Applicant’s sHRA [\[REP7-015\]](#). The assessment of AEol was made in light of the conservation objectives for the European sites.
- C.4.2. The ExA is satisfied, based on the information provided that the correct impacts have been assessed.
- C.4.3. This section of the Appendix discusses some overarching themes that were raised during the Examination concerning the in-combination assessment and the proposed mitigation measures, before addressing site-specific issues and providing conclusions with respect to AEol for each site assessed.

In-combination effects

- C.4.4. The Applicant’s approach to in-combination assessment of AEol is presented in section 4.15 of the sHRA [\[REP7-015\]](#). Table 35 identifies the project and impact pathways screened into the assessment. Tables 36, 37 and 38 present the assessment itself (numbered 34 to 36 in the original sHRA [\[APP-238\]](#)).
- C.4.5. NE (ID NE36 [\[RR-019\]](#)[\[REP3-112\]](#)) considered that Tables 34, 35 and 36 of the sHRA [\[APP-238\]](#), relating to in-combination effects at the AEol stage, did not provide sufficient detail to provide a robust conclusion of no adverse effects. NE considered the assessment should identify where impacts have been fully avoided through mitigation and where there is still a residual impact that could act in combination, and, where these exist, consider the residual effects of developments together. NE (ID NE52 [\[RR-019\]](#)) also advised that an assessment of cumulative effects should also be provided in the sHRA, with reference to Conservation Objectives, in relation to:
- loss and fragmentation of SAC habitats;
 - impacts of operational vessel traffic on marine mammals; and
 - impacts arising from an increase in maintenance dredging.

- C.4.6. The Applicant provided additional information with respect to these pathways in their response to NE's RR [\[REP1-021\]](#), arguing that:
- The in-combination assessment already considers direct and indirect intertidal and subtidal habitat loss (and change) associated with proposed projects in the Immingham region including loss as a result of all the proposed projects screened into the assessment together.
 - The Proposed Development along with IERRT will result in an increase in operational vessel traffic in the Port of Immingham area by approximately 6%, but this is unlikely to result in a LSE for this feature, due to the existing high background noise in the wider Humber Estuary and the fact that grey seals are well adapted to avoiding collision risk given the existing exposure to high levels of shipping activity.
 - The in-combination assessment already considers effects of ongoing/future maintenance dredging in the Immingham area along with proposed future dredging requirements as a result of proposed projects in the region. This is also set in the context of the maintenance dredge protocol which is established for the estuary as a whole.
- C.4.7. The Applicant also provided updates to the sHRA [\[REP4-014\]](#) and [\[REP5-021\]](#), adding information on the combination of residual effects of all relevant projects.
- C.4.8. NE continued to have concerns relating to specific areas of the in-combination assessment (physical loss of (or change to) habitat and cumulative underwater noise disturbance and barrier effects to grey seal during construction) and these are described in more detail below, but NE confirmed that it considered the matters listed in bullets above to be resolved at D3 [\[REP3-112\]](#).
- C.4.9. Based on the findings of the Examination, the ExA is satisfied that an assessment of AEoI from the Proposed Development in combination with other plans or projects can be based on this information and that no other plans or projects are required to be taken into account.

Mitigation

- C.4.10. The assessment of effects presented in Sections 4.2 to 4.15 of the sHRA [\[REP7-015\]](#) sets out where mitigation measures are required to avoid or minimise the effects from each impact pathway included in the assessment. Where mitigation measures are considered necessary, these have been described in the sHRA, and Table 39 provides a summary of them. These were taken into account in the Applicant's assessment of effects on integrity.
- C.4.11. NE (ID NE41 [\[RR-019\]](#)) requested that a summary of each European site affected be provided, alongside a summary of mitigation measures, whether they will completely avoid or reduce impacts to an acceptable level, the certainty of this mitigation and a schedule of mitigation measures that describes how mitigation measures would be implemented over the calendar year.
- C.4.12. To respond to this, the Applicant updated Section 5 of the sHRA [\(REP1-012\)](#), including the provision of Table 38 which summarises the mitigation measures proposed, detailing their effectiveness, target features of the European sites affected and the confidence in the mitigation effectiveness. A Waterbird Mitigation Effectiveness Summary was also added to Appendix E of the updated sHRA [\[REP1-012\]](#) and included a schedule of the proposed seasonal restrictions on construction activity in Table E.2. NE [\[REP3-112\]](#) welcomed the additional information and considered this matter resolved.

Sites for which AEol can be excluded

C.4.13. The Applicant concluded [[REP7-015](#)] that the Proposed Development would not adversely affect the integrity of all of the European sites and features assessed, either alone or in combination with other projects or plans, namely:

- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar site; and
- The Wash and North Norfolk Coast SAC.

C.4.14. In relation to the sites and features and pathways listed in Table C below, at no point during the Examination had the Applicant's conclusions been disputed by any IP. In addition, NE confirmed that subject to the appropriate mitigation as outlined in the application documents being secured adequately, it was satisfied that a number of potential effects would be unlikely to result in AEol on the above sites.

Table D: Effects for which the Applicant concluded no AEol and which were not disputed during the Examination

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
Humber Estuary SAC	H1130: Estuaries	<p>The potential effects of changes to qualifying habitats as a result of the removal of seabed material during capital dredging.</p> <p>No AEol (Table 11 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE9 [RR-019]).</p>	None required
	<p>H1130: Estuaries</p> <p>H1140: Mudflats and sandflats not covered by seawater at low tide</p>	<p>The potential effects of changes to qualifying habitats as a result of sediment deposition during capital dredging.</p> <p>No AEol (Table 12 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE10 [RR-019]).</p>	None required
	<p>H1110: Sandbanks which are slightly covered by sea water all the time</p> <p>H1130: Estuaries</p>	<p>Changes to qualifying habitats as a result of sediment deposition during capital dredge disposal.</p> <p>No AEol (Table 13 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE11 [RR-019]).</p>	None required

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
	<p>H1130: Estuaries</p> <p>H1140: Mudflats and sandflats not covered by seawater at low tide</p>	<p>Indirect loss or change to qualifying habitats and species as a result of changes to hydrodynamic and sedimentary processes as a result of the marine works.</p> <p>No AEol (Table 15 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE14 [RR-019]).</p>	None required
	<p>H1110: Sandbanks which are slightly covered by sea water all the time</p> <p>H1130: Estuaries</p>	<p>Indirect changes to qualifying habitats of changes to hydrodynamic and sedimentary processes during capital dredge disposal.</p> <p>No AEol (Table 16 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE15 [RR-019]).</p>	None required
	<p>H1130: Estuaries</p> <p>H1140: Mudflats and sandflats not covered by seawater at low tide</p>	<p>Direct changes to qualifying habitats beneath marine infrastructure due to shading.</p> <p>No AEol (Table 17 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE16 [RR-019]).</p>	None required
	H1130: Estuaries	The potential effects of elevated SSC during capital dredging on qualifying habitats and species.	None required

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
	<p>H1140: Mudflats and sandflats not covered by seawater at low tide</p> <p>S1095: Sea lamprey <i>Petromyzon marinus</i></p> <p>S1099: River lamprey <i>Lampetra fluviatilis</i></p>	<p>No AEol (Table 21 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE17 [RR-019]).</p>	
	<p>H1110: Sandbanks which are slightly covered by sea water all the time</p> <p>H1130: Estuaries</p> <p>S1095: Sea lamprey <i>Petromyzon marinus</i></p> <p>S1099: River lamprey <i>Lampetra fluviatilis</i></p>	<p>The potential effects of elevated SSC during capital dredge disposal on qualifying habitats and species.</p> <p>No AEol (Table 21 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE17 [RR-019]).</p>	None required
	H1130: Estuaries	<p>The potential effects of the release of contaminants during capital dredging on qualifying habitats and species.</p> <p>No AEol (Table 23 of the sHRA [APP-238]).</p>	None required

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
	<p>H1140: Mudflats and sandflats not covered by seawater at low tide</p> <p>S1095: Sea lamprey <i>Petromyzon marinus</i></p> <p>S1099: River lamprey <i>Lampetra fluviatilis</i></p>	<p>NE agree with conclusion of no AEol (ID NE18 [RR-019]).</p>	
	<p>H1110: Sandbanks which are slightly covered by sea water all the time</p> <p>H1130: Estuaries</p> <p>S1095: Sea lamprey <i>Petromyzon marinus</i></p> <p>S1099: River lamprey <i>Lampetra fluviatilis</i></p>	<p>The potential effects of the release of contaminants during capital dredge disposal on qualifying habitats and species.</p> <p>No AEol (Table 24 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE18 [RR-019]).</p>	<p>None required</p>
	<p>S1095: Sea lamprey <i>Petromyzon marinus</i></p>	<p>Effects of underwater noise and vibration during capital dredge and dredge disposal on qualifying fish.</p> <p>No AEol (Table 30 of the sHRA [APP-238]).</p>	<p>None required</p>

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
	S1099: River lamprey <i>Lampetra fluviatilis</i>	NE agree with conclusion of no AEol (ID NE26 [RR-019]).	
	S1364: Grey seal <i>Halichoerus grypus</i>	Effects of underwater noise and vibration during capital dredge and dredge disposal on qualifying marine mammals. No AEol (Table 30 of the sHRA [APP-238]). NE agree with conclusion of no AEol (ID NE27 [RR-019]).	None required
	H1110: Sandbanks which are slightly covered by sea water all the time H1130: Estuaries H1140: Mudflats and sandflats not covered by seawater at low tide	Introduction of non-native species during construction. No AEol (Table 31 of the sHRA [APP-238]). NE agree with conclusion of no AEol (ID NE28 [RR-019]).	Biosecurity control measures included within the CEMP.

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
Humber Estuary SPA	<p>A048; Common Shelduck <i>Tadorna tadorna</i> (Non-breeding)</p> <p>A149: Dunlin <i>Calidris alpina alpina</i> (Non-breeding)</p> <p>A156: Black-tailed Godwit <i>Limosa limosa islandica</i> (Non-breeding)</p> <p>A162: Common Redshank <i>Tringa totanus</i> (Non-breeding)</p> <p>Waterbird assemblage</p>	<p>The potential for an AEol due to the direct loss of supporting intertidal habitat on qualifying species.</p> <p>No AEol (Table 8 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE5 [RR-019]).</p>	None required
	<p>A048; Common Shelduck <i>Tadorna tadorna</i> (Non-breeding)</p> <p>A149: Dunlin <i>Calidris alpina alpina</i> (Non-breeding)</p>	<p>Indirect loss or change to qualifying habitats and species as a result of changes to hydrodynamic and sedimentary processes as a result of the marine works.</p> <p>No AEol (Table 15 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE14 [RR-019]).</p>	None required

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
	<p>A156: Black-tailed Godwit <i>Limosa limosa islandica</i> (Non-breeding)</p> <p>A162: Common Redshank <i>Tringa totanus</i> (Non-breeding)</p> <p>Waterbird assemblage</p>		
Humber Estuary Ramsar	<p>Criterion 5 – Bird Assemblages of International Importance</p> <p>Criterion 6 – Bird Species/ Populations Occurring at Levels of International Importance</p>	<p>The potential for an AEol due to the direct loss of supporting intertidal habitat on qualifying species.</p> <p>No AEol (Table 8 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE5 [RR-019]).</p>	None required
	<p>Criterion 1 – natural wetland habitats that are of international importance</p>	<p>The potential effects of changes to qualifying habitats as a result of the removal of seabed material during capital dredging.</p> <p>No AEol (Table 11 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE 9 [RR-019]).</p>	None required

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
	Criterion 1 – natural wetland habitats that are of international importance	<p>The potential effects of changes to qualifying habitats as a result of sediment deposition during capital dredging.</p> <p>No AEol (Table 12 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE10 [RR-019]).</p>	None required
	Criterion 1 – natural wetland habitats that are of international importance	<p>Changes to qualifying habitats as a result of sediment deposition during capital dredge disposal.</p> <p>No AEol (Table 13 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE11 [RR-019]).</p>	None required
	<p>Criterion 1 – natural wetland habitats that are of international importance</p> <p>Criterion 5 – Bird Assemblages of International Importance</p> <p>Criterion 6 – Bird Species/ Populations Occurring at</p>	<p>Indirect loss or change to qualifying habitats and species as a result of changes to hydrodynamic and sedimentary processes as a result of the marine works.</p> <p>No AEol (Table 15 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE14 [RR-019]).</p>	None required

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
	Levels of International Importance		
	<p>Criterion 1 – natural wetland habitats that are of international importance</p> <p>Criterion 5 – Bird Assemblages of International Importance</p> <p>Criterion 6 – Bird Species/ Populations Occurring at Levels of International Importance</p>	<p>Indirect changes to qualifying habitats of changes to hydrodynamic and sedimentary processes during capital dredge disposal.</p> <p>No AEol (Table 16 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE15 [RR-019]).</p>	None required
	Criterion 1 – natural wetland habitats that are of international importance	<p>Direct changes to qualifying habitats beneath marine infrastructure due to shading.</p> <p>No AEol (Table 17 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE16 [RR-019]).</p>	None required

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
	<p>Criterion 1 – natural wetland habitats that are of international importance</p> <p>Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/ or migration path</p>	<p>The potential effects of elevated SSC during capital dredging on qualifying habitats and species.</p> <p>No AEol (Table 21 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE17 [RR-019]).</p>	None required
	<p>Criterion 1 – natural wetland habitats that are of international importance</p> <p>Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/ or migration path</p>	<p>The potential effects of elevated SSC during capital dredge disposal on qualifying habitats and species.</p> <p>No AEol (Table 22 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEol (ID NE17 [RR-019]).</p>	None required
	<p>Criterion 1 – natural wetland habitats that are of international importance</p> <p>Criterion 8 – Internationally important source of food for</p>	<p>The potential effects of the release of contaminants during capital dredging on qualifying habitats and species.</p> <p>No AEol (Table 23 of the sHRA [APP-238]).</p>	None required

European site(s)	Qualifying Feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
	fishes, spawning grounds, nursery and/ or migration path	NE agree with conclusion of no AEoI (ID NE18 [RR-019]).	
	<p>Criterion 1 – natural wetland habitats that are of international importance</p> <p>Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/ or migration path</p>	<p>The potential effects of the release of contaminants during capital dredge disposal on qualifying habitats and species.</p> <p>No AEoI (Table 24 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEoI (ID NE18 [RR-019]).</p>	None required
	Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/ or migration path	<p>Effects of underwater noise and vibration during capital dredging and dredge disposal on qualifying fish.</p> <p>No AEoI (Table 30 of the sHRA [APP-238]).</p> <p>NE agree with conclusion of no AEoI (ID NE26 [RR-019]).</p>	None required
	Criterion 3 – supports populations of plants and/ or animal species of international importance	Effects of underwater noise and vibration during capital dredging and dredge disposal on qualifying marine mammals.	None required

European site(s)	Qualifying Feature(s)	AEol alone or in-combination	Mitigation required to avoid AEol
		No AEol (Table 30 of the sHRA [APP-238]). NE agree with conclusion of no AEol (ID NE27 [RR-019]).	
	Criterion 1 – natural wetland habitats that are of international importance	Introduction of non-native species during construction. No AEol (Table 31 of the sHRA [APP-238]). NE agree with conclusion of no AEol (ID NE28 [RR-019]).	Biosecurity control measures included within the CEMP.
The Wash and Norfolk Coast SAC	S1365 Harbour seal <i>Phoca vitulina</i>	Underwater noise effects on marine mammals (during piling and dredging). No AEol (Table 29 and 30 of the sHRA [APP-238]). NE agree with conclusion of no AEol (ID NE24 [RR-019]).	Marine piling measures (soft start, vibro piling, seasonal restriction, night time restriction, marine mammal observer).

- C.4.15. The ExA agrees with the conclusions above of no AEoI listed in Table C.
- C.4.16. Several of the Applicant's conclusions of no AEoI in relation to these European sites and their qualifying features were disputed by IPs and were discussed throughout the Examination. The account of the Examination of these matters is set out in the following sections.

Sites with habitat features

- C.4.17. The Applicant assessed the potential for AEoI for the following sites with habitat features:
- Humber Estuary SAC:
 - Sandbanks which are slightly covered by sea water all the time;
 - Estuaries;
 - Mudflats and sandflats not covered by seawater at low tide;
 - *Salicornia* and other annuals colonising mud and sand; Glasswort and other annuals colonising mud and sand; and
 - Atlantic salt meadows *Glauco-Pucci nellietalia maritimae*.
 - Humber Estuary Ramsar site:
 - Criterion 1 – natural wetland habitats that are of international importance.

Physical loss of habitat

- C.4.18. The Applicant's information to inform appropriate assessment for the physical loss of habitat and associated species is presented in section 4.3 of the sHRA [REP7-015] for the Proposed Development alone, and Table 36 (Humber Estuary SAC) and Table 38 (Ramsar) for in-combination effects [REP7-015].
- C.4.19. The Applicant assessed the potential for AEoI from the direct loss of intertidal habitat because of piling on the 'mudflats and sandflats not covered by seawater at low tide' SPA feature and Ramsar Criterion 1 (Table 7). The Proposed Development alone is estimated to result in the direct loss of 0.0021 ha of intertidal mudflat habitat [REP7-015].
- C.4.20. The Applicant's assessment puts this habitat loss in the context of the total footprint of the SAC/Ramsar (0.000006%) and the coverage of intertidal foreshore habitats (approximately 0.000024%) (paragraph 4.3.5). The Applicant concludes that the Proposed Development alone would have no AEoI on the intertidal mudflat and sandflat habitats of the sites on the basis that the loss in intertidal habitat due to marine piling is *de minimis* in extent, and considered ecologically inconsequential given the negligible contribution that a loss of this type and magnitude has for the overall structure and functioning of the wider intertidal habitat feature. No mitigation is proposed.
- C.4.21. NE did not support the Applicant's conclusion of no AEoI and requested further information to be provided in Table 7 of [APP-238]. NE argued (ID NE4 [RR-019][REP1-087][REP3-112]) that the loss of habitat would be small but appreciable and the assessment should provide detail on the biological communities and characteristic components (how the affected area contributes to the structure and function of the wider intertidal habitat feature) instead of relying on the relative size of the loss alone to rule out AEoI. The Applicant updated the sHRA [REP1-012][REP3-032] to provide further justification to support the conclusion in the context of the conservation objectives and associated targets. In light of these updates, NE considered this matter resolved at D4 [REP4-054].

- C.4.22. The Applicant also assessed the potential for AEoI from the direct loss of qualifying subtidal habitat due to piling on the 'estuaries' SPA qualifying feature and Ramsar Criterion 1 (Table 9). Marine piling in the subtidal area associated with the Proposed Development 'alone' is expected to result in the direct loss of up to 0.059 ha of seabed habitat (paragraph 4.3.21).
- C.4.23. Similarly to the loss of intertidal habitat, the Applicant's assessment concludes that the scale of predicted loss of subtidal habitat is considered inconsequential in the context of the amount of similar habitat in the region and as a proportion of the SAC/Ramsar. Again, no mitigation is proposed.
- C.4.24. NE disagreed with the Applicant's conclusion of no AEoI for the loss of subtidal habitat for the same reasons it disagreed with the loss of intertidal habitat (see NE4) (ID NE6 [\[RR-019\]](#)). The Applicant updated the sHRA [\[REP1-012\]](#) to provide further justification in terms of the conservation objectives (Table 9). In light of these updates, NE considered this matter resolved at D1 [\[REP1-087\]](#).
- C.4.25. However, NE had outstanding concerns regarding the in-combination assessment of physical loss of (or change to) habitat (ID NE36 [\[REP4-054\]](#)). NE advised that further information should be provided in the in-combination assessment regarding the pathway, in line with agreed updates to the assessment of impacts from the Proposed Development alone. For example, the in-combination assessment for intertidal habitat loss from IGET and IERRT relies on the justification that the losses are considered to be "de minimis changes in mudflat extent." However, as per the assessment of the Proposed Development alone, NE advised that further information regarding ecological impacts is required to determine a conclusion of no AEoI; that spatial extent alone is not sufficient enough to support a conclusion of no AEoI, and that other factors such as the ecological integrity, functioning and overall quality of the habitat that would be lost should be taken into account [\[REP4-054\]](#).
- C.4.26. The Applicant provided updates to the sHRA [\[REP4-014\]](#) and [\[REP5-021\]](#), adding information on the combination of residual effects of all relevant projects.
- C.4.27. At D5, NE [\[REP5-058\]](#) confirmed that based on the updated assessments provided by the Applicant to NE, it agrees with the conclusions of the in-combination assessment for physical loss of (or change to) habitat, subject to agreed updates to the sHRA.

Physical Damage through Disturbance and/or Smothering of Habitat

- C.4.28. Categorised as 'physical damage through disturbance and/ or smothering of habitat', the Applicant assessed the effects of the following pathways on qualifying habitat features:
- Changes to qualifying habitats as result of the removal of seabed material during capital dredging (affecting the estuaries feature);
 - Changes to qualifying habitats as result of sediment deposition during capital dredging (affecting the estuaries and mudflats and sandflats feature);
 - Changes to qualifying habitats as result of sediment deposition during capital dredge disposal (affecting the estuaries and sandbanks feature); and
 - Changes to qualifying habitats as result of the removal of seabed material during maintenance dredging (affecting the estuaries feature).
- C.4.29. During the Examination, there was some discussion over the language used to characterise the affected habitats. These assessments classify the benthic communities present at the dredge and dredge disposal sites as 'impoverished'

(e.g. paragraph 4.4.35 and 4.5.19 of [\[APP-238\]](#)). NE (ID NE12 [\[RR-019\]](#)) agreed that the disposal site is impoverished but disagreed with the Applicant's characterisation of the dredge site, stating that although the site is less diverse in nature, the intertidal and subtidal benthic communities at the IGET dredge site are of low to moderate ecological value.

- C.4.30. The Applicant provided further justification in [\[REP1-021\]](#), comparing the benthic communities within and near the dredge footprint to benthic data from the Immingham area and UK estuaries and coastal areas more widely. Following this information NE considered this matter resolved [\[REP1-087\]](#).
- C.4.31. Regarding the assessments of the removal of seabed material during maintenance dredging (fourth pathway listed above), the assessment concludes that there would be no AEoI on the basis that the maintenance dredge will not cause a change in habitat type (ie it will remain subtidal habitat with a similar substrate type), and that as maintenance dredging would occur infrequently, a comparable macrofaunal community to pre-dredge conditions would be expected to occur over much of the maintenance dredging area between maintenance dredging campaigns (Table 14) [\[APP-238\]](#).
- C.4.32. NE disagreed with the Applicant's conclusion of no AEoI (ID NE13 [\[RR-019\]](#)), requiring additional information relating to the frequency and location of the maintenance dredging. The Applicant provided further explanation in [\[REP1-021\]](#) on the frequency of the maintenance dredging campaigns and the total maintenance dredge area. In light of this information, NE considered this matter resolved at D1 [\[REP1-087\]](#).

Deposition of airborne pollutants

- C.4.33. The Applicant's assessment of the physical change to habitats resulting from the deposition of airborne pollutants is set out in section 4.7 of the sHRA for the Proposed Development alone, and section 4.15 for in-combination effects [\[REP7-015\]](#).
- C.4.34. The Applicant assessed the potential effects of emissions from docked marine vessels and landside plant during operation of the Proposed Development on the 'Salicornia etc' and 'Atlantic salt meadows' features. The assessment concluded that operational emissions would not lead to AEoI on designated habitats or undermine the conservation objectives of the Humber Estuary SAC. No mitigation for this impact pathway was proposed.
- C.4.35. The Applicant employed a 20 kg/ha/yr critical load to assess the air quality impacts on saltmarsh. NE (ID NE32 [\[RR-019\]](#) [\[REP3-112\]](#)) sought further clarification to determine whether the 20 kg/ha/yr critical load was the most appropriate. The Applicant provided further information in [\[REP1-021\]](#) and referred to the results of a saltmarsh survey in the Humber Estuary contained within an unpublished 2019 document ('Humber Estuary SSSI: NFEU Saltmarsh Surveys 2018') provided by NE to show that the saltmarsh habitat present is nitrogen-tolerant, and the use of a higher critical load is appropriate. Paragraph 4.7.19 of the sHRA was updated in [\[REP3-032\]](#) to include the additional information. In light of this, NE considered this matter resolved at D3 [\[REP3-112\]](#).
- C.4.36. NE (ID NE33/NE33A [\[RR-019\]](#) [\[REP3-112\]](#)) also requested that further justification be provided to clarify how the assumptions used in the operational vessel assessment were representative of the worst-case scenario. The Applicant

explained in [REP1-021] [REP3-052] that the 292 vessels used in the modelling is a maximum number of vessel calls to the jetty per year and considers a number of factors, including the likely size of vessels accessing the jetty, tidal constraints for access to the berth and the amount of time a vessel is expected to be on berth to offload cargo. NE considered this matter resolved in [REP4-054] but sought to confirm the requirement to secure the maximum number of vessel movements in the dDCO (ID NE33B [REP1-087]). The Applicant [REP3-052] [REP5-050] argued that it is not necessary to impose such a restriction in order to determine the robustness of the sHRA. NE stated in [REP5-058] [REP6-030] a preference for the Applicant to provide a Vessel Management and Monitoring Plan to ensure that vessel movements remain within the assessed limits. At ISH8 [EV11-002] the ExA asked the Applicant to explain how the number of vessel movements would be monitored should the maximum number be reached. The Applicant responded verbally and clarified at [REP5-051] that in order for usage of the jetty to approach the levels used for the purposes of assessment, further infrastructure would be required on land to facilitate these imports or exports and these would require additional consents (either by NELC or the SoS), at which stage the number of vessel calls would be a material consideration for the decision maker to take into account.

- C.4.37. NE raised several additional overarching comments (ID NE34 [RR-019]) on the assessment of air quality impacts. Following the submission of a Technical Note [REP6-024] by the Applicant, NE agreed that their outstanding comments regarding the source apportionment of site and vessel emissions to the Proposed Development's pollutant contributions and flare stack modelling had been addressed [REP6-030]. NE considered this matter resolved at D6.

Biological disturbance due to potential introduction and spread of non-native species

- C.4.38. The Applicant has assessed the potential effects of the introduction and spread of non-native species during construction and operation of the Proposed Development in section 4.12 of the sHRA [REP7-015].
- C.4.39. The assessment concluded that the probability of the introduction and spread of non-native species during the construction and operational phase is low and predicted effects are not considered to compromise any of the conservation objectives or have the potential for AEOL on qualifying interest features of the Humber Estuary SAC and Ramsar.
- C.4.40. No additional mitigation measures are proposed, however the Applicant [REP7-015] concluded that standard best practice measures in the form of ABP's biosecurity management procedures will be followed during construction and operation. Biosecurity control measures during construction are proposed to be included in the oCEMP [REP4-008].
- C.4.41. NE agreed (ID NE29 [RR-019] [REP1-087] [REP3-112] [REP5-058]) with the conclusion of no AEOL from the potential introduction and spread of non-native species during operation, subject to securing the implementation of ABP's existing biosecurity management procedures but encouraged an overall biosecurity management plan for the operational facility be produced.
- C.4.42. The Applicant argues [REP1-012] [REP5-050] that its existing biosecurity management procedures will apply to the operational facility.

- C.4.43. On the basis of the above information, the ExA is satisfied that this LSE pathway will not result in AEoI to the Humber Estuary SAC and Ramsar site from the Proposed Development alone.
- C.4.44. The SoS should note that the Applicant submitted a ‘without prejudice’ derogation case with its application [APP-235]. This was due to a lack of agreement with NE on the conclusion of no AEoI during the pre-application stage, which related specifically to the permanent loss of intertidal habitat associated with IGET. This proposed compensatory measures which comprised intertidal mudflat to be allocated at the Outstrays to Skeffling managed realignment site (OtSMRS), which has been designed specifically as compensatory habitat for port related infrastructure development within the Humber estuary and is currently undergoing construction.
- C.4.45. As the ExA concludes that there are no AEoI on the sites assessed, a derogations case is not proposed in this report. Nevertheless, the Applicant’s information to inform a derogation was examined by the ExA during the Examination. An account of this is set out in the RIES [PD-018] should the SoS as competent authority conclude differently.

Sites with marine mammal and fish qualifying features

- C.4.46. The Applicant assessed the potential for AEoI for the following sites with marine mammal and fish features:
- Humber Estuary SAC:
 - Sea lamprey *Petromyzon marinus*;
 - River lamprey *Lampetra fluviatilis*;
 - Grey seal *Halichoerus grypus*.
 - Humber Estuary Ramsar site:
 - Criterion 3 – supports populations of plants and/or animal species of international importance: grey seal *Halichoerus grypus*.
 - Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/or migration path: river lamprey *Lampetra fluviatilis* and sea lamprey *Petromyzon marinus*.
 - The Wash and North Norfolk Coast
 - Harbour seal *Phoca vitulina*.

Underwater noise and vibration

- C.4.47. The potential effects from disturbance through underwater noise and vibration during piling are assessed in section 4.11 of the sHRA for the Proposed Development alone, on qualifying species of fish (sea and river lamprey) and seals [REP7-015]. The Applicant proposed various mitigation measures comprising soft start, vibro piling, seasonal restrictions, nighttime restrictions, and marine mammal observer (see paragraph 4.11.44).
- C.4.48. With respect to effects on qualifying fish species, NE advised (ID NE25 [RR-019]) that the night-time restrictions that had been applied to percussive piling should be extended to include vibro-piling, to mitigate impacts to migratory lamprey. The Applicant amended Section 4.11.43 of and Table 30 of the sHRA [REP1-012] to include this additional mitigation and updated the DML to secure this change (Part 2, Condition 16(9) in the dDCO [REP4-004]). Following these updates, NE considered this matter resolved at D1 [REP1-087].
- C.4.49. For grey seals, the assessment concludes that underwater noise might cause some temporary changes to the movement patterns of foraging seals with avoidance

responses and intermittent barrier effects during marine piling operations, therefore short-term changes in the local distribution of grey seals could occur but no permanent changes in the overall distribution of grey seals in the region will occur. In terms of potential injury or lethal effects, the sHRA [\[REP7-015\]](#) concludes that these would be expected to be restricted to a very localised area in the direct vicinity of marine piling operations and that with proposed mitigation in place, the potential for injury effects is considered to be limited.

- C.4.50. NE expressed (ID NE23 [\[RR-019\]](#)[\[REP1-012\]](#)[\[REP5-058\]](#)) a preference for the underwater noise pathways (injury and behavioural disturbance) to be assessed separately, and for a project-specific Marine Mammal Mitigation Protocol (MMMP) to be created, to capture the proposed mitigation measures in a standalone document (as some mitigation measures are not standard, such as ceasing piling if marine mammals are observed in the mitigation zone).
- C.4.51. The Applicant argued that underwater noise effects on marine mammals are considered under one impact pathway within the sHRA (paragraphs 4.11.6 to 4.11.13, 4.11.29 to 4.11.42) [\[APP-238\]](#), but that both injury and behavioural responses are considered, and that mitigation is captured in the outline Construction Environmental Management Plan (CEMP) and Deemed Marine Licence (DML), so the Applicant doesn't see the need for a project-specific plan.
- C.4.52. NE [\[REP5-058\]](#) remains of the opinion that the production of an MMMP would be useful, however, it concedes this would not result in a material difference to the assessment outcome. A piling protocol was agreed between the Applicant and the MMO that included details of the overall time commitments and a reporting schedule; this was included in the DML at Schedule 3 of the dDCO [\[REP7-004\]](#).
- C.4.53. The assessment of in-combination effects is presented in Table 36 of the sHRA [\[REP7-015\]](#). The Applicant identified eight projects with the potential to interact cumulatively with the Proposed Development in the context of noise and vibration effects.
- C.4.54. Raising concerns with the Applicant's in combination assessment, NE:
- considered that the screening distance used to establish the zone of influence for the in-combination assessment of effects from underwater noise on marine mammals was smaller than they would normally advise for marine mammals and advised that the assessment should cover all projects that could contribute to in-combination effects within the boundary of the Humber Estuary SAC (ID NE37 [\[RR-019\]](#)).
 - disagreed with the Applicant's conclusion of no AEoI from cumulative underwater noise disturbance and barrier effects, requesting further detail on the nature of the combined impact from the Proposed Development (piling, dredging, and dredge disposal combined) in combination with all other cumulative projects) to demonstrate the worst case for disturbance and barrier effects to justify the conclusion (ID NE38 [\[RR-019\]](#)[\[REP1-087\]](#)[\[REP3-112\]](#)[\[REP4-054\]](#)).
 - considered that the mitigation proposed was aimed at limiting injury and would have limited benefit to reducing barrier effects/ disturbance, and therefore cannot be relied upon to conclude no AEoI for disturbance impacts (ID NE38 [\[RR-019\]](#)).
- C.4.55. The Applicant responded to these concerns at D1 [\[REP1-021\]](#) and provided additional information on the combined impact of several relevant projects (due to

dredging or piling) in Tables 35 and 37 of the sHRA, including quantification of the worst-case combined impact piling scenario for IERRT and IGET [REP3-033] [REP5-021]. This supported the Applicant's position that any disturbance and barrier to grey seal movements caused by the noise would be temporary. [REP1-021] provided further justification for the zone of influence applied, based on the propagation of sound and physical constraints in the project location. In light of this explanation, NE was satisfied with the screening distance used in this context [REP1-087].

- C.4.56. The Applicant considers that proposed mitigation measures for underwater noise will limit the risk of exposure and reduce the residual impact of the Proposed Development to minor adverse; given that other projects involving piling (IEERT, Humber International Terminal Berth 2, Able Marine Energy Park ("AMEP"), and North Killingholme Power Project) will require similar mitigation (such as soft-start procedures, timing restrictions to avoid sensitive periods for migratory fish and the use of marine mammal observers) the Applicant concludes on this basis that there won't be an in-combination effect.
- C.4.57. NE [REP5-058] maintain that more detail should be provided on the nature of the combined effects for all the projects together, and that the Applicant should confirm whether any of the piling campaigns are scheduled to occur simultaneously in a month/year and to assess what the combined effects will be. By the close of the Examination, NE considered that despite the methodological limitation to the Applicant's assessment, based on the additional information provided, that cumulative underwater noise disturbance and barrier effects to seal will not have an AEol of any European site, alone or in-combination.
- C.4.58. The ExA is satisfied that, subject to the delivery of the mitigation measures described in the sHRA, AEol from the Proposed Development can be excluded, both alone and in combination with other plans or projects on all marine mammal and migratory fish SAC and Ramsar features.

Sites with coastal waterbird qualifying species

- C.4.59. The Applicant assessed the potential for AEol for the following sites with coastal waterbird qualifying features:
- Humber Estuary SPA
 - Common Shelduck (Non-breeding) *Tadorna tadorna*
 - Red Knot (Non-breeding) *Calidris canutus*
 - Bar-tailed Godwit (Non-breeding) *Limosa lapponica*
 - Black-tailed Godwit *Limosa limosa islandica* (Non-breeding)
 - Dunlin *Calidris alpina alpina* (Non-breeding)
 - Common Redshank *Tringa totanus* (Non-breeding)
 - Waterbird assemblage
 - Humber Estuary Ramsar site
 - Criterion 5 – Bird Assemblages of International Importance;
 - Criterion 6 – Bird Species/ Populations Occurring at Levels of International Importance.

Airborne noise and visual disturbance during construction

- C.4.60. The Applicant assessed the potential effects of airborne noise and visual disturbance during construction (including capital dredging) on qualifying species of waterbirds (for the Proposed Development alone) in section 4.10 of the sHRA. This

pathway applied to the shelduck, dunlin, black-tailed godwit, redshank and relevant waterbird assemblage species (specifically turnstone, teal, oystercatcher and curlew) features of the SPA and Ramsar site.

- C.4.61. To inform the assessment of disturbance responses, the Applicant refers to research into the distances from activities that evoke a disturbance response (or flight initiation distance “FID”). The Applicant considers these suggest that for most coastal works and other foreshore activity in areas where birds are likely to be habituated to some extent to disturbance due to existing anthropogenic activity, disturbance behaviour is not typically observed when activities occur more than some 200m away from a source with the reactions of many species occurring between 20 and 100m (paragraph 4.10.6).
- C.4.62. In order to reduce the level of impact associated with noise and visual disturbance during construction the Applicant proposes a series of mitigation measures to be implemented (paragraph 4.10.31) and these are detailed in the final oCEMP [\[REP7-011\]](#) These comprise:
- winter construction restriction from 1 October to 31 March;
 - noise suppression system;
 - soft starts; and
 - cold weather construction restriction.
- C.4.63. NE raised a series of concerns with the Applicant’s assessment.
- C.4.64. NE (ID NE 19/19A [\[RR-019\]](#)[\[REP3-112\]](#))) recommended that relevant bird survey results be collated and presented by month to demonstrate the pattern of usage across the year. Table 1 of Annex A.1 sHRA [\[REP1-012\]](#) was updated by the Applicant to present survey results by month.
- C.4.65. NE (ID NE 19/19B [\[RR-019\]](#)[\[REP3-112\]](#))) advised that the information to inform the appropriate assessment should provide further consideration of the potential impacts on black-tailed godwit and turnstone, as these species are identified in the sHRA to have been recorded in numbers over 1% of the estuary population in the area of intertidal mudflat between Immingham Oil Terminal (IOT) and the North Beck Drain affected by the Proposed Development. NE was concerned about roosting areas in particular being affected.
- C.4.66. The Applicant [\[REP1-021\]](#) referred to paragraph 1.4.28, Figure A-7 and Table A-8 of Appendix A of the sHRA [\[APP-238\]](#) to explain that the foreshore between the IOT Jetty and the mudflat fronting North Beck Drain is only known to typically support very low numbers of SPA species roosting. The only species known to roost in this area in numbers exceeding 1% of estuary-wide populations is turnstone. Based on the information provided by the Applicant, NE [\[REP3-112\]](#) agreed that this matter in relation to the location of roosting areas for black-tailed godwit and turnstone had been addressed.
- C.4.67. NE (ID NE 19/19C and 21/21A [\[RR-019\]](#)[\[REP3-112\]](#)) considered that the ambient noise levels used to establish the baseline in the assessment included data from a measurement location that is not representative of ambient noise levels in the relevant areas of the Humber Estuary for the Proposed Development. NE advised that noise levels are monitored at an additional location in closer proximity to the proposed works. The Applicant undertook additional project-specific ambient noise measurements within the Order limits and updated paragraph 4.10.23 of the sHRA [\[REP3-032\]](#) to include the project-specific background noise levels. In light of the

additional noise level measurements provided in the sHRA [REP3-032], NE considered this matter resolved and no further revisions to the assessment were required [REP4-054].

- C.4.68. NE (ID NE 19/19D [RR-019][REP3-112]) acknowledged that the 200m potential noise disturbance distance is generally an acceptable disturbance distance in the port environment context, however it did not consider it to be a precautionary approach to noise disturbance distances for piling activity, and advised that the noise disturbance zone should be larger, such as 300m from a noise source.
- C.4.69. The Applicant [REP1-021] explained that the assessment of piling effects for the Proposed Development was specifically undertaken in the context of background noise levels in the Port of Immingham area, where noise levels in the range of 55 to 70dB are known to regularly occur on a daily basis. The Applicant [REP1-021] considered that local waterbird populations are therefore subjected to noise levels of between 55dB and 70dB repeatedly, with observations from ongoing ornithology surveys in the area suggesting that birds continue to feed in important numbers on the mudflats and are habituated to noise at these levels. In addition to known habituation of bird species to existing port-related activity and noise, the Applicant [REP1-021] argued that that construction restrictions based on a 200m zone rather than 300m zone are proportionate, given the proposed winter marine construction restriction and noise suppression system.
- C.4.70. NE [REP3-112] acknowledged that the use of a 200m disturbance buffer may be suitable in this instance as part of the suite of construction disturbance mitigation measures. However, NE [REP3-112] requested that the Applicant provide further information relating to how the buffer distance will be implemented and monitored to ensure that the proposed suite of mitigation measures are effective.
- C.4.71. Following discussions with NE [REP4-054], the Applicant updated the sHRA [REP4-014] (paragraph 4.10.31) with agreed wording to ensure the approach is sufficiently precautionary, explaining the detail of how this mitigation measure would be implemented and controlled.
- C.4.72. NE (ID NE19/19E [RR-019][REP3-112]) advised that the behavioural studies cited in the ES should not be relied upon in the assessment of potential impacts on SPA birds from disturbance events and the assessment should consider sub-dispersive responses in more detail. However, NE [REP3-112][REP4-054][REP5-058] agreed that the impact of sub-dispersive responses would be adequately minimised through the provision of suitable mitigation measures, and therefore do not object to the conclusion on no AEol.
- C.4.73. The Applicant [REP5-050] argued the evidence collated to inform the HRA is robust and includes a wide range of literature. The Applicant [REP5-050] also notes that sub-dispersive responses (without mitigation) were considered in detail in paragraph 4.10.27 of the sHRA [REP4-014] and both dispersive and sub-dispersive responses would be very limited with the implementation of the proposed mitigation.
- C.4.74. NE (ID NE19/19F [RR-019][REP3-112]) advised that potential limitations for birds to relocate within the surrounding area due to development pressures in the area and limited availability of alternative feeding sites should be considered in the assessment. The Applicant [REP1-021] provided additional information to show that extensive areas of mudflat would be available and explained why potential effects on alternative feeding sites are predicted to be limited. In light of the additional

information provided by the Applicant [REP1-021], NE considered this matter resolved [REP3-112].

C.4.75. NE (ID NE19/19G and ID NE35 [RR-019][REP3-112]) requested that the Applicant clarify whether the noise assessment includes the combined effects of noise from terrestrial and marine works. The Applicant [REP1-021] explained that combined effects resulting from terrestrial and marine piling could occur, however due to the distance of the terrestrial piling to the foreshore, combined effects are predicted to be negligible, and are not considered to compromise any of the conservation objectives. Paragraph 4.13.7 of the updated sHRA [REP1-012] was revised to include this information (4.14.7 in the latest iteration [REP7-015]). Following these updates, NE considered this matter resolved [REP3-112].

C.4.76. Raising concerns relating the proposed measures to mitigation for disturbance effects to birds, NE:

- advised that the marine construction works should be programmed so that the most disturbing works are carried out in the summer and early autumn, with works that are less disturbing to the SPA birds taking place during the coldest months (ID NE20 [RR-019]).
- explained that although soft start piling may reduce the 'startle effect' on birds, there is no robust evidence to suggest that it prevents disturbance caused by the noise and it is not generally used as a mitigation measure to reduce the impacts on SPA waterbirds (ID NE21/21B [RR-019][REP3-112]).
- raised concerns about how the winter marine construction restriction would be implemented (how the Applicant will ensure that there is sufficient distance between the piling site and exposed mudflat foraging habitat when piling starts) and recommended the use of Global Positioning System (GPS) or markers to identify the location of piles and therefore distance from the foreshore (ID NE21/21C [RR-019][REP3-112]).
- advised that that the cold weather restrictions should apply to all marine construction works, not just those located within 200m of the exposed intertidal foreshore (ID NE21/21D [RR-019][REP3-112]).
- recommended that the cold weather construction restriction should be triggered by data from local weather stations and be implemented after three days of consecutive freezing weather conditions (noting however that this would not have a material effect on the outcome of the assessment) (ID NE21/21E [RR-019][REP3-112] [REP4-054][REP5-058]).
- recommended the use of a suitably qualified Ecological Clerk of Works (ECoW) during the construction period (ID NE21/21F/NE42 [RR-019][REP3-112][REP5-050]).

C.4.77. In response to these concerns, the Applicant:

- explained that the construction programme has been designed around the proposed mitigation measures, a winter marine construction restriction will be put in place between 1 October and 31 March (for the approach jetty) to ensure that disturbing activities including piling, as well as all other construction activity on or near the foreshore will not take place during the winter months [REP1-021]. Paragraph 4.10.30 of the sHRA [REP1-012] was amended to extend the winter restriction to works taking place on the sea wall and landside jetty ramp instead of solely the approach jetty. The Applicant [REP5-050] confirmed that the most potentially disturbing construction works (including piling) within 200m of the mean low water springs (MLWS) mark will be avoided between October and March inclusive. Following these commitments, NE [REP6-030] agreed that

potential impacts will be adequately minimised through the provision of suitable mitigation measures.

- provided justification for the use of soft starts as part of an overall mitigation strategy rather than one of the primary mitigation measures in place, such as the winter construction restriction [REP1-021][REP5-050]. NE [REP3-112][REP4-054][REP5-058] maintain their position that soft start piling does not provide effective additional mitigation for disturbance to birds, but agree that potential impacts will be adequately minimised through the provision of other suitable mitigation measures.
- updated the sHRA [REP4-014] with the commitment to use a digital GPS boundary to control restriction distances, specified in Table 7 of the oCEMP [REP7-011]. Following this update, NE considered this matter resolved [REP4-054].
- argued that it would not be necessary to stop all marine construction activity as part of the cold weather construction restriction as a lot of the work would be located well outside the zone of potential disturbance effects [REP1-021]. However, the sHRA [REP1-012] was updated for the winter construction restriction to include the sea wall and landside jetty ramp. In their responses, NE [REP3-112][REP4-054] [REP5-058] recommend that a more precautionary 300m buffer distance should be used during very severe weather, but do not consider this will have a material effect on the outcome of the assessment. The Applicant [REP5-050] remains of the opinion that the proposed package of mitigation measures would mitigate noise and visual disturbance impacts on SPA birds during construction to a level that would not be considered AEol.
- confirmed that the cold weather construction restriction would be based on records from a local weather station (specified in Table 7 of the oCEMP [REP7-011]) but considered that 7 days of freezing temperatures is an appropriate trigger, citing JNCC guidance [REP1-021] [REP5-050].
- updated the sHRA [REP3-032] to confirm that an ECoW would be present on site during the construction period to ensure that agreed mitigation measures are adhered to (secured in Table 7 of the oCEMP [REP7-011]). In their responses, NE [REP3-112][REP4-054][REP5-058][REP6-030] welcomed the commitment but recommended that further details should be provided regarding the role of the ECoW, such as how they will monitor and implement any required measures.

C.4.78. The assessment of noise and visual disturbance effects in-combination with other plans and projects is presented in Table 37 of the sHRA [REP7-015]. This assessment identifies the potential for cumulative disturbance effects to occur with all nine projects considered. It concludes that given the proposed winter restriction on construction in place for the Proposed Development and other nearby proposals (Stallingborough 3 flood risk management scheme and IERRT), and the alternative feeding sites available within the Humber Estuary area, there is no potential for AEol on qualifying interest features.

C.4.79. NE (ID NE39 [RR-019]) advised that the in-combination assessment should provide more detail and consider whether construction works, and piling works in particular, could be carried out at the same/ similar time as works associated with other relevant projects in the area, including IERRT.

C.4.80. The sHRA [REP3-032] was updated to include additional justification on the temporal interaction of the other projects to support the conclusion of AEol. Following these updates, NE considered this matter resolved [REP4-054].

Airborne noise and visual disturbance during operation

- C.4.81. The potential effects of airborne noise and visual disturbance during operation on qualifying species of waterbirds (for the Proposed Development alone) are assessed in section 4.10 of the sHRA. As above, this pathway applied to the shelduck, dunlin, black-tailed godwit, redshank and relevant waterbird assemblage species (specifically turnstone, teal, oystercatcher and curlew) features of the SPA and Ramsar site.
- C.4.82. The main disturbance stimuli assessed are operational vessel movements and berthing operations, including movement of vehicles on the approach jetty near the intertidal. The Applicant concludes no AEoI on the basis that mild and infrequent disturbance occurring could cause some limited (localised and temporary) displacement of coastal waterbirds around berthing infrastructure, but it is expected that birds will become habituated relatively quickly which will limit any longer-term disturbance responses. No mitigation is proposed.
- C.4.83. NE (ID NE22 [\[RR-019\]](#)) advised that further assessment was required regarding areas used for roosting by turnstone and black-tailed godwit, and whether any waterbirds had been recorded using the area of berthing activities and may be affected by vessels. NE also requested that the Applicant provide clarifications regarding the disturbance terminology used in ES Chapter 10 [\[APP-052\]](#) to inform the sHRA [\[APP-238\]](#), and the estimated increase in vessel traffic compared to the current baseline.
- C.4.84. The Applicant [\[REP1-021\]](#) provided additional information regarding roosting, feeding and loafing birds on the intertidal area as well as information relating to diving birds offshore around vessel berths. This information was added to Table 28 of the updated sHRA [\[REP1-021\]](#). This explains that:
- no established roosts which are considered important even on a local scale would be impacted as a result of potential disturbance during operation;
 - very low numbers of teal and shelduck are occasionally recorded floating on the water near the foreshore and potential operational effects would be anticipated to be negligible;
 - no SPA assemblage species of diving bird (such as diving ducks) were screened into the sHRA (Table 2) on basis that they are considered to be absent/only occur very rarely within the vicinity of the jetty (including diving bird species such goldeneye and scaup).
- C.4.85. In light of the additional information provided by the Applicant, NE agreed that this point in relation to effects of noise and visual disturbance during operation has been addressed [\[REP1-087\]](#).

Changes to waterbird foraging and roosting habitat as a result of the presence of marine infrastructure during operation on qualifying species

- C.4.86. The potential effects on the qualifying features of the Humber Estuary SPA and Ramsar due to changes to waterbird foraging and roosting habitat as a result of the presence of marine infrastructure during operation of the Proposed Development is set out in paragraphs 4.3.27 to 4.3.37 of the sHRA [\[REP7-015\]](#). This pathway applied to the shelduck, dunlin, black-tailed godwit, redshank and relevant waterbird assemblage species (specifically turnstone) features of the SPA and Ramsar site.

- C.4.87. The assessment concluded that the presence of marine infrastructure during operation is unlikely to change the overall distribution of the waterbird assemblage and the potential effects on qualifying species is expected to be limited and highly localised [REP7-015]. The assessment concluded that there is no potential for AEol on qualifying features as a result of this pathway and no additional mitigation measures have been proposed.
- C.4.88. NE (ID NE8 [RR-019]), disagreed with the Applicant's conclusion of no AEol, noting that survey results indicate turnstone and black-tailed godwit used the area for roosting and feeding and requested further information on the locations of the roosts and whether the function of these areas as roost sites will be affected by the development.
- C.4.89. The Applicant provided further explanation in [REP1-021] and Table 10 of the sHRA [REP1-012]. In light of these updates, NE considered this matter resolved at D1 [REP1-087].
- C.4.90. The ExA is satisfied that, subject to the delivery of the mitigation measures described in the sHRA, AEol from the Proposed Development can be excluded, both alone and in combination with other plans or projects on all coastal waterbird SPA and Ramsar features.

C.5. HRA CONCLUSIONS

- C.5.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoS.
- C.5.2. Five European Sites and their qualifying features were considered in the Applicant's assessment of LSE (Humber Estuary SAC, SPA and Ramsar site, The Wash and North Norfolk Coast SAC, and the Greater Wash SPA). LSE were identified for four of these sites (all bar the Greater Wash SPA) both from the Proposed Development alone and in-combination with other plans or projects.
- C.5.3. The methodology and outcomes of the Applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSE were identified were not disputed by any IP. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- C.5.4. The ExA's findings are that, subject to the mitigation measures to be secured in the dDCO, AEol on the Wash and North Norfolk Coast and the three Humber Estuary sites from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.
- C.5.5. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment to fulfil their duty under the requirements of the Habitats Regulations.
- C.5.6. As the ExA concludes that there are no AEol on the sites assessed, a derogations case is not proposed in this report. Should the SoS disagree with the Applicant's conclusion and the ExA's recommendation, the Applicant has provided a 'without

prejudice' derogation case with its application [[APP-235](#)]. The Applicant's case for no alternative solutions, imperative reasons of overriding public interest, and compensatory measures were examined by the ExA and the substance of this is set out comprehensively in the RIES for reference [[PD-018](#)].

APPENDIX D: THE RECOMMENDED DCO

2021 No.

INFRASTRUCTURE PLANNING

**The Associated British Ports (Immingham Green Energy
Terminal) 202***

Made - - - - ***
Laid before Parliament ***
Coming into force ***

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (the “2008 Act”) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an order granting development consent.

The application has been examined by a panel of 5 members (“the Panel”), pursuant to Chapter 2 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

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

The Secretary of State has considered the representations made and not withdrawn and the report and recommendation of the Panel, taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(d) and, as a National Policy Statement has effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).
(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, S.I. 2019/734, 2020/1534, 2021/978 and 2022/634; modified by S.I. 2012/1659.
(c) S.I. 2010/103, amended by S.I. 2012/635.
(d) S.I. 2017/572, amended by S.I. 2017/1012, S.I. 2018/695, S.I. 2018/834, S.I. 2018/942, S.I. 2018/1232, S.I. 2020/764, S.I. 2020/904 and S.I. 2020/1534.

The Secretary of State has decided to make an order granting development consent for the development described in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

Accordingly, the Secretary of State, in exercise of the powers in sections 114(a), 115(b), 120(c) and 122(d) of, and paragraphs 1-4, 6, 10-17, 20, 22, 26, 30A, 30B, 32-33, 36 and 37 of Schedule 5 to, the 2008 Act, makes the following Order.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Associated British Ports (Immingham Green Energy Terminal) Order 202[●] and comes into force on [●].

Interpretation

- 2.—(1) In this Order, unless the context requires otherwise—
- “the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(e);
 - “the 1961 Act” means the Land Compensation Act 1961(f);
 - “the 1965 Act” means the Compulsory Purchase Act 1965(g);
 - “the 1967 Act” means the Forestry Act 1967 (h);
 - “the 1980 Act” means the Highways Act 1980(i);
 - “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(j);
 - “the 1984 Act” means the Road Traffic Regulation Act 1984 (k);
 - “the 1990 Act” means the Town and Country Planning Act 1990 (l);
 - “the 1991 Act” means the New Roads and Street Works Act 1991(m);
 - “the 2008 Act” means the Planning Act 2008(n);
 - “the 2009 Act” means the Marine and Coastal Access Act 2009(o);
 - “the 2010 Regulations” means the Community Infrastructure Levy Regulations(p)
 - “the 2017 Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(q).

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- (a) 2008 c. 29. Section 114, was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (b) 2008 c. 29. Section 115, was amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
 - (c) 2008 c. 29. Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act.
 - (d) 2008 c. 29. Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (e) 1847 c. 27.
 - (f) 1961 c. 33.
 - (g) 1965 c. 56.
 - (h) 1967 c. 10.
 - (i) 1980 c. 66.
 - (j) 1981 c. 66.
 - (k) 1984 c. 27.
 - (l) 1990 c. 8.
 - (m) 1991 c. 22.
 - (n) 2008 c. 29.
 - (o) 2009 c. 23.
 - (p) S.I. 2010/948 Regulation 6 was amended by SI 2011/987.
 - (q) S.I. 2017/572.

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order and which are not development within the meaning of section 32 (meaning of development) of the 2008 Act;

“Air Products” means Air Products (BR) Limited with company number 2532156 and registered at Hershams Place Technology Park, Molesey Road, Walton on Thames, Surrey KT12 4RZ or such other person as the Secretary of State agrees;

“apparatus” has the same meaning as in Part 3 of the 1991 Act except that, unless otherwise provided, it further includes pipelines, aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment (including masts and cables), electricity cabinets and any pipe sleeves, ducts and culverts in which any apparatus is lodged;

“area of jurisdiction” means so far as it falls within the UK marine area, the area extending to a distance of 186 metres in every direction from any part of Work No. 1;

“area of seaward construction activity” means the area of the sea within the Order limits;

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

“authorised project” means the authorised development and the ancillary works;

“the Board” means the North East Lindsey Drainage Board;

“the book of reference” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the book of reference for the purposes of this Order;

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

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

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

“the Company” means Associated British Ports with company number ZC000195 and registered at 25 Bedford Street, London, WC2E 9ES;

“construct” includes execution, placing, altering, replacing, relaying and removal and “construction is to be construed accordingly;

“the deemed marine licence” means the marine licence granted by article 47 (deemed marine licence);

“the dock master” means the dock master for the Port of Immingham statutory harbour authority area;

“electronic transmission” means a communication transmitted by means of an electronic communications network or by other means provided it is in electronic form;

“existing early works planning permission” means the planning permission granted by the relevant planning authority on [●](b) with reference number [●] and any amendments or variations made or granted in respect of it pursuant to section 96A, section 73, section 73A or section 73B of the 1990 Act;

“the environmental statement” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the environmental statement for the purposes of this Order;

“the harbour master” means the harbour master for the Statutory Conservancy and Navigation Authority;

(a) 1971 c. 80.

(b) [Note to the Examining Authority: the applications for the existing early works planning permissions have been made but not yet granted by NELC. The Applicant will update the Examining Authority and Secretary of State with the relevant dates once these are granted, so the draft Order contains the relevant details before it is made.]

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

“the land plans” means the plans of that name identified in the table at Schedule 15 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“the level of high water” means the level of mean high-water springs;

“Long Strip” means the area shown edged blue and labelled “Tree Preservation Order” on the plan of potentially affected hedgerows and trees subject to preservation orders;

“maintain” includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain is to be construed accordingly”;

“the MMO” means the Marine Management Organisation;

“new early works planning permission” means any planning permission granted under the 1990 Act prior to service of notice under article 55(3) for works also comprised in Work No. 2, Work No. 3, Work No 5 or Work No. 7 (including any further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers) or any part of them, and any amendments or variations made or granted in respect of such planning permission pursuant to section 96A, section 73, section 73A or section 73B of the 1990 Act, except an existing early works planning permission;

“the Order land” means the land shown shaded pink, blue, green and purple and shown shaded and hatched blue (in each case) on the land plans and described in the book of reference;

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

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

“the plan of potentially affected hedgerows and trees subject to preservation orders” means the plan of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the plan of potentially affected hedgerows and trees subject to preservation orders for the purposes of this Order;

“the Port of Immingham” means the statutory port estate including the Port of Immingham statutory harbour authority area;

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

“the requirements” means the requirements listed in Schedule 2 (requirements), and any reference to a numbered requirement is to be construed accordingly;

“the River Humber” means the tidal estuary from its mouth at the Spurn Peninsula to its confluence with the rivers Ouse and Trent;

“sea” has the same meaning as that given at section 42(3) (UK marine area) of the 2009 Act;

“the Statutory Conservancy and Navigation Authority” means the statutory conservancy and navigation authority for the River Humber (as successor to the Conservancy Commissioners established under the Humber Conservancy Act 1868) and including in its role as competent harbour authority and local lighthouse authority for its statutory area;

“statutory harbour authority” means the Company in its capacity as the local lighthouse authority and as the statutory harbour authority for the Port of Immingham including that part of the estuary of the River Humber immediately adjacent to that port;

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

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

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning Compensation Act 1991 (c. 34). There are other amendments to section 7 but none are relevant to this Order.

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

“street works” means the works listed in article 7 (street works);

“stopping up and restriction of use of streets and public rights of way plan” means the plan of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the stopping up and restriction of use of streets and public rights of way plan for the purposes of this Order;

“street works and accesses plan” means the plan of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the street works and accesses plan for the purposes of this Order;

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

“tidal works” means so much of the authorised project as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

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

“the UK marine area” has the meaning given to it in section 42 (the UK marine area) of the 2009 Act;

“the undertaker” means, subject to article 46 (benefit of the Order)—

(a) the Company;

(b) Air Products in respect of the following provisions—

(i) article 19 (authority to survey and investigate the land);

(ii) article 20 (protective works);

(iii) article 31 (temporary use of land for constructing the authorised project);

(iv) article 32 (temporary use of land for maintaining the authorised project),

so far as they relate to the land shown as plots 3/2, 4/5, 4/7, 4/8, 4/9, 4/16, 4/17, 4/18, 4/19, 4/20, 4/21, 4/22, 4/23, 4/26, 4/28, 4/29, 4/30, 4/32, 5/3, 5/4, 5/7, 5/8, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/18, 5/20, 5/22, 5/23, 5/24, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/33, 5/36, 5/37, 5/38, 5/39, 5/45, 6/6, 6/14, 6/15, 6/16, 6/18, 6/19, 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10, 7/11, 7/12, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 and 7/23 on the land plans and described in the book of reference and (where applicable on the terms of those provisions) land outside the Order limits except (in each aforementioned case) in respect of any interests of the Company; and

(c) any person who has the benefit of the Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act;

“vessel” means every description of vessel, however propelled or moved, and includes a displacement and non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over in water and which is at the time in, on, or over water;

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

“the works plans” means the plans of that name identified in the table at Schedule 15 (documents and plans to be certified) and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(a) 1991 c. 22. See section 49, as amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c. 7).

(b) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act, and amended by section 1(6) of, and paragraph 95(2) and (3) of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and S.I. 2001/1400. There are other amendments to section 121A which are not relevant to this Order.

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

(3) All measurements of distances, directions, lengths and volumes referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised project and shown on the works plans are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised project as numbered in Part 1 of Schedule 1 (authorised project) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule.

(5) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(6) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the plan to which the reference applies.

(7) In this Order, the expression “includes” is to be construed without limitation.

(8) In this Order, references to any statutory body include that body’s successor bodies.

Disapplication of legislative provisions

3.—(1) The following provisions do not apply in relation to activities carried out for the purpose of, or in connection with, the construction, maintenance, use or decommissioning of the authorised project—

- (a) Section 23 (prohibition on obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);
- (b) The provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(b);
- (c) The provisions of any byelaws made under, or having effect as if made under, paragraph 5 of Schedule 25 (byelaw – making powers of the appropriate agency) to the Water Resources Act 1991(c);
- (d) Regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(d) in respect of a flood risk activity only; and
- (e) The provisions of the Neighbourhood Planning Act 2017(e) insofar as they relate to temporary possession of land under articles 31 (temporary use of land for carrying out the authorised project) and 32 (temporary use of land for maintaining the authorised project) of this Order.

(2) Sections 25 (penalties for improper deposit of hard materials in the river) and 26 (no mud to be cast into the river except as Admiralty direct) of the River Humber Conservancy Act 1852(f),

(a) 1991 c. 59.

(b) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 of the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c.21).

(c) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22 to the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(d) S.I. 2016/1154, amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428, S.I. 2018/575, S.I. 2018/721, S.I. 2018/1216, S.I. 2018/1227, S.I. 2019/39, S.I. 2020/904, S.I. 2021/77 and S.I. 2023/149.

(e) 2017 c. 20.

(f) 1852 c. cxxx.

section 5 (removal of obstructions) and 9 (licences for execution of works) of the Humber Conservancy Act 1899^(a) and section 6 (no erections in Humber below river lines or without licence above river lines) and section 8 (sand not to be removed from bed or foreshore of River Humber) of the Humber Conservancy Act 1905^(b) do not apply to the authorised project.

Incorporation of the 1847 Act

4.—(1) The 1847 Act, except sections 5 to 13, 16 to 25, 47 to 50, 77, 79, 80, 85 to 102 and 104, so far as applicable for the purposes of and not inconsistent with this Order, is incorporated with and forms part of this Order, subject to the modifications set out in sub-paragraph (2).

(2) For the purposes of the 1847 Act, as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” have the meaning given to “the Company” in article 2(1) of this Order;
- (c) the expression “the harbour, dock or pier” means the area of jurisdiction;
- (d) the expression “the harbour master” so far as applicable to the authorised project, has the meaning given to “the dock master” in article 2(1) of this Order;
- (e) the meaning given to the word “vessel” by section 3 of the 1847 Act is substituted by that given to “vessel” in article 2(1) of this Order;
- (f) section 53 of the 1847 Act is not to be construed as requiring the dock master to serve on the master of a vessel a notice in writing of his directions but such directions may be given orally or otherwise communicated to such master;
- (g) reference in section 69 of the 1847 Act to “level 4 on the standard scale” is to be read as to “level 3 on the standard scale”;
- (h) section 33 of the 1847 Act, as so incorporated, must not be construed as derogating from the power of the dock master (which has the meaning given in article 2(1) of this Order) to discontinue any part of its undertaking; and
- (i) any requirement to comply with a notice or direction given by the harbour master is to be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction must also comply with any relevant notice or direction given by the dock master or the harbour master (which both have the meaning given in article 2(1) of this Order) in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

PART 2

WORKS PROVISIONS

Principal powers

Development consent, etc., granted by the Order

5. Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works.

(a) 1899 c. cci.
(b) 1905 c. clxxix.

Extent of certain works

6.—(1) Subject to paragraph (2), in carrying out the authorised project comprising the works numbered in Part 1 (authorised development) of Schedule 1 (authorised project) the undertaker must, where the works plans set out the lateral extent of the area in which the numbered work comprised in the authorised project is to be located, carry out, maintain, use or decommission the numbered work within the lateral extent of the area set out for it on those plans.

(2) For the purposes of paragraph (1), the lateral extent of the area for the dredged pocket described in paragraph 66(b) of Part 1 (authorised development) of Schedule 1 (authorised project) is not to be taken as the area set out on the works plans, which is shown on those plans for indicative purposes only, and the area within which the dredged pocket described in paragraph 66(b) of Part 1 (authorised development) of Schedule 1 (authorised project) must be carried out is instead to be taken from time to time to be the area bounded by the grid coordinates specified in paragraph 103(2) of the deemed marine licence or such other area for the dredged pocket as is specified in any marine licence granted or varied pursuant to the 2009 Act (including any variation of the deemed marine licence).

Streets

Street works

7.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street, or carry out works to strengthen or repair the carriage way or to provide protection to apparatus installed in or on the street;
- (c) place and keep apparatus in or on the street;
- (d) maintain, renew or alter the position of apparatus in or on the street or change its position;
- (e) demolish, remove, replace and relocate any street furniture (including any bus shelter and associated bus stop infrastructure);
- (f) execute any works to provide or improve sight lines required by the highway authority;
- (g) execute and maintain any works to provide hard and soft landscaping;
- (h) carry out re-lining and placement of new temporary and permanent markings; and
- (i) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (h) (inclusive) above.

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

(3) The undertaker must not construct works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent and the undertaker must comply with any reasonable conditions so attached.

(4) Paragraph (3) does not apply to works described in column (3) of the table at Schedule 4 (streets subject to street works) carried out to the corresponding street specified in columns (1) and (2) of that table.

Application of the 1991 Act

8.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway must be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of the 1991 Act (which defines what highway authority works are major highway works); or

- (b) they are works which, had they been executed by the relevant highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts)(a).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1) to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works constructed under the powers of this Order—

- (a) section 56 (directions as to timing);
- (b) section 56A (powers to give directions as to placing of apparatus);
- (c) section 58 (restrictions following substantial road works);
- (d) section 58A (restriction on works following substantial street works);
- (e) section 73A (power to require undertaker to re-surface street);
- (f) section 73B (power to specify timing, etc., of re-surfacing);
- (g) section 73C (materials, workmanship and standard of re-surfacing);
- (h) section 78A (contributions to costs of re-surfacing by undertaker); and
- (i) Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the construction of street works) and any regulations made, or code of practice issued or approved under those provisions, apply (with necessary modifications) in relation to—

- (a) any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary stopping up and prohibition or restriction of use of streets and public rights of way) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act; and
- (b) any alteration of the layout of or the carrying out of any works in the street by the undertaker under the powers conferred by article 9 (power to alter layout, etc., of streets) whether or not the alteration of the layout of or the carrying out of the works constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(b) referred to in paragraph (4) are—

- (a) section 54(c) (advance notice of certain works), subject to paragraph (6);
- (b) section 55(d) (notice of starting date of works), subject to paragraph (6);
- (c) section 57(e) (notice of emergency works);
- (d) section 59(f) (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

(a) 1991 c. 22. Section 65 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the 1991 Act.

(b) 1991 c. 22. Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(c) 1991 c. 22. Section 54 was also amended by section 49(1) of the Traffic Management Act 2004.

(d) 1991 c. 22. Section 55 was also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(e) 1991 c. 22. Section 57 was also amended by section 52(3) of the Traffic Management Act 2004.

(f) 1991 c. 22. Section 59 was amended by section 42 the Traffic Management Act 2004.

and all such other provisions as apply for the purpose of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were references to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not, by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Power to alter layout, etc., of streets

9.—(1) The undertaker may for the purposes of the authorised project alter the layout of or carry out any works in the street—

- (a) in the case of the streets specified in columns 1 and 2 of the table in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and
- (b) in the case of the streets specified in columns 1 and 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(2) Without limitation on the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating, maintaining or decommissioning the authorised project, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, central reservation or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track, central reservation or verge;
- (c) reduce the width of the carriageway of the street;
- (d) execute any works to widen or alter the alignment of pavements;
- (e) make and maintain crossovers and passing places;
- (f) execute any works of surfacing or resurfacing of the highway;
- (g) carry out works for the provision or alteration of parking places, loading bays and cycle tracks;
- (h) execute any works related to signage and street markings;
- (i) execute any works necessary to alter or provide facilities for the management and protection of pedestrians; and
- (j) execute any works to provide or improve sight lines required by the highway authority.

(3) The undertaker must restore to the reasonable satisfaction of the street authority any street that has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority (such consent not to be unreasonably withheld or delayed).

Construction and maintenance of new, altered or diverted streets

10.—(1) Subject to paragraph (5), any street constructed under this Order must be completed to the reasonable satisfaction of the street authority and must, unless otherwise agreed with the street

authority, be maintained by and at the expense of the undertaker to the reasonable satisfaction of the street authority for a period of 12 months from its completion and thereafter by the street authority.

(2) Subject to paragraph (5), where a street is permanently altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, that part of the street must be maintained by and at the expense of the undertaker to the reasonable satisfaction of the street authority for a period of 12 months from its completion and thereafter by the street authority.

(3) Subject to paragraph (5), where a street is temporarily altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(4) Where land not previously part of the highway comes to form part of the highway by virtue of the construction, diversion or alteration of streets under this Order, unless otherwise agreed in writing with the street authority, the land is deemed to have been dedicated as highway on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted and is thereafter to be maintained by and at the expense of the street authority.

(5) In the case of any bridge or any other structure constructed under this Order to carry a street, both the street surface and structure of the bridge or other structure must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the undertaker to the reasonable satisfaction of the street authority for a period of 24 months from its completion and thereafter by the street authority.

(6) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(7) For the purposes of a defence under paragraph (6), the court must in particular have regard to the following matters—

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

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

(8) The date of completion of any works referred to in paragraphs (1), (2), (3), (4) and (5) is to be agreed between the undertaker and the street authority, acting reasonably.

Permanent stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2)

of Schedule 6 (permanent stopping up of highways) and identified on the stopping up and restriction of use of streets and public rights of way plan to the extent specified and described in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 6 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The condition referred to in paragraph (2) is that—

- (a) the undertaker is in possession of the land;
- (b) there is no right of access to the land from the street concerned;
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(4) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.

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

(6) This article is subject to article 17 (apparatus and rights of statutory undertakers in stopped up streets).

(7) The undertaker must give the highway authority notice of any street having been stopped up under paragraph (1) specifying the date of such stopping up and providing a plan of the extent of the street which has been stopped up.

Permanent stopping up of public rights of way

12. With effect from the date upon which the authorised project is first begun for the purposes of section 155 (when development begins) of the 2008 Act the section of each public right of way specified in columns (1) and (2) of Schedule 7 (public rights of way to be permanently stopped up) and shown on the stopping up and restriction of use of streets and public rights of way plan is extinguished to the extent specified in column (3) of that Schedule.

Temporary stopping up and prohibition or restriction of use of streets and public rights of way

13.—(1) During and for the purposes of carrying out the authorised project, the undertaker may temporarily stop up, alter, divert or prohibit the use of or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way;
- (b) authorise for the purpose of crossing only the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without limitation on the scope of paragraph (1), the undertaker may use as a temporary working site any street or public right of way which has been temporarily stopped up, altered or diverted or the use of which has been prohibited or restricted under the powers conferred by this article.

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

(4) Without limitation on the scope of paragraph (1) the undertaker may temporarily prohibit the use of, use, restrict the use of, alter or divert—

- (a) the streets or public rights of way specified in columns (1) and (2) of the table in Part 1 (temporary prohibition or restriction of the use or diversion of streets or public rights of way) of Schedule 8 (temporary restriction or alteration, etc. of the use of streets or public rights of way) in the manner specified in column (3) of that table; and
- (b) the public rights of way specified in columns 1 and 2 of the table in Part 2 (temporary use of motor vehicles on public rights of way) of Schedule 8 (temporary restriction or alteration, etc. of the use of streets or public rights of way) in the manner specified in column 3 of that table.

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

- (a) any street or public right of way specified as mentioned in paragraph (4) without first consulting the street authority during a period of not less than 28 days; or
- (b) any other street or public right of way without the consent of the street authority (such consent not to be unreasonably withheld or delayed), which may attach reasonable conditions to such consent.

(6) If the undertaker temporarily closes under the powers conferred by this article any part of Bridleway Number 36 to which columns 1, 2 and 3 of the table in Part 1 (temporary prohibition or restriction of the use or diversion of streets or public rights of way) of Schedule 8 (temporary restriction or alteration, etc. of the use of streets or public rights of way) refer it must provide the temporary diversion specified in column 3 of that table but the temporary diversion is not required to be of a higher standard than the temporarily closed Bridleway Number 36.

(7) The undertaker must make good to the reasonable satisfaction of the highway authority any damage caused to any part of Bridleway Number 36 to which columns 1, 2 and 3 of the table in Part 1 (temporary prohibition or restriction of the use or diversion of streets or public rights of way) of Schedule 8 (temporary restriction or alteration, etc. of the use of streets or public rights of way) refer by the exercise of the undertaker of any powers conferred by this article.

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

Use of private roads for construction

14.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised project.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

15. The undertaker may, for the purposes of the authorised project—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent means of access to works) of Schedule 9 (access to works);

- (b) form and lay out the temporary means of access in the locations specified in Part 2 (temporary means of access to works) of Schedule 9; and
- (c) with the consent of the relevant planning authority (such consent not to be unreasonably withheld or delayed), after consultation with the relevant highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

- 16.—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised project;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised project;
 - (d) any stopping up, prohibition, restriction, alteration or diversion of a street under the powers conferred by this Order;
 - (e) the construction in the street of any of the authorised project;
 - (f) the undertaking in the street of any of the works referred to in article 7 (street works), article 9 (power to alter layout, etc., of streets) and article 10 (construction and maintenance of new, altered or diverted streets);
 - (g) such other works as the parties may agree; or
 - (h) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as publicly maintainable highway.
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Apparatus and rights of statutory undertakers in stopped up streets

17.—(1) Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 7 (street works), article 9 (power to alter layout, etc., of streets), article 10 (construction and maintenance of new, altered or diverted streets) or article 13 (temporary stopping up and prohibition or restriction of use of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 14 (protective provisions), as if this Order had not been made.

Supplementary

Discharge of water

18.—(1) Subject to paragraphs (4), (5) and (7) the undertaker may use any watercourse or public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any

land within the Order limits, make opening into, and connections with, the watercourse or public sewer or drain.

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

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

(4) The undertaker must not make any opening into any public sewer or drain in connection with the authorised project except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(b) in respect of a water discharge activity or groundwater activity.

(7) A person who receives an application for consent or approval under paragraph (3) or under paragraph (4)(a) and fails to notify the undertaker which made the application of a decision within 28 days of receiving the application is deemed to have granted consent or given approval, as the case may be.

(8) A person who receives an application for consent or approval under paragraph (3) or under paragraph (4)(a)—

(a) may not refuse the application on a ground which is inconsistent with a relevant drainage strategy approved by the relevant planning authority pursuant to paragraph 89 (surface water drainage) of Schedule 2 (requirements); and

(b) may not make such consent or approval subject to any term or condition which is inconsistent with such a drainage strategy.

(9) Any application to which this article applies must include a statement that the provisions of paragraphs (7) and (8) apply to that application.

(10) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Board, the Environment Agency, a joint planning board, a local authority or a sewerage undertaker; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits except the land shaded yellow on the land plans and, where reasonably necessary, any land which is adjacent to but outside the Order limits or which may be affected by the authorised project and—

(a) 1991 c. 56.

(b) S.I. 2016/1154.

(c) 1991 c. 57.

- (a) survey, monitor or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (b) without prejudice to the generality of sub-paragraph (a), survey, monitor or investigate the land and any buildings on that land for the purpose of investigating the potential effects of the authorised project on that land or buildings on that land or for enabling the construction, use and maintenance of the authorised project;
- (c) without limitation on the scope of sub-paragraph (a)—
 - (i) make trial holes, boreholes, excavations or take horizontal cores in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil, groundwater and other materials below ground level and remove soil, rock, water and other material samples and discharge water from sampling operations on to the land;
 - (ii) carry out ecological or archaeological investigations and monitoring on the land, including making any excavations or trial holes on the land for such purposes; and
- (d) place on, leave on and remove from the land apparatus (including but not limited to welfare facilities and apparatus attached to buoys) for use in connection with the survey, monitoring or investigation of land, making of trial holes, boreholes, excavations and cores and the carrying out of ecological or archaeological investigations or monitoring.

(2) The power conferred by paragraph (1) includes, without prejudice to the generality of that paragraph, the power to take, and process, samples of or from any of the following found on, in or over the land—

- (a) water;
- (b) air;
- (c) soil or rock;
- (d) flora;
- (e) bodily excretions, or dead bodies, of non-human creatures; or
- (f) any non-living thing present as a result of human action.

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

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

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

(5) No surveying, monitoring or investigation to which paragraph (1) refers may be carried out under this article—

- (a) in land located within the boundary of any highway for which the highway authority is responsible without its consent; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(6) As soon as reasonably practicable following the completion of any activities carried out under paragraph (1), the undertaker must remove the apparatus used in connection with the activities and restore the land on which the activities were carried out to the reasonable satisfaction of the owners of the land; but the undertaker is not required to breach or fail to comply with a term of this Order.

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

(8) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Protective works

20.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any land, building, structure, apparatus or equipment, lying within the Order limits or which may be affected by the construction or operation of the authorised project outside of the Order limits, as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the land, building, structure, apparatus or equipment of any part of the authorised project or works ancillary to it; or
- (b) after the completion of any part of the authorised project in the vicinity of the land, building, structure, apparatus or equipment, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first brought into operational use.

(3) For the purpose of determining how the functions under this article are to be exercised, the undertaker may enter and survey—

- (a) any land, building, structure, apparatus or equipment, falling within paragraph (1) and any land within its curtilage; and
- (b) where reasonably necessary, any land which is adjacent to the land, building, structure, apparatus or equipment, whether or not within Order limits,

and place on, leave on and remove from the land, building, structure, apparatus or equipment any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to any land, building, structure, apparatus or equipment, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the land, building or structure and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the land, building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (2) to carry out protective works to any land, building, structure, apparatus or equipment;
- (b) a right under paragraph (3) to enter or survey any land, building, structure, apparatus or equipment, and land within its curtilage or any adjacent land;
- (c) a right under sub-paragraph (4)(a) to enter the land, building or structure and land within its curtilage; or
- (d) a right under sub-paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specify the protective works proposed to be carried out.

(6) Where a notice is served under sub-paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the land, building, structure, apparatus or equipment concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 62 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any land, building, structure, apparatus or equipment, in relation to which rights under this article have been exercised, for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to any land, building, structure, apparatus or equipment; and
- (b) within the period of five years beginning with the day on which the part of the authorised project carried out in the vicinity of the land, building, structure, apparatus or equipment is first brought into operational use it appears that the protective works are inadequate to protect the land, building, structure, apparatus or equipment against damage caused by the carrying out or use of that part of the authorised project,

the undertaker must compensate the owners and occupiers of the land, building, structure, apparatus or equipment for any loss or damage sustained by them.

(9) Subject to article 39 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) of the 2008 Act (compensation in case where no right to claim in nuisance).

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

(11) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(12) In this article “protective works” in relation to any land, building, structure, apparatus, equipment or the authorised project means—

- (a) underpinning, strengthening, ground strengthening, earthing and any other works the purpose of which is to prevent damage which may be caused to the land, building, structure, apparatus, equipment or the authorised project by the carrying out, maintenance or use of the authorised project;
- (b) any works the purpose of which is to remedy any damage which has been caused to the land, building, structure, apparatus or equipment by the carrying out, maintenance or use of the authorised project; and
- (c) any works the purpose of which is to secure the safe operation of the authorised project or to prevent or minimise the risk of such operation being disrupted.

(13) This article does not apply to the land shaded yellow on the land plans.

(14) No protective works may be carried out under this article in land located within the boundary of any highway for which the highway authority is responsible without its consent but such consent must not be unreasonably withheld or delayed.

Removal of human remains

21.—(1) In this article “the specified land” means any land within the Order limits which the undertaker reasonably considers may contain human remains.

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

(a) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(b) 1965 c. 56. Section 13 was amended by sections 62(3) and 139(4) to (9) of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Upper Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) 2008 c. 29. Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

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

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

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

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

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

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

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

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

(8) Subject to paragraph (7), the undertaker must pay the reasonable expenses both of responding to notices under this article and of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

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

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

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

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

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

- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article—

- (a) references to a relative of the deceased are to a person who—
 - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
 - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased.
- (b) references to a personal representative of the deceased are to a person who—
 - (i) is the lawful executor or executrix of the estate of the deceased; or
 - (ii) is the lawful administrator of the estate of the deceased.

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

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

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

(18) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950^(b) does not apply to the authorised project.

(19) Sections 238 and 239 (use and development of consecrated land and burial grounds) of the 1990 Act apply—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised project (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 31 (temporary use of land for constructing the authorised project) and 32 (temporary use of land for maintaining the authorised project), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order, without prejudice to the status of the land over which the right is exercised as consecrated land,

and in section 238(1)(b) of the 1990 Act reference to a “planning permission” includes this Order, in section 240(1) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (16) of this article and in section 240(3) of the 1990 Act reference to

(a) 1857 c. 81.
(b) S.I. 1950/792.

a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

22.—(1) The undertaker may—

- (a) acquire compulsorily so much of the land shaded pink on the land plans and described in the book of reference as is required for the construction, operation, use or maintenance of the authorised project, or to facilitate it, or which is incidental to it; and
- (b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the construction, operation, or maintenance of the authorised project.

(2) This article is subject to article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily), paragraph (1) of article 24 (compulsory acquisition of rights), article 25 (acquisition of subsoil or airspace only), article 28 (rights over or under streets), article 31 (temporary use of land for constructing the authorised project) and article 60 (Crown rights).

Time limit for exercise of powers to acquire land compulsorily or to possess land temporarily

23.—(1) After the end of the period of five years beginning with the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 29 (application of the 1981 Act)(a)

in relation to any part of the Order land shown shaded pink, blue or shown shaded and hatched blue on the land plans and described in the book of reference.

(2) The authority conferred by article 31 (temporary use of land for constructing the authorised project) ceases after the end of the period of five years beginning with the day on which this Order is made except that—

- (a) in relation to plots 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10 and 7/11 shown on sheet 7 of the land plans such authority ceases at the end of the period of ten years beginning with the day on which this Order is made; and
- (b) nothing in this paragraph (2) prevents the undertaker remaining in possession of land after the end of such applicable period if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

24.—(1) Subject to the provisions of this paragraph—

(a) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981 Act which are not relevant to this Order.

- (a) the undertaker may acquire compulsorily such rights over the land shaded pink on the land plans and described in the book of reference or impose restrictive covenants affecting such land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence;
- (b) the undertaker may in the case of the land shaded blue or shaded and hatched blue on the land plans, described in the book of reference and specified in columns (1) and (2) of Schedule 12 (land in which only new rights and restrictive covenants, etc. may be acquired) acquire compulsorily the existing rights and create and acquire compulsorily the new rights and impose the restrictive covenants for the purpose specified in relation to that land in column (3) of that Schedule and relating to that part of the authorised project specified in column (4) of that Schedule.

(2) Subject to section 8 of the 1965 Act (other provisions as to divided land), as modified by Schedule 11 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants), where the undertaker creates or acquires a right over land or the benefit of a restrictive covenant under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 11 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(4) This article is subject to article 60 (Crown rights).

Acquisition of subsoil or airspace only

25.—(1) The undertaker may acquire compulsorily so much of, or such rights over, the subsoil of and the airspace over the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 30 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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

Private rights

26.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished or suspended—

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land owned by the undertaker which—

- (a) is within the Order limits except the land shaded yellow on the land plans; and
- (b) is required for the purposes of this Order,

cease to have effect in so far as their continuance would be inconsistent with any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants as from the date on which that activity has begun.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant being imposed, whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act in pursuance of the right; or
- (c) on the beginning of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

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

(5) All restrictive covenants contained in a transfer dated 19 April 1979 and made between (1) the right Honourable John Edward Pelham Earl of Yarborough and (2) Samuel James Parker and Maud Parker relating to land shown as plot 5/4 on sheet 5 of the land plans and described in the book of reference are extinguished on the date on which the authorised project is begun (within the meaning given in section 255 (when development begins) of the 2008 Act.

(6) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers, etc.) of the 2008 Act, or where article 33 (statutory undertakers) applies.

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

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

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

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

(9) If any such agreement as is referred to in sub-paragraph (8)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and

- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(10) References in this article to private rights and restrictive covenants over land include any right of way, restrictive covenant, easement, trust, incident, wayleave, liberty, privilege, right or advantage annexed to land (including any land forming part of a common, open space or fuel or field garden allotment) and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

27.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

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

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised project;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

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

(4) Where an interest, right or restriction is overridden by paragraph (1) compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4), and
- (b) fails to discharge that liability,

the liability is enforceable against that undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) Paragraph (1) has effect subject to—

- (a) any notice given by the undertaker before the authorised activity which—
 - (i) interferes with an interest or right to which this article applies; or
 - (ii) breaches a restriction as to the user of land to which this article applies,

is begun that the paragraph does not apply to any interest, right or restriction as to the user of land specified in the notice; and

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

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

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

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

(9) This article does not apply to the land shaded yellow on the land plans.

Rights over or under streets

28.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised project or for any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3) the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Application of the 1981 Act

29.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

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

(3) In section 1 (application of Act) for subsection (2) substitute—

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

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

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

(6) In section 5B(1) (extension of time limit during challenge)(b) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 23 (time limit for exercise of powers to acquire land

(a) 1981 c. 66. Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(b) As inserted by section 202(2) of the Housing and Planning Act 2016.

compulsorily or to possess land temporarily) of the Associated British Ports (Immingham Green Energy Terminal) Order 202*”.

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

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

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

“(2) But see article 25 (acquisition of subsoil or airspace only) of the Associated British Ports (Immingham Green Energy Terminal) Order 202*, which excludes the acquisition of subsoil only from this Schedule”

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1)(d) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)”, the three year period mentioned in Section 4 substitute “section 118(e) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Associated British Ports (Immingham Green Energy Terminal) Development Consent Order 202*”.

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

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Associated British Ports (Immingham Green Energy Terminal) Development Consent Order 202*”.

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

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

“(2) But see article 25 (acquisition of subsoil or airspace only) of the Associated British Ports (Immingham Green Energy Terminal) Development Consent Order 202*, which excludes the acquisition of subsoil only from this Schedule.”; and

(b) after paragraph 29 insert—

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- (a) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
 - (b) 1981 c. 66. Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
 - (c) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
 - (d) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.
 - (e) 1965 c. 56. Section 118 was amended by paragraphs 1, 58 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).
 - (f) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 20 (protective works), article 31 (temporary use of land for constructing the authorised project) or article 32 (temporary use of land for maintaining the authorised project) of the Associated British Ports (Immingham Green Energy) Order 202*.”

Temporary possession of land

Temporary use of land for constructing the authorised project

31.—(1) The undertaker may, in connection with the carrying out of the authorised project but subject to article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily)—

- (a) enter on and take temporary possession of—
 - (i) the land shown shaded green on sheets 3, 4, 5, 6 and 7 of the land plans, described in the book of reference and specified in columns (1) and (2) of Schedule 13 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any other Order land shown shaded pink, blue or shown shaded and hatched blue on the land plans and described in the book of reference in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(a) (execution of declaration) of the 1981 Act; except that in respect of the land shaded and hatched blue on the land plans and described in the book of reference such entry and temporary possession pursuant to this paragraph (1)(a)(ii) may only be taken of the subsoil of that land;
- (b) subject to article 33 (statutory undertakers) remove or reposition the apparatus belonging to statutory undertakers or the operators of any electronic communications code network;
- (c) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from the land referred to in sub-paragraph (a);
- (d) install apparatus to enable utility connections to temporary buildings and construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on the land referred to in sub-paragraph (a);
- (e) use the land referred to in sub-paragraph (a) for the purposes of a temporary working site with access to the working site in connection with the authorised project;
- (f) construct any works on the land referred to in sub-paragraph (a)(ii) as are mentioned in Schedule 1 (authorised project); and
- (g) carry out mitigation works required under the requirements in Schedule 2 (requirements) on the land referred to in sub-paragraph (a).

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied,

except that the undertaker may take temporary possession of any garden or part of a garden belonging to a house in plots 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10 and 7/11 shown on sheet 7 of the land plans for the purposes of removing or repositioning apparatus belonging to

(a) 1981 c. 66. Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act.

statutory undertakers or the operators of any electronic communications code network pursuant to Article 33 (statutory undertakers).

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land referred to in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (3) of Schedule 13 (land of which only temporary possession may be taken); or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the works, use of facilities or other purpose for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(f);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised project;
- (d) remove or reposition any apparatus belonging to statutory undertakers, or measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised project;
- (e) remove or reposition necessary mitigation works;
- (f) remove any drainage works;
- (g) restore ground levels adjusted as part of the authorised project; or
- (h) breach or fail to comply with a term of this Order.

(6) Any dispute as to the removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Subject to article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act^(a) (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) Nothing in this article prevents the undertaker from taking temporary possession more than once in relation to any land specified in paragraph (1)(a).

Temporary use of land for maintaining the authorised project

32.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised project; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house;
- (b) any building (other than a house) if it is for the time being occupied;
- (c) any land shaded yellow on the land plans; or
- (d) any land located within the boundary of any highway for which the highway authority is responsible.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the purpose for which the undertaker intends to take possession of the land except as provided in paragraph (11).

(4) The undertaker may remain in possession of land under this article only for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which temporary possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and temporary buildings and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Subject to article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes temporary possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(a) 1965 c. 56. Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to, the Upper Tribunals, Courts and Enforcement Act 2007 (c. 15).

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Where the undertaker has identified a potential risk to the safety of—

- (a) the authorised project or any part of it; or
- (b) the public; or
- (c) the surrounding environment,

the requirement to serve notice under paragraph (3) does not apply and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

(12) In this article “the maintenance period” in relation to any part of the authorised project means the period of five years beginning with the date on which that part of the authorised project is brought into operational use by the undertaker.

Supplementary

Statutory undertakers

33.—(1) Subject to the provisions of paragraph (1)(b) of article 24 (compulsory acquisition of rights), Schedule 14 (protective provisions) and paragraph (2) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers or the operators of any electronic communications code network;
- (b) extinguish the rights of statutory undertakers or the operators of any electronic communications code network over or within the Order land;
- (c) remove or reposition the apparatus belonging to statutory undertakers or the operators of any electronic communications code network over or within the Order land; and
- (d) construct the authorised project in such a way as to cross underneath or over apparatus belonging to statutory undertakers or the operators of any electronic communications code network within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) Article 17 (apparatus and rights of statutory undertakers in stopped up streets).

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer, but where such a sewer is removed under article 33 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 17 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

Acquisition of part of certain properties

35.—(1) This article applies where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 28 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Upper Tribunal.

(5) If on such a reference the Upper Tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on such a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the Upper Tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the Upper Tribunal determines that—

(a) 2003 c. 21.

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where by reason of a determination by the Upper Tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of six weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Upper Tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Compulsory acquisition of land – incorporation of the mineral code

36.—(1) Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” there is substituted “the undertaker”;
- (c) for “undertaking” substitute “authorised project”; and
- (d) for “compulsory purchase order” substitute “this Order”.

Compensation

Disregard of certain interests and improvements

37.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the Upper Tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the Upper Tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration as part of the authorised project was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made as part of the authorised project, directly or indirectly concerned.

(a) 1981 c. 67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c. 21) and paragraph 8 of Part 3 of Schedule 3 was amended by section 46 of the Criminal Justice Act 1982 (c. 48). There are other amendments to the 1981 Act which are not relevant to this Order.

Set-off for enhancement in value of retained land

38.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including any subsoil) the Upper Tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised project.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil), under article 24 (compulsory acquisition of rights), the Upper Tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised project.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

39. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

PART 4

OPERATIONAL PROVISIONS

Authorisation of operation and use

40. Subject to the provisions of this Order and to the requirements set out in Schedule 2 (requirements), the undertaker and any persons authorised by the undertaker may operate and use the authorised project for which development consent is granted by this Order.

Maintenance of authorised project

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

(2) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

Limits of dock master's jurisdiction

42.—(1) Subject to the provisions of paragraph (2) of this article, the limits within which the powers of the dock master under any enactment may be exercised include the area of jurisdiction.

(2) The powers conferred by this article are, so far as applicable to vessels, limited to vessels going to, moored at or departing from any part of the area of jurisdiction and must not be exercised so as to affect vessels navigating or at anchor in the channels of the River Humber unless such vessels obstruct access to the area of jurisdiction.

Area of jurisdiction to form part of the undertaking and application of byelaws

43.—(1) The area of jurisdiction for all purposes forms part of the undertaking.

(2) The Immingham Dock Byelaws 1929 are deemed to apply in relation to the limits within which the powers of the dock master may be exercised under article 42(1) (limits of dock master's jurisdiction) of this Order and may be enforced by the Company accordingly until such time as new byelaws relating to the area within such limits are made by the Company and come into operation.

(3) In the Immingham Dock Byelaws 1929, as applied by paragraph (1) above—

- (a) references to “the prescribed limits” must be construed as including the limits within which the powers of the dock master may be exercised under article 42(1) (limits of dock master's jurisdiction) of this Order; and
- (b) any activity carried out pursuant to this Order is not a breach of byelaw 52 if it is with the written approval of the Company.

(4) In this article “Immingham Dock Byelaws 1929” means the byelaws made by the London and North Eastern Railway Company on 1 January 1929 and confirmed by the Minister of Transport on 4 January 1929.

Power to appropriate

44.—(1) Regardless of anything in section 33 of the 1847 Act (harbour, dock and pier to be free to the public on payment of rates) or any other enactment, the dock master may from time to time set apart and appropriate any part of the area of jurisdiction for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the dock master may think fit.

(2) No person or vessel may make use of any part of the authorised project or such area so set apart or appropriated without the consent of the dock master and—

- (a) the dock master may order any person or vessel making use of the authorised project or such area without such consent to be removed;
- (b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, extend and apply with the necessary modifications to any such vessel.

Powers to dredge

45.—(1) The Company may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore within any part of the Order limits situated within the River Humber as may be required for the purpose of constructing, maintaining and operating the authorised project.

(2) Subject to paragraph (3) the Company may use, deposit or otherwise dispose of materials dredged or removed (other than a wreck within the meaning of Part 9 (salvage and wreck) of the Merchant Shipping Act 1995(a)) as it thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine area except in accordance with the deemed marine licence or under any other marine licence granted by the MMO.

(4) In respect of any activities falling within paragraph (1) this Order is deemed to be ‘legislation’ falling within section 75(3) (exemptions for certain dredging, etc. activities) of the 2009 Act.

(a) 1995 c. 21.

PART 5
MISCELLANEOUS AND GENERAL

Benefit of Order

46.—(1) Subject to the remaining paragraphs of this article—

- (a) the provisions of this Order conferring a power only on the Company, the dock master or the statutory harbour authority have effect solely for the benefit of (as applicable) the Company, the dock master or the statutory harbour authority; and
- (b) the other provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1)(b) does not apply to the following provisions, of which the Company has the sole benefit—

- (a) article 22 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of rights);
- (c) article 25 (acquisition of subsoil or airspace only);
- (d) articles 33(1)(a) and (b) (statutory undertakers);
- (e) article 35 (acquisition of part of certain properties),

unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Paragraph (1)(b) does not apply to the following provisions, of which the Company and, to the extent specified in paragraph (4), Air Products have the benefit—

- (a) article 19 (authority to survey and investigate the land);
- (b) article 20 (protective works);
- (c) article 31 (temporary use of land for constructing the authorised project);
- (d) article 32 (temporary use of land for maintaining the authorised project),

unless the Secretary of State consents to the transfer of the benefit of those provisions.

(4) Air Products has the benefit of the provisions to which paragraph (3) refers solely so far as they relate to the land shown as plots 3/2, 4/5, 4/7, 4/8, 4/9, 4/16, 4/17, 4/18, 4/19, 4/20, 4/21, 4/22, 4/23, 4/26, 4/28, 4/29, 4/30, 4/32, 5/3, 5/4, 5/7, 5/8, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/18, 5/20, 5/22, 5/23, 5/24, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/33, 5/36, 5/37, 5/38, 5/39, 5/45, 6/6, 6/14, 6/15, 6/16, 6/18, 6/19, 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10, 7/11, 7/12, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 and 7/23 on the land plans and described in the book of reference and (where applicable on the terms of those provisions) land outside the Order limits except (in each aforementioned case) in respect of any interests of the Company.

(5) Paragraph (1)(b) does not apply to article 26(8) (private rights) or article 27(7) (power to override easements and other rights) insofar as only the Company has the benefit of the powers conferred on the undertaker to give the notices or make the agreements to which those articles refer, unless the Secretary of State consents to the transfer of the benefit of those powers.

(6) Paragraph (1) does not apply to article 55(2) (planning legislation) insofar as only the Company has the benefit of the power conferred on the undertaker to serve a notice to which that article refers, unless the Secretary of State consents to the transfer of the benefit of that power.

(7) Paragraph (8) applies in any case where the benefit of a provision of this Order is required by a statutory undertaker for the purpose of—

- (a) the installation, connection, removal or alteration of the position of services and apparatus including overhead cables and lines and above ground or below ground pipes, pipelines, sewers, watercourses, drains and cables and other conducting media and any pipe sleeves, ducts and culverts in which any apparatus is lodged (in each aforementioned case) comprised in Schedule 1 (authorised project); or
- (b) diverting, replacing or protecting apparatus of that statutory undertaker.

(8) An undertaker with the benefit of a provision to which paragraph (7) refers may—

- (a) transfer to a statutory undertaker to which paragraph (7) refers any or all of the benefit of the provision and such related statutory rights as may be agreed between the undertaker and the statutory undertaker;
- (b) grant to such a statutory undertaker for a period agreed between the undertaker and the statutory undertaker any or all of the benefit of the provision and such related statutory rights as may be so agreed between the undertaker and the statutory undertaker.

(9) The consent of the Secretary of State is required for the purposes of paragraph (8) where the provision to be transferred or granted to the statutory undertaker is listed in paragraph (11) except where the transfer or grant is to—

- (a) a licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker or sewerage undertaker for the purposes of the Water Act 1989; or
- (d) the operator of an electronic communications code network.

(10) An undertaker with the benefit of any provision of this Order may pursuant to this paragraph—

- (a) transfer to any person any or all of the benefit of the provision (excluding the deemed marine licence) and such related statutory rights as may be agreed between the undertaker and that person;
- (b) grant to any person for a period agreed between the undertaker and that person any or all of the benefit of the provision (excluding the deemed marine licence) and such related statutory rights as may be so agreed between the undertaker and that person,

except this paragraph does not apply to any provision listed in paragraph (11).

(11) The list of provisions in this paragraph to which paragraphs (9) and (10) refer is as follows—

- (a) article 19 (authority to survey and investigate the land);
- (b) article 20 (protective works);
- (c) article 22 (compulsory acquisition of land);
- (d) article 24 (compulsory acquisition of rights);
- (e) article 25 (acquisition of subsoil or airspace only);
- (f) article 31 (temporary use of land for constructing the authorised project);
- (g) article 32 (temporary use of land for maintaining the authorised project); and
- (h) articles 33(1)(a) and (b) (statutory undertakers);
- (i) article 35 (acquisition of part of certain properties).

(12) An undertaker with the benefit of any provision of the deemed marine licence may pursuant to this sub-paragraph, with the consent of the Secretary of State—

- (a) transfer to any person any or all of the benefit of the provision and such related statutory rights as may be agreed between the undertaker and that person;
- (b) grant to any person for a period agreed between the undertaker and that person any or all of the benefit of the provision and such related statutory rights as may be so agreed between the undertaker and that person,

but the Secretary of State must consult the MMO before giving such consent to the transfer or grant to another person of the benefit of the provision and such related statutory rights.

(13) Any transfer or grant under paragraph (12) does not take effect until the undertaker has given notice to the MMO stating—

- (a) the name and contact details of the person to whom the benefit of the provision will be transferred or granted;
- (b) the date on which the transfer or grant will take effect (which must be at least 28 days after the date on which the notice is given); and

(c) the provision to be transferred or granted,

and providing a copy of the consent given by the Secretary of State to the transfer or grant and a copy of the transfer or grant itself; and the MMO may update its records in respect of the deemed marine licence accordingly.

(14) Paragraphs (7) and (8) of section 72 of the 2009 Act do not apply to a transfer or grant of the benefit of any provision of the deemed marine licence pursuant to paragraph (12).

(15) Paragraph (12) does not prevent an application to the MMO pursuant to section 72(7) of the 2009 Act to transfer the deemed marine licence to another person and vary it accordingly.

(16) Where a transfer or grant has been made in accordance with this article references in this Order to the undertaker, except in paragraph (17), include references to the person to whom the benefit of provisions of this Order have been transferred or granted to the extent that the person has the benefit of such provisions and paragraph (17) applies to that person.

(17) Where the undertaker has transferred any benefit (“transferor”), or for the duration of any period during which the undertaker has granted any benefit (“grantor”), under this article the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant, is subject to the same restrictions, liabilities and obligations under this Order as would apply if those benefits or rights were exercised by the transferor or grantor.

(18) Where a transfer or grant has been made in accordance with this article—

- (a) the benefit transferred or granted (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates; and
- (b) the transferred benefit resides exclusively with the person to whom the benefit has been transferred or, as the case may be, granted and the transferred benefit will not be enforceable against the undertaker.

(19) Paragraph (1)(b) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers, operators of the electronic communications code network and other persons affected by the authorised project.

(20) Where more than one undertaker has the benefit in relation to the same land of—

- (a) article 19 (authority to survey and investigate the land);
- (b) article 20 (protective works);
- (c) article 31 (temporary use of land for constructing the authorised project); or
- (d) article 32 (temporary use of land for maintaining the authorised project),

each undertaker may exercise the powers conferred by the article in question on its terms at the same time on such terms as they may agree with each other in writing; and the exercise of such a power by an undertaker on its terms does not prevent subsequent exercise of it on its terms by another undertaker.

(21) No person can be—

- (a) held liable in any manner for breaching or otherwise failing to comply with a term of this Order except where they are the person who (as applicable) has carried out, or caused to be carried out, that part of the authorised project to which the breach or failure relates or has exercised, or caused to be exercised, the provision of this Order to which the breach or failure relates;
- (b) required to comply with a term of this Order except where they are the person who (as applicable) has carried out, or caused to be carried out, that part of the authorised project to which the term relates or has exercised, or caused to be exercised, the provision of this Order to which the term relates.

Deemed marine licence

47. The undertaker is granted a deemed marine licence under Part 4 of the 2009 Act (marine licensing) to carry out the activities specified in Part 1 of Schedule 3 (deemed marine licence), subject to the licence conditions set out in Part 2 of that Schedule.

Saving for Trinity House

48. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Provision against danger to navigation

49. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify Trinity House, the statutory harbour authority and the Statutory Conservancy and Navigation Authority (as relevant) and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House and the statutory harbour authority or Statutory Conservancy and Navigation Authority (as relevant) may from time to time direct.

Lights on tidal works during construction

50. The undertaker must at or near—

- (a) a tidal work, including any temporary work; or
- (b) any plant, equipment or other obstruction placed in connection with any authorised project within the area of seaward construction activity in the River Humber,

during the whole time of their construction, alteration, replacement or extension, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House and the statutory harbour authority or Statutory Conservancy and Navigation Authority (as relevant) may from time to time direct.

Permanent light on tidal works

51. After a completion of a tidal work, the undertaker must at the outer extremity of the tidal work exhibit every night from sunset to sunrise such lights, if any, and take such steps for the prevention of danger to navigation as Trinity House and the statutory harbour authority or Statutory Conservancy and Navigation Authority (as relevant) may from time to time direct.

Application of landlord and tenant law

52.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law to which paragraph (2) applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Felling or lopping of trees and removal of hedgerows

53.—(1) Subject to article 54 (trees subject to tree preservation orders), the undertaker may fell, lop, prune, coppice, pollard, or reduce in height or width, any tree, shrub, hedgerow, or important hedgerow under or within or overhanging any part of the land within the Order limits, or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree, shrub, hedgerow or important hedgerow—

- (a) from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to persons constructing, maintaining, operating or decommissioning the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must not cause any unnecessary damage to any tree, shrub or hedgerow, or important hedgerow;
- (b) the undertaker must pay compensation to any person for any loss or damage arising from such activity;
- (c) the duty in section 206(1) (replacement of trees) of the 1990 Act does not apply; and
- (d) for the purposes of section 9 (requirement of licence for felling) of the 1967 Act (a) any felling comprised in the activity is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2)(b), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) Subject to paragraph (2), the undertaker may, for the purposes of carrying out the authorised project—

- (a) remove any hedgerow within the area edged and shaded purple and labelled “area of hedgerows to be removed” on the plan of potentially affected hedgerows and trees subject to preservation orders; and
- (b) without limitation on the scope of sub-paragraph (a) and with the consent of the relevant planning authority, remove or translocate any other hedgerow or an important hedgerow within the Order limits that is required to be removed.

(5) The grant of consent of the relevant planning authority pursuant to paragraph (4)(b) must not be unreasonably withheld.

(6) The undertaker may not pursuant to paragraph (1) fell or lop a tree within or overhanging the extent of highway maintainable at the public expense without the consent of the highway authority.

(7) The power conferred by paragraph (1) removes any obligation upon the undertaker to secure any consent to remove hedgerows or any part thereof under the Hedgerows Regulations 1997 (b).

(8) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997.

(a) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 141) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.
 (b) S.I. 1997/1160, amended by S.I. 2006/1177, S.I. 2009/1307, S.I. 2013/755 and S.I. 2015/377.

Trees subject to tree preservation orders

- 54.—(1) The undertaker may fell, lop, prune or cut back the roots of—
- (a) any tree subject to a tree preservation order within the area edged and shaded green and labelled “area of TPO trees to be removed (including tree canopy)” on the plan of potentially affected hedgerows and trees subject to preservation orders; and
 - (b) any other tree within the Order limits subject to a tree preservation order, if it reasonably believes it to be necessary in order to do so to prevent the tree—
 - (i) from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised project or any apparatus used in connection with the authorised project; or
 - (ii) from constituting a danger to persons constructing, maintaining, operating or decommissioning the authorised project.
- (2) In carrying out any activity authorised by paragraph (1)(b) the undertaker must—
- (a) obtain the written approval of the relevant planning authority prior to that activity taking place; and
 - (b) do no unnecessary damage to any tree in respect of which the activity is carried out.
- (3) In carrying out any activity authorised by paragraph (1)—
- (a) the undertaker must pay compensation to any person for any loss or damage arising from such activity;
 - (b) the duty in section 206(1) (replacement of trees) of the 1990 Act does not apply; and
 - (c) for the purposes of section 9 (requirement of licence for felling) of the 1967 Act any felling comprised in the activity is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.
- (4) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.
- (5) Any dispute as to a person’s entitlement to compensation under paragraph (1), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

Planning legislation

55.—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

(2) As from the date on which the authorised project is begun if the undertaker serves a notice on the relevant planning authority that any of the conditions to which a planning permission granted pursuant to section 57 (planning permission required for development) of the 1990 Act is subject prior to the making of this Order and which relate to the Order limits cease to have effect to the extent that they are inconsistent with the authorised project or anything done or approved pursuant to this Order then the notice will immediately have that effect; except that this subparagraph (2) does not apply to any existing early works planning permission or new early works planning permission.

(3) Before beginning Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable) under this Order, the undertaker must serve notice on the relevant planning authority that it intends to begin Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable) under this Order and must specify in that notice any existing early works planning permission or new early works planning permission under which works also comprised within Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable) have begun and whether or not such works have been completed.

- (4) From the date of service of any notice pursuant to paragraph (3)—
- (a) the undertaker must cease to carry out development under any existing early works planning permission or new early works planning permission specified in that notice; and

- (b) the conditions to which an existing early works planning permission or new early works planning permission specified in that notice are subject will be unenforceable except in respect of—
- (i) any breach that occurred prior to the undertaker serving notice pursuant to paragraph (3); and
 - (ii) any conditions of the existing early works planning permission or new early works planning permission that relate to the statutory requirement under the 1990 Act for biodiversity net gain.

(5) The undertaker must not begin Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable) under this Order until notice has been served under paragraph (3).

(6) Notwithstanding paragraphs (3) and (4), the undertaker may exercise any other powers under this Order in respect of any part of the authorised project prior to or following service of notice under paragraph (3).

(7) Without prejudice to the generality of paragraph (6), the undertaker may discharge any requirement in Schedule 2 (requirements) of this Order at any time prior to or following the service of notice under paragraph (3).

(8) Where details, documents, plans, works or any other matters have been imposed as a condition, or approved or agreed pursuant to a condition, of any existing early works planning permission or new early works planning permission prior to the date on which the undertaker serves notice under paragraph (3), the relevant planning authority and the undertaker must agree in writing which details, documents, plans, works or other matters under the existing early works planning permission or new early works planning permission will be deemed to have been discharged, approved, agreed, obtained or undertaken for the purposes of the requirements in Schedule 2 (requirements) of this Order relating to all or part of Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable); and upon that agreement being reached in writing it will immediately have that effect.

(9) In this article “begin” and “begun” mean for the purposes of section 155 (when development begins) of the 2008 Act.

(10) It does not constitute a breach of the terms of this Order if, following the coming into force of this Order, any development, or any part of a development, is carried out, used, operated or decommissioned within the Order limits in accordance with any planning permission granted under the 1990 Act (including a planning permission granted under article 3 (permitted development) and Class B (dock, pier, harbour, water transport, canal or inland navigation undertakings) of Part 8 (transport related development) of Schedule 2 (permitted development rights) to the Town and County Planning (General Permitted Development) (England) Order 2015^(a)); and nothing done pursuant to any such planning permission prevents the undertaker from constructing, operating, using, maintaining or decommissioning any part of the authorised project pursuant to this Order which has not been carried out pursuant to such planning permission.

(11) This Order does not constitute a planning permission for the purposes of Part 11 of the 2008 Act notwithstanding the definition of planning permission contained within article 5 (meaning of planning permission) of the 2010 Regulations.

(12) The authorised project, including any part of it, may be delivered in severable phases subject to paragraph 82 (phasing) of Schedule 2 (requirements).

Traffic regulation measures

56.—(1) Subject to the provisions of this article, the undertaker may, for the purposes of the authorised project—

(a) S.I. 2015/596.

- (a) make provision, in respect of those lengths of road specified in column (2) of Part 1 (permanent speed limits) of Schedule 10 (traffic regulation measures), imposing the permanent speed limit specified in column 3 of that Part of that Schedule;
- (b) make provision, in respect of those lengths of road specified in column (2) of Part 2 (temporary prohibition of parking) of Schedule 10 (traffic regulation measures) prohibiting the parking of vehicles to the extent specified in column 3 of that Part of that Schedule;
- (c) make provision, in respect of those lengths of road specified in column (2) of Part 3 (temporary road closures) of Schedule 10 (traffic regulation measures) temporarily closing that road to the classes of road user specified in column 3 of that Part of that Schedule;
- (d) make provision, in respect of those lengths of road specified in column (2) of Part 4 (priority of vehicular traffic) of Schedule 10 (traffic regulation measures), as to the priority of vehicular traffic as specified in column 3 of that Part of that Schedule; and
- (e) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(a) when used in accordance with regulation 3(5) of those regulations.

(3) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road is situated, the undertaker may for the purposes of construction, operation, maintenance and decommissioning of the authorised project, temporarily place traffic signs and signals on any road and, subject to the consent of the traffic authority in whose area the road is situated, the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016^(b).

(4) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as expedient or necessary for the purposes of, in connection with, or in consequence of the construction, maintenance, operation and decommissioning of the authorised project—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the maximum speed, routes, direction or priority of vehicular traffic on any road; and
- (e) permit, prohibit or restrict vehicular access or use to or on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(5) The undertaker must not exercise the powers in paragraphs (1), (3) and (4) unless it has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; and

(a) S.I. 2011/935.

(b) S.I. 2016/362.

- (ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily, to the chief officer of police and to the traffic authority in whose area the road is situated and that notice must include the time periods within which the traffic authority may specify the manner in which, under sub-paragraph (b), the undertaker must advertise its intention to exercise the powers conferred by paragraphs (1), (3) and (4); and
 - (b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1), (3) or (4)—
- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,
 and the instrument by which it is effected, to be in such form as the undertaker considers appropriate, may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a); and
 - (c) must be advertised in the same manner as the undertaker's intention to make the prohibition, restriction or other provision was under paragraph (5)(b).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraphs (1), (3) and (4).
- (8) Before exercising the powers conferred by paragraphs (1), (3) or (4) the undertaker must consult such persons as the undertaker considers necessary and appropriate and have regard to the representations made to the undertaker by any such person.
- (9) An order made under paragraph (4)(a) may be varied or revoked by an order made by the highway authority under the 1984 Act.

Defence to proceedings in respect of statutory nuisance

57.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(b) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (b), (d), (e), (fb), (g), (ga) and, so far as relevant to sections 259(1)(a) and (b) of the Public Health Act 1936, (h) of section 79(1) (statutory nuisances and inspections thereof) of the Environmental Protection Act 1990 no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance, operation or decommissioning of the authorised project and that the nuisance is attributable to such activity or use in accordance with—
 - (i) a notice served under section 60 of the Control of Pollution Act 1974(c) (control of noise on construction site);
 - (ii) a consent given under section 61 (prior consent for work on a construction site) of that Act; or

(a) 2004 c. 18.
 (b) 1990 c. 43.
 (c) 1974 c. 40.

(iii) the applicable controls and measures relating to smoke, dust, accumulations, deposits, light, noise, vibration, lighting or ponds, pools, ditches, gutters or watercourses described in the relevant construction environmental management plan, construction traffic management plan, drainage strategy, lighting strategy, noise management scheme or decommissioning environmental management plan approved (as applicable) by the relevant planning authority pursuant to the relevant provision of Schedule 2 (requirements) or by the MMO pursuant to the relevant term of the deemed marine licence or of any marine licence granted or varied pursuant to the 2009 Act (including any variation of the deemed marine licence) or in the Long Strip construction environmental management plan or in accordance with noise and lighting levels set out in an environmental permit relating to the construction, maintenance, operation or decommissioning of the relevant part of the authorised project; or

(b) is a consequence of the construction, maintenance, operation or decommissioning of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974(a) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990(b)) does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised project.

(3) In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990 (offence of contravening abatement notice) in respect of a statutory nuisance falling within paragraphs (b), (d), (e), (fb), (g), (ga) and, so far as relevant to section 259 of the Public Health Act 1936, (h) of the Environmental Protection Act 1990 where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b) of that Act, it is a defence to show that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance, operation or decommissioning of the authorised project and that the nuisance is attributable to such use in accordance with—

(i) a notice served under section 60 of the Control of Pollution Act 1974 (control of noise on construction site);

(ii) a consent given under section 61 (prior consent for work on a construction site) of that Act; or

(iii) the applicable controls and measures relating to smoke, dust, accumulations, deposits, light, noise, vibration, lighting or ponds, pools, ditches, gutters or watercourses described in the relevant construction environmental management plan, construction traffic management plan, drainage strategy, lighting strategy, noise management scheme or decommissioning environmental management plan approved by the relevant planning authority pursuant to the relevant provision of Schedule 2 (requirements) or by the MMO pursuant to the relevant term of the deemed marine licence or of any marine licence granted or varied pursuant to the 2009 Act (including any variation of the deemed marine licence) or in the Long Strip construction environmental management plan or in accordance with noise and lighting levels set out in an environmental permit relating to the construction, maintenance, operation or decommissioning of the relevant part of authorised project; or

(b) is a consequence of the construction, maintenance, operation or decommissioning of the authorised project and that it cannot reasonably be avoided.

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

(b) 1990 c. 43.

Procedure in relation to appeals under Control of Pollution Act 1974

58.—(1) In the Control of Pollution Act 1974, sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) each have effect, subject to the provisions of article 79 of the Environmental Protection Act 1990 (defence to proceedings in respect of statutory nuisance)) in relation to works carried out in exercise of the powers conferred by this Order, as if—

- (a) in subsection (7) (appeal against notice or against failure to give consent or the giving of qualified consent), for a “magistrates’ court” there were substituted “the Secretary of State”, and
- (b) after that subsection there were inserted—

“(7A) the procedure for determining appeals in accordance with subsection (7) is provided in paragraph 267 (appeals) of Schedule 17 (procedure regarding certain approvals, etc.) of the Associated British Ports (Immingham Green Energy Terminal) Development Consent Order 202*”.

(2) Where a local authority is acting further to section 60(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised project it must also have regard to relevant noise levels referred to in the environmental statement and—

- (a) the applicable construction environmental management plan or noise management scheme approved by the relevant planning authority pursuant to the relevant provision of Schedule 2 (requirements);
- (b) the applicable construction environmental management plan approved by the MMO pursuant to the relevant term of the deemed marine licence or of any marine licence granted or varied pursuant to the 2009 Act (including any variation of the deemed marine licence).

Protection of interests

59. Schedule 14 (protective provisions) has effect.

Crown rights

60.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate, without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate, without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1)—

- (a) may be given unconditionally or subject to terms and conditions; and
- (b) is deemed to have been given in writing where it is sent electronically.

Application of sections 91(3A) and (3B) of the 1990 Act

61. For the purposes of this Order, sections 91(3A) and (3B) (general condition limiting duration of planning permission) of the 1990 Act apply in the circumstances set out in those provisions to extend the time limit specified in paragraph (1) of article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) and paragraph 79 (time limit for

commencement of the authorised project) of Schedule 2 (requirements) as if this Order were a planning permission to develop land in England pursuant to the 1990 Act.

Arbitration

62.—(1) Subject to article 63 (procedure regarding certain approvals, etc.) and except where otherwise expressly provided for in this Order or unless otherwise agreed between the parties, any difference under any provision of this Order must be referred to and settled in arbitration in accordance with the rules set out in Schedule 16 (arbitration rules) of this Order, by a single arbitrator to be agreed between the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) This article does not apply to—

- (a) the provisions of the 1847 Act incorporated in this Order by article 4 (incorporation of the 1847 Act);
- (b) Trinity House in the exercise of its statutory functions;
- (c) any matter for which the consent or approval of the Secretary of State, the Statutory Conservancy and Navigation Authority or the MMO is required under any provision of this Order.

Procedure regarding certain approvals, etc.

63.—(1) Where an application is made to or request is made of any authority, body or person pursuant to any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) When any consent, agreement or approval is required of, or with, the relevant planning authority pursuant to a requirement set out in Schedule 2 (requirements) such consent agreement or approval must not be given if it would—

- (a) permit development (so far as the development falls within a Work No.)—
 - (i) outside of the extent of the area shown on the works plans for the Work No. in which that development is comprised; or
 - (ii) exceeding the maximum built element height set out in column (2) of the table at paragraph 81(5) of Schedule 2 (requirements) for development comprised in the corresponding Work No. set out in column (1) of that table; or
 - (iii) below the minimum built element height set out in column (5) of the table at paragraph 81(5) of Schedule 2 (requirements) for the corresponding built element set out in column (4) of that table; or
- (b) give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

(3) When any details, plans or other matters have been consented, agreed or approved by the relevant planning authority pursuant to a requirement set out in Schedule 2 (requirements), then they may subsequently be amended by agreement with the relevant planning authority provided that no amendments to those details, plans or other matters may be approved where such amendments would—

- (a) permit development (so far as the development falls within a Work No.)—
 - (i) outside of the extent of the area shown on the works plans for the Work No. in which that development is comprised; or
 - (ii) exceeding the maximum built element height set out in column (2) of the table at paragraph 81(5) of Schedule 2 (requirements) for development comprised in the corresponding Work No. set out in column (1) of that table; or

- (iii) below the minimum built element height set out in column (5) of the table at paragraph 81(5) of Schedule 2 (requirements) for the corresponding built element set out in column (4) of that table; or
 - (b) give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.
- (4) Subject to paragraph (5), Schedule 17 (procedure regarding certain approvals, etc.) has effect in relation to all consents, agreements or approvals required or contemplated by any of the provisions of this Order.
- (5) Schedule 17 (procedure regarding certain approvals, etc.) does not apply—
- (a) in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 14 (protective provisions) or any difference or dispute under article 20(6) (protective works) to which, in each case, article 62 (arbitration) instead applies; or
 - (b) in respect of the Statutory Conservancy and Navigation Authority.
- (6) If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Schedule 2 (requirements), those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Certification of documents, public register, etc.

64.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 15 (documents and plans to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 15 (documents and plans to be certified) is required to be amended to accord with the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) The undertaker must, as soon as practicable following the making of this Order, establish and, for the lifetime of the authorised project pursuant to this Order, maintain in an electronic form suitable for inspection by members of the public a copy of each of the documents listed in Schedule 15 (documents and plans to be certified) as may be amended in accordance with paragraph (2).

Service of notices

65.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the written consent of the recipient and subject to paragraphs (5) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects”, in relation to a notice or document, means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Signed by authority of the Secretary of State for Transport

Address
Date

Name
Parliamentary Under Secretary of State
Department for Transport

(a) 1978 c. 30.

AUTHORISED PROJECT

PART 1

AUTHORISED DEVELOPMENT

In the Borough of North East Lincolnshire, a nationally significant infrastructure project as defined in sections 14(1)(j)(a) (nationally significant infrastructure projects: general) and sections 24(2) and 24(3)(c)(b) (harbour facilities) of the 2008 Act and associated development within the meaning of section 115(2)(c) (development for which development consent may be granted), comprising—

*Nationally significant infrastructure project***Work No. 1**

1. Within the area shown on sheets 1, 2 and 3 of the works plans as Work No. 1, a multi-user marine terminal for the import and export of bulk liquids including—

- (a) Work No. 1a, within the area shown as such, being—
 - (i) an open piled approach jetty leading to a jetty head with a single berth with loading and unloading platforms and associated dolphins, fenders and walkways; and
 - (ii) supporting jetty topside infrastructure including marine loading arms, pipes, valves, pipe racks and other process equipment, roadways, footways, maintenance and access platforms, lighting infrastructure, utilities (including electrical systems, firewater systems, communication systems, security systems and potable water supply), ship access equipment, electrical rooms, control rooms, shelters, toxic refuge rooms and other berth furniture;
- (b) a dredged pocket to create a berthing pocket;
- (c) piling works and other construction works (including cathodic protection, scour prevention and remediation works); and
- (d) related landside infrastructure including a jetty access ramp, flood defence access ramp, other access infrastructure, local flood defence works, pipelines, pipes, lighting infrastructure, utilities (including electrical systems, communication systems, security systems and potable water supply), drainage, culverts, traffic control systems, gates and fencing.

*Associated development***Work No. 2**

2. Within the area shown on sheets 3 and 4 of the works plans as Work No. 2, a jetty access road, pipe-racks, pipelines, pipes and associated buildings, plant and infrastructure including—

- (a) a private road for access to Work No 1. from Laporte Road including formation of a new access from Laporte Road;
- (b) a gated access control point with security access gates, parking area, a security building and a power distribution building;
- (c) above ground pipe-racks, pipelines, pipes, cables and other conducting media between works within this Work No. 2 and those comprised in Work Nos. 1 and 3; and

(a) There are amendments to section 14 which are not relevant to this Order.

(b) 2008 c.29. Section 24(2)(a) was amended by section 33(3) of the Wales Act 2017 (c.4)

(c) 2008 c. 29. Section 115(2) was amended by section 160(3) of the Housing and Planning Act 2016 (c. 22). There are other amendments to section 115 which are not relevant to this Order.

- (d) lighting infrastructure, utilities (including electrical systems, communication systems, security systems and potable water supply), drainage, culverts, traffic control systems, gates and fencing.

Work No. 3

3. Within the area shown on sheets 4 and 5 of the works plans as Work No. 3, an ammonia storage tank and associated buildings, plant and infrastructure including—

- (a) Work No. 3a, within the area shown as such, being an ammonia storage tank including boil-off gas processing unit, ammonia tank flare stack, pumps and associated plant and infrastructure;
- (b) piling and foundations;
- (c) welfare building, power distribution building and process instrumentation building;
- (d) process and utility equipment some of which may be within enclosed shelters including instrument air compressor equipment, instrument air drier equipment, instrument air drier receiver equipment, emergency generator and fuel storage, fire water tank and firewater pump equipment, chemical dosing equipment and associated equipment;
- (e) pipe-racks and cable-racks and above and below ground pipelines, pipes, cables, ducts and other conducting media between works within this Work No.3 and those comprised in Work Nos. 4 and 6;
- (f) road access from the highway at two locations from Laporte Road and one location from an unnamed private road off Queens Road;
- (g) internal site roads, hard standing and parking areas;
- (h) drainage system, associated sumps and pumps and a water retention pond;
- (i) utilities, transformers and lighting infrastructure; and
- (j) fencing and gates.

Work No. 4

4. Within the area of land shown on sheet 4 of the works plans as Work No. 4, an underground culvert, containing pipelines, pipes, cables and other conducting media, with any required cathodic protection, under Laporte Road, to link Work Nos. 3 and 5 and including related surface works, fencing, excavations, back-filling and making good to the highway.

Work No. 5

5. Within the area shown on sheets 3, 4 and 5 of the works plans as Work No. 5, a hydrogen production facility and associated buildings, plant and infrastructure including—

- (a) Work No. 5a, within the area of land shown as such, being up to three hydrogen production units each including fired heater, fired heater flue gas stack, flare stack, heat exchangers, compressor buildings, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media;
- (b) piling and foundations;
- (c) process control building, power distribution buildings, process instrumentation buildings and analyser shelters;
- (d) process and utility equipment some of which may be within enclosed shelters including, instrument air compressor equipment, instrument air drier equipment, instrument air drier receiver equipment, emergency generator and fuel storage, fire water tank, fire water pump equipment, chemical dosing equipment and associated equipment;
- (e) pipe-racks and cable-racks and above and below ground pipelines, pipes, cables, ducts and other conducting media between works within this Work No. 5 and those comprised in Work Nos. 2 and 4;

- (f) road access from the highway at two locations on Laporte Road;
- (g) road access at one location from the unnamed private access road off Queens Road;
- (h) internal site roads, hard standing and parking areas;
- (i) drainage system, associated sumps and pumps and a water retention pond;
- (j) utilities, transformers and lighting infrastructure; and
- (k) fencing and gates.

Work No. 6

6. Within the area shown on sheets 4, 5 and 6 of the works plans as Work No. 6, underground pipelines, pipes, cables and other conducting media, with any required cathodic protection, linking Work Nos. 3 and 7.

Work No. 7

7. Within the area shown on sheets 5, 6 and 7 of the works plans as Work No. 7, a hydrogen production, storage and distribution facility and associated buildings, plant and infrastructure, including—

- (a) Work No. 7a, within the area shown as such, comprising—
 - (i) up to two hydrogen production units each including fired heater, fired heater flue gas stack, heat exchangers, compressor buildings, flare stack, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media; and
 - (ii) one hydrogen liquefier unit including a cold box with heat exchangers and expanders, compressor buildings, flare stack, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media;
- (b) Work No. 7b, within the area shown as such, comprising—
 - (i) one hydrogen production unit, including fired heater, fired heater flue gas stack, heat exchangers, compressor buildings, flare stack, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media; and
 - (ii) up to three hydrogen liquefier units, each including a cold box with heat exchangers and expanders, compressor buildings, flare stack, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media;
- (c) Work No. 7c, within the area shown as such, comprising hydrogen storage tanks, hydrogen trailer filling stations, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media, a hydrogen vent stack and associated process equipment;
- (d) Work No. 7d, within the area of land shown as such, comprising hydrogen vehicle refuelling and trailer filling stations, hydrogen compressors, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media and associated process equipment;
- (e) piling and foundations;
- (f) control room and workshop building, security and visitor building, contractor building, warehouse, driver administration building, safe haven building, electrical substation and metering station, power distribution buildings, process instrumentation buildings, analyser buildings, temporary vehicle and contractor maintenance buildings;
- (g) other associated buildings not exceeding 6 metres in height (and, for the purposes of this sub-paragraph (g), the expression “buildings” does not include structures, erections or equipment or any part of structures, erections or equipment);
- (h) process and utility equipment some of which may be within enclosed shelters including cooling towers and pumps, instrument air compressor equipment, instrument air drier

equipment, instrument air drier receiver equipment, nitrogen generation equipment, steam generation equipment, wastewater and water treatment equipment, emergency generator and fuel storage, fire water tank and firewater pump equipment, chemical dosing equipment and associated equipment;

- (i) pipe-racks and cable-racks and above and below ground pipelines, pipes, cables and other conducting media between works within this Work No. 7 and those within Work No. 6;
- (j) road access from the highway to the site at two locations from Kings Road and two locations from the A1173;
- (k) internal site roads, hard standing and parking areas;
- (l) drainage system, associated sumps and pumps and a water retention pond;
- (m) utilities, transformers and lighting infrastructure; and
- (n) fencing and gates.

Work No. 8

8. Within the area shown on sheets 5 and 6 of the works plans as Work No. 8, a temporary construction and laydown area including a road access from Queens Road, hard standing, open storage areas, storage buildings, contractor compound and staff welfare facilities, vehicle parking, roadways, fencing and gates and lighting infrastructure.

Work No. 9

9. Within the area shown on sheets 3 and 4 of the works plans as Work No. 9, a temporary construction and laydown area including a road access from Laporte Road, works to divert Bridleway Number 36, surface protections, open storage areas, storage buildings, vehicle parking, roadways, fencing and gates and lighting infrastructure.

Work No. 10

10. Within the area shown on sheets 6 and 7 of the works plans as Work No. 10, the temporary modification of overhead cables and lines and the temporary removal of highway signage, lamp posts and other street furniture.

Further associated development

11. In connection with such Work Nos. 1 to 10 and to the extent that they do not otherwise form part of any such work, further associated development within the Order limits comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project which do not give rise to any materially new or materially different significant effects from those assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations including—

- (a) site preparation works including site clearance and set up (including fencing) and earthworks (including soil stripping and storage, ground preparation and site levelling, lowering and raising);
- (b) temporary site construction compounds including (in each case temporary) fencing, storage areas (including for waste and spoil), welfare facilities, buildings, lighting infrastructure, access, parking and drainage infrastructure;
- (c) the installation, removal or alteration of the position of services and apparatus including overhead cables and lines and above ground or below ground pipes, pipelines, sewers, watercourses, drains and cables and other conducting media and any pipe sleeves, ducts and culverts in which any apparatus is lodged;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised project;
- (e) works for the benefit or protection of land affected by the authorised project;

- (f) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (g) works required for the protection, strengthening, improvement or maintenance of any buildings;
- (h) street works, works to alter the layout of streets, the installation, alteration or removal of street furniture and the marking and lining of any street;
- (i) the provision, strengthening, improvement, alteration, diversion and creation of ramps, means of access, footpaths, bridleways and cycleways;
- (j) closed circuit television; and
- (k) such other works, including works of demolition, as may be necessary for the purposes of or in connection with the construction, operation, maintenance and decommissioning of the authorised project.

PART 2

ANCILLARY WORKS

12. Generally, works within the Order limits comprised in—

- (a) surveying and setting-out;
- (b) vegetation removal;
- (c) planting;
- (d) installation of demarcation fencing, stockproof fencing and heras fencing or similar to enable the establishment of construction areas;
- (e) survey trenches and pits; and
- (f) demobilisation of construction works.

SCHEDULE 2 REQUIREMENTS

Article 5

Interpretation

1. In this Schedule—

“commence” means beginning to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part of the authorised project or the relevant part of it (in each case as specified where the term “commence” is used in this Schedule) other than operations consisting of site clearance (excluding the clearance of trees or other vegetation from Long Strip), demolition work, environmental surveys and monitoring, investigations for the purposes of assessing ground and geological conditions, the receipt and erection of construction plant and equipment (excluding in relation to Work No. 9), the erection of temporary contractor and site welfare facilities (excluding in relation to Work No. 9), the diversion, laying and connection of services, the erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” and “commenced” are to be construed accordingly;

“decommissioning” means the decommissioning of the relevant part of the authorised project when it is no longer required for operational use or, as the case may be, upon the permanent cessation of operational use (such that it is the undertaker’s understanding and expectation that the relevant part will not be returned to operational use at some point in the future);

“hydrogen production facility building design code” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the hydrogen production facility building design code for the purposes of this Order;

“Long Strip construction environmental management plan” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the Long Strip construction environmental management plan for the purposes of this Order;

“operational use” means the relevant part of the authorised project being in operation after construction and commissioning is complete;

“outline construction environmental management plan” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline construction traffic management plan” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline decommissioning environmental management plan” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order;

“outline landscape and ecology management plan” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline landscape and ecology management plan for the purposes of this Order;

“outline operational travel plan” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline operational travel plan for the purposes of this Order;

“Queens Road residential properties” means the land comprised in plots 5/3, 5/4, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 or 7/23 shown on the land plans and described in the book of reference;

“residential purposes” means any use falling within a class set out in Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as in force at the date of this Order) or any other use for residential purposes;

“woodland compensation plan” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the woodland compensation plan for the purposes of this Order.

Time limit for commencement of the authorised project

2. The authorised project must be begun (which has the meaning given in section 155 (when development begins) of the 2008 Act) within five years of the date on which this Order comes into force.

Parts of the authorised project

3. Any application to the relevant planning authority pursuant to a paragraph of this Schedule 2 (requirements) in respect of a part of the authorised project must include a plan showing the part to which the application relates, the parts (if any) in respect of which an application pursuant to the paragraph has previously been approved by the relevant planning authority and the parts (if any) in respect of which the requirement for approval by the relevant planning authority pursuant to the paragraph remains to be satisfied.

Detailed approval

4.—(1) No part of—

- (a) any control building within Work No. 5; or
- (b) any control room and workshop building, security and visitor building, contractor building and warehouse within Work No. 7,

may be constructed above its ground floor slab until details of the external materials to be used in the construction of that building have been submitted to and approved by the relevant planning authority.

(2) Any details submitted and approved under sub-paragraph (1) must be in general accordance with the principles contained in the hydrogen production facility building design code.

(3) The ammonia storage tank within Work No. 3a must not be brought into operational use until details of the external paint finish for the tank have been submitted to and approved by the relevant planning authority.

(4) The relevant buildings and ammonia storage tank must not be carried out other than in accordance with the details approved by the relevant planning authority under sub-paragraphs (1) and (3).

(5) In respect of the table below—

- (a) no permanent built element of the authorised project within (as applicable) a Work No. or part of a Work No. set out in column (1) may exceed the maximum height set out in column (2) or the maximum finished ground level set out for that permanent built element in column (3); and
- (b) the height of any permanent built element of the authorised project set out in column (4) within (as applicable) a Work No. or part of a Work No. set out in column (1) must exceed the minimum height set out in column (5) for that built element.

Table 1

<i>(1) Work No.</i>	<i>(2) Maximum built element height</i>	<i>(3) Maximum finished ground level</i>	<i>(4) Built element</i>	<i>(5) Minimum built element height</i>
Work No.2	15m above finished ground level	5 metres above ordinance datum	-	-
Work No.3 (except Work No.3a)	20 metres above finished ground level	3.5 metres above ordinance datum	-	-
Work No.3a	65 metres above finished ground level	3.5 metres above ordinance datum	-	-
Work No.5 (except Work No.5a)	20 metres above finished ground level	3.8 metres above ordinance datum	-	-
Work No.5a	45 metres above finished ground level	3.8 metres above ordinance datum	Hydrogen production unit flare stack	37 metres above finished ground level
Work No.7 (except Work Nos. 7a, 7b, 7c and 7d)	20 metres above finished ground level	2.5 metres above ordinance datum	-	-
Work Nos.7a, 7b and 7c	45 metres above finished ground level	2.5 metres above ordinance datum	Hydrogen production unit flare stack	37 metres above finished ground level
Work No. 7d	15 metres above finished ground level	2.5 metres above ordinance datum	-	-

Phasing

5.—(1) The ammonia storage tank within Work No. 3a and the hydrogen production units within Work No. 5 and Work No. 7 must not be brought into operational use until the jetty forming part of Work No. 1 is available for use.

(2) The construction of no more than two hydrogen production units and no more than one hydrogen liquefier unit may begin until a plan setting out the phase of works relating to any additional hydrogen production unit or hydrogen liquefier unit has been submitted to and approved by the relevant planning authority.

Construction environmental management plan

6.—(1) No works forming part of Work No. 1 outside of the UK marine area (except the clearance of trees or other vegetation from Long Strip) may be commenced until a construction

environmental management plan for that part of the works has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency on matters related to its function; and it is agreed that any such construction environmental management plan and the construction environmental management plan submitted pursuant to paragraph 106 of Part 2 (conditions applying to all licensable activities) of Schedule 3 (deemed marine licence) may be comprised in the same document.

(2) No works forming part of Work No. 2 (except the clearance of trees or other vegetation from Long Strip), Work No. 3, Work No. 4, Work No. 5, Work No. 6, Work No. 7, Work No. 8 or Work No. 9 may be commenced until a construction environmental management plan for those works has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency and Natural England on matters related to their function.

(3) Any construction environmental management plan submitted and approved under sub-paragraph (1) and (2) must be in general accordance with the outline construction environmental management plan.

(4) Any works forming part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 4, Work No. 5, Work No. 6, Work No. 7, Work No. 8 and Work No. 9 must be carried out in accordance with the approved construction environmental management plan for those works, unless otherwise approved by the relevant planning authority.

(5) The clearance of trees or other vegetation from Long Strip must be carried out in accordance with the Long Strip construction environmental management plan, unless otherwise approved by the relevant planning authority.

Construction traffic management plan

7.—(1) No part of the authorised project outside of the UK marine area (except the clearance of trees or other vegetation from Long Strip) may be commenced until the construction traffic management plan for that part has been submitted to and approved by the relevant planning authority.

(2) Any construction traffic management plan submitted and approved under sub-paragraph (1) must be in general accordance with the outline construction traffic management plan.

(3) Each part of the authorised project outside of the UK marine area must be carried out in accordance with any approved construction traffic management plan for that part, unless otherwise approved by the relevant planning authority.

Highway works

8.—(1) Before the construction of any works to a highway maintainable at the public expense begins, written details of those works, including a plan of any land which is not such highway but which it is proposed for the purposes of article 10 (construction and maintenance of new, altered or diverted streets) is to become such highway on completion of those works, must be submitted to and approved by the relevant planning authority following consultation with the highway authority on matters related to its functions.

(2) Before the construction of the underground culvert forming part of Work No. 4 begins, written details of the design of such underground culvert, back-filling and making good to the highway and the construction methodology for its installation must be submitted to and approved by the relevant planning authority following consultation with the highway authority on matters related to its functions.

(3) The works referred to in sub-paragraph (1) and the underground culvert, back-filling and making good referred to in sub-paragraph (2) must be constructed in accordance with the approved details, unless otherwise approved by the relevant planning authority following consultation with the highway authority on matters related to its function.

Construction hours

9.—(1) Subject to sub-paragraph (2), no works of construction comprised in Work No. 2, Work No. 3, Work No. 4, Work No. 5, Work No. 6 or Work No. 7 are to take place on bank holidays or outside the hours of 07:00 to 19:00 on Mondays to Saturdays, unless otherwise agreed with the relevant planning authority.

(2) The following works comprised in Work No. 2, Work No. 3, Work No. 4, Work No. 5, Work No. 6 or Work No. 7 are permitted outside the hours stated in sub-paragraph (1) provided such works do not give rise to any materially new or materially different effects than those assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations —

- (a) works that cannot be interrupted, including concrete pours, or that need to be conducted outside of normal work hours for safety reasons, including radiographic testing;
- (b) emergency works;
- (c) works that are carried out with the prior approval of the relevant planning authority;
- (d) works that do not exceed maximum permitted levels of noise at each agreed monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed with the relevant planning authority for specific construction activities;
- (e) works necessary to support the construction of Work No. 1.

(3) Any emergency works carried out under sub-paragraph (2)(b) must be notified to the relevant planning authority within 24 hours of being begun.

Landscape and ecology management plan

10.—(1) No part of Work No. 3, Work No. 5 or Work No. 7 may be brought into operational use until details of the landscape and ecology measures associated with that part, the timing of provision of those measures and a plan for securing their establishment and maintenance have been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved under sub-paragraph (1) must be in general accordance with the principles contained in the outline landscape and ecology management plan.

(3) The landscape and ecology measures approved under sub-paragraph (1) must be carried out, established and maintained in accordance with the details approved under sub-paragraph (1).

(4) Any tree or shrub planted pursuant to this paragraph that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Woodland compensation plan

11. The woodland compensation plan must be complied with, unless otherwise approved by the relevant planning authority.

Surface water drainage

12.—(1) No part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (except the clearance of trees or other vegetation from Long Strip) may be commenced until the drainage strategy for that part has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency and the Board on matters related to their respective functions.

(2) Any drainage strategy submitted and approved under sub-paragraph (1) must (so far as applicable) be in general accordance with the outline drainage strategy contained in appendix 18.B of the environmental statement.

(3) Each part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 and Work No. 7 must be carried out in accordance with the approved drainage strategy for that part, unless otherwise approved by the relevant planning authority.

Flood risk assessment

13.—(1) The authorised project outside of the UK marine area must be carried out and operated in accordance with the approved flood risk assessment contained in appendix 18A of the environment statement, unless otherwise approved by the relevant planning authority.

Queens Road residential properties

14.—(1) No part of Work No. 7 may be brought into operational use until in respect of the Queens Road residential properties—

- (a) the undertaker has entered on and taken possession of all of the Queens Road residential properties following either compulsory acquisition pursuant to article 22 (compulsory acquisition of land) of this Order or acquisition of it by agreement by the Company or Air Products (whether before or after the date of this Order);
- (b) the use of all of the Queens Road residential properties for residential purposes has ceased; and
- (c) notice confirming such possession and cessation of use has been served on the relevant planning authority.

(2) From the date of the notice served on the relevant planning authority pursuant to sub-paragraph (1) no part of the Queens Road residential properties may be used for residential purposes for so long as any part of Work No. 7 is in operational use.

Contaminated land

15.—(1) No part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 4, Work No. 5, Work No. 6 or Work No. 7 (except the clearance of trees or other vegetation from Long Strip) may be commenced until a written remediation strategy applicable to that part to deal with any contamination of that part which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency on matters related to its function.

(2) In the event that any unexpected contamination is discovered during the construction of any part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 4, Work No. 5, Work No. 6 or Work No. 7, the part of the works to which the contamination relates must cease until a site investigation and assessment report applicable to that part and, if necessary, a remediation strategy to deal with any contamination which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency on matters related to its function.

(3) Any remediation strategy submitted under sub-paragraphs (1) or (2) must be in general accordance with the outline remediation strategy contained in appendix 21.C of the environmental statement.

(4) Any remediation required pursuant to sub-paragraphs (1) or (2) must be carried out in accordance with the remediation strategy approved pursuant to sub-paragraphs (1) or (2) (as the case may be) unless otherwise approved by the relevant planning authority.

(5) Any verification report required by a remediation strategy approved pursuant to sub-paragraphs (1) or (2) must be submitted to the relevant planning authority in accordance with that remediation strategy.

External lighting

16.—(1) No part of the authorised project within Work No. 1 outside of the UK marine area, Work No 2, Work No. 3, Work No. 5 and Work No. 7 may be brought into operational use until a written scheme of the proposed operational external lighting relating to that part has been submitted to and approved by the relevant planning authority.

(2) Any scheme submitted and approved under sub-paragraph (1) must be in general accordance with the lighting assessment report contained in appendix 2.B of the environmental statement.

(3) Each part of Work No. 1 outside of the UK marine area, Work No 2, Work No. 3, Work No. 5 and Work No. 7 must be operated in accordance with the scheme approved under sub-paragraph (1) for that part, unless otherwise approved by the relevant planning authority.

Control of noise during operational use

17.—(1) No part of the authorised project comprised in Work No. 3, Work No. 5 or Work No. 7 may be brought into operational use until a scheme for noise management (addressing any parts of Work No. 3, Work No. 5 and Work No. 7 to which the application relates together with any parts in respect of which a scheme has previously been approved) has been submitted to and approved by the relevant planning authority.

(2) Any scheme submitted and approved under sub-paragraph (1) must demonstrate that the effects of noise on the noise sensitive receptors identified in chapter 7 of the environmental statement are no worse than the residual effects identified in that chapter.

(3) Each part of Work No. 3, Work No. 5 and Work No. 7 must be operated in accordance with the scheme approved under sub-paragraph (1) for that part, unless otherwise approved by the relevant planning authority.

Decommissioning environmental management plan

18.—(1) Prior to the decommissioning of (in each case) the entirety of Work No. 2 (except the jetty access road), Work No. 3, Work No. 4, Work No. 5, Work No. 6 or Work No. 7, a decommissioning environmental management plan for that part of the authorised project must be submitted to and approved by the relevant planning authority, following consultation with the Environment Agency on matters related to its function.

(2) Any decommissioning environmental management plan submitted and approved under sub-paragraph (1) must be in general accordance with the outline decommissioning environmental management plan.

(3) The decommissioning of (in each case) the entirety of Work No. 2 (except the jetty access road), Work No. 3, Work No. 4, Work No. 5, Work No. 6 or Work No. 7 must be carried out in accordance with the approved decommissioning environmental management plan for that part of the authorised project unless otherwise approved by the relevant planning authority.

Operational travel plan

19.—(1) No part of the authorised project comprised in Work No. 3, Work No. 5 or Work No. 7 may be brought into operational use until an operational travel plan relating to that part of the authorised project has been submitted to and approved by the relevant planning authority.

(2) Any operational travel plan submitted and approved under sub-paragraph (1) must be in general accordance with the outline operational travel plan.

(3) Each part of Work No. 3, Work No. 5 and Work No. 7 must be operated in accordance with the approved operational travel plan for that part, unless otherwise approved by the relevant planning authority.

Operational phase flood emergency response plans

20.—(1) No part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 or Work No. 7 may be brought into operational use until a flood emergency response plan to apply during operation of that part has been submitted to and approved by the relevant planning authority, following consultation with North East Lincolnshire Council in its capacity as lead local flood authority (within the meaning of the Flood and Water Management Act 2010) and the Environment Agency on matters related to their respective functions.

(2) Any flood emergency response plan submitted and approved under sub paragraph (1) must (so far as applicable) be in general accordance with the flood risk assessment contained in appendix 18.A of the environmental statement.

(3) Each part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 and Work No. 7 must be operated in accordance with the plan approved under sub-paragraph (1) for that part, unless otherwise approved by the relevant planning authority.

Flood Defence Agreement

21.—(1) No part of the authorised project shall be commenced until a Flood Defence Agreement between the Applicant and the Environment Agency regarding the reconstruction, future ownership, operation and maintenance of the flood defence that will be impacted by the authorised project, has been submitted to and approved by the Local Planning Authority. The authorised project must be carried out in accordance with the approved agreement.

SCHEDULE 3

Article 47

DEEMED MARINE LICENCE

PART 1

GENERAL

Interpretation

1.—(1) In this Schedule—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(a);

“the 2017 Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;

“2023 sediment sampling plan” means—

(a) the document of that name identified in the table at Schedule 15 (documents and plans to be certified) of the Order and which has been certified by the Secretary of State as the 2023 sediment sampling plan for the purposes of the Order, which sets out—

(i) a detailed dredging methodology;

(ii) dredge locations;

(iii) dredge amounts (total and annual, if applicable);

(iv) dredge depths;

(v) duration of dredging activities;

(vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and

(vii) specific gravity of the material or material type; and

(b) any sediment sampling analyses submitted to the MMO related to the plan to which subparagraph (a) refers prior to its expiry;

“the authorised development” has the meaning given in paragraph 101(2);

“business day” means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the banking and Financial Dealings Act 1971;

“business hours” means the period from 09:00 until 17:00 on any business day;

“capital dredge” means dredging to a depth not previously dredged, or to a depth not dredged within the last 10 years and is generally undertaken to create or deepen navigational channels, berths or to remove material deemed unsuitable for the foundation of a construction project and “capital dredging” is to be construed accordingly;

“Chart Datum” means 3.9 m below ordnance datum (Newlyn), corresponding with a depth of 7.6m of the outer sill of the Port of Immingham;

“cold weather construction restriction strategy” means the strategy of that description referred to in paragraph 109 of this Schedule;

“commence” means beginning to carry out any part of a licensed activity and “commenced” and “commencement” are to be construed accordingly;

(a) 2009 c. 23.

“condition” means a condition in Part 2 and Part 3 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

“consolidated dredged materials” mean materials including glacial clay with a diameter of less than 31.25 micrometres and gravel with a diameter of at least 2 and less than 64 millimetres;

“environmental statement” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) of the Order and which has been certified by the Secretary of State as the environmental statement for the purposes of the Order;

“existing marine licence” means licence L/2014/00429 and any variation to it or any subsequent equivalent successor licence as may be granted that permits the disposal of dredged arisings from the Port of Immingham;

“flood risk assessment” means the flood risk assessment contained in appendix 18A of the environmental statement;

“further sediment sampling plan” means—

(c) any further sediment sampling plan approved by the MMO in accordance with paragraph 107(2) of this Schedule which sets out—

(i) a detailed dredging methodology;

(ii) dredge locations;

(iii) dredge amounts (total and annual, if applicable);

(iv) dredge depths;

(v) duration of dredging activities;

(vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and

(vii) specific gravity of the material or material type; and

(d) any sediment sampling analyses submitted by the MMO related to the plan to which subparagraph (a) refers prior to its expiry;

“high water” means daily high tides in every lunar day;

“HU056” means the area bounded by co-ordinates (53°39.3000’N, 00°10.4898’W), (53°39.0499’N, 00°10.4700’W), (53°38.8201’N, 00°09.4398’W), (53°39.3000’N, 00°10.4898’W);

“HU060” means the area bounded by co-ordinates—

(53°39.3000’N, 00°10.4898’W) (53°38.7499’N, 00°10.4536’W); (53°38.7575’N, 00°10.4677’W), (53°38.7648’N, 00°10.4823’W), (53°38.7718’N, 00°10.4974’W), (53°38.7784’N, 00°10.5128’W), (53°38.7847’N, 00°10.5287’W), (53°38.7906’N, 00°10.5450’W), (53°38.7962’N, 00°10.5617’W), (53°38.8013’N, 00°10.5787’W), (53°38.8061’N, 00°10.5960’W), (53°38.8105’N, 00°10.6136’W), (53°38.8145’N, 00°10.6315’W), (53°38.8181’N, 00°10.6496’W), (53°38.8213’N, 00°10.6679’W), (53°38.8240’N, 00°10.6864’W), (53°38.8264’N, 00°10.7051’W), (53°38.8283’N, 00°10.7239’W), (53°38.8298’N, 00°10.7428’W), (53°38.8309’N, 00°10.7618’W), (53°38.8315’N, 00°10.7809’W), (53°38.8317’N, 00°10.8000’W), (53°38.8315’N, 00°10.8191’W), (53°38.8309’N, 00°10.8382’W), (53°38.8298’N, 00°10.8572’W), (53°38.8283’N, 00°10.8761’W), (53°38.8264’N, 00°10.8949’W), (53°38.8240’N, 00°10.9136’W), (53°38.8213’N, 00°10.9321’W), (53°38.8181’N, 00°10.9504’W), (53°38.8145’N, 00°10.9685’W), (53°38.8105’N, 00°10.9864’W), (53°38.8061’N, 00°11.0040’W), (53°38.8013’N, 00°11.0213’W), (53°38.7962’N, 00°11.0383’W), (53°38.7906’N, 00°11.0550’W), (53°38.7847’N, 00°11.0713’W), (53°38.7784’N, 00°11.0872’W), (53°38.7718’N, 00°11.1026’W), (53°38.7648’N, 00°11.1177’W), (53°38.7575’N, 00°11.1323’W), (53°38.7499’N, 00°11.1464’W), (53°38.7439’N, 00°11.1567’W), (53°38.7438’N, 00°11.1564’W), (53°38.5320’N, 00°10.8000’W), (53°38.7438’N, 00°10.4436’W) and (53°38.7439’N, 00°10.4434’W);

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity authorised in paragraph 101 of this Schedule;

“maintenance dredge” means a dredge undertaken to keep channels, berths and other areas at their designed depths, involving removing recently accumulated sediments such as mud, sand and gravel to a level that is not lower than it has been at any time during the past 10 years and “maintenance dredging” is to be construed accordingly;

“marine piles” means piles that will be in a free water condition during construction;

“MCMS” means the Marine Case Management System provided by the MMO;

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“mean low water springs” means the average of low water heights occurring at the time of spring tides;

“the MMO” means the Marine Management Organisation;

“outline marine written scheme of investigation” means the outline marine archaeological written scheme of investigation contained in appendix 15B to the environmental statement;

“Notice to Mariners” means any notice to mariners which may be issued by the Admiralty, Trinity House, the King’s harbour masters, government departments or harbour and pilotage authorities advising mariners of important matters affecting navigational safety;

“the Order” means the Associated British Ports (Immingham Green Energy Terminal) Order 202*;

“outline construction environmental management plan” means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) of the Order and which has been certified by the Secretary of State as the outline construction environmental management plan for the purposes of the Order;

“percussive piles” means driven piles but excludes the handling, placing and vibro-driving of piles;

“percussive piling” for the purposes of this licence means the driving of piles by percussive means but does not include the handling, placing or vibro-driving of piles and a “marine pile” means a pile which will, during construction, be in a free-water state;

“the Port of Immingham” has the meaning given in the Order;

“relevant planning authority” has the meaning given in the Order;

“the River Humber” means the tidal estuary from its mouth at the Spurn Peninsula to its confluence with the rivers Ouse and Trent;

“sea bed” means the ground under the sea.

“subtidal” means areas of the bed of the estuary permanently submerged throughout the tidal cycle;

“unconsolidated dredged materials” mean materials including alluvial sand with a diameter of at least 62.5 micrometres and less than two millimetres, alluvial silt with a diameter of at least 31.25 and less than 62.5 micrometres and gravel with a diameter of at least 2 and less than 64 millimetres;

“undertaker” has the meaning given to “undertaker” in article 2 (interpretation) of the Order;

“vessels” means every description of vessel, however propelled or moved, and includes a displacement and non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over in water and which is at the time in, on, or over water; and

“the works plans” means the plans of that name identified in the table at Schedule 15 (documents and plans to be certified) and which is certified by the Secretary of State as the works plans for the purposes of the Order.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to four decimal places.

(3) Tonnages of dredged materials are expressed in wet tonnes.

(4) References to sunset and sunrise are, unless otherwise agreed with the MMO, to be in accordance with the relevant daily set and rise times for the British Isles provided by HM Nautical Almanac Office.

Contacts

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this licence is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH, telephone 0300 123 1032 and, unless otherwise advised in writing, where contact to the local MMO office (local office) is required, the following contact details must be used: Marine Management Organisation, The MMO District Office - Crosskill House, Mill Lane, Beverley, HU17 9JB, telephone 0208 720 1344, email – beverley@marinemangement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consent@marinemangement.org.uk or where contact to the local MMO office is required is beverley@marinemangement.org.uk.

(3) Unless otherwise advised in writing by the MMO, MCMS must be used for all licence returns or applications to vary this licence. The MCMS address is: https://marinelicensing.marinemangement.org.uk/mmofox5/fox/live/MMO_LOGIN/login.

(4) Unless otherwise stated in writing by the MMO, all notifications required by this licence must be sent by the undertaker to the MMO using MCMS.

Licensed marine activities

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the undertaker to carry out licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemption specified by order) of the 2009 Act.

(2) For the purposes of this licence “the authorised development” means the construction, operation and maintenance of a liquid bulk facility on the River Humber comprising—

- (a) within the area shown as Work No.1a on the works plans—
 - (i) an open piled approach jetty carrying on its surface a roadway, a footway, pipes, pipework and utilities and lighting, rising from ground level to cross over existing flood defence infrastructure and then extending from the shore in a north easterly direction connecting to a jetty head;
 - (ii) a jetty head comprising structures including loading and unloading platforms with mechanical loading arms, two breasting dolphins with fenders, each with a gangway tower and eight mooring dolphins linked by walkways;
 - (iii) four monopiles located in front of the jetty head or loading platform to provide fendering for smaller vessels;
 - (iv) a jetty head building, a separate refuge building with attached office, water closet and external safety shower, an electrical building, shelters, pump housing and pump canister;
 - (v) a jetty operations building located near the landside end of the jetty to house control room functions including switch room, operations room and welfare facilities;
 - (vi) topside infrastructure installed on the jetty to load and unload vessels including marine loading arms, gangways, pipes, piping, valves and other process equipment, maintenance access roadways and access ramps;

- (vii) lighting infrastructure, utilities and electrical systems including firewater systems, communication systems and security systems;
- (viii) piling works and construction operations within the River Humber;
- (b) within the area shown as Work No.1 on sheets 1, 2, 3 and 4 of the works plans, capital dredging works within the River Humber related to the works to which paragraph 101(2)(a) refers and the disposal of any arisings from such dredging;
- (c) activities including works to—
 - (i) alter, clean, modify, dismantle, refurbish, reconstruct, carry out excavations and clearance (excluding clearance or detonation of ordnance), deepen, scour and cleanse;
 - (ii) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore and waters of the River Humber;
 - (iii) remove, relocate or replace any work or structure;
 - (iv) construct, place and maintain works and structures including piled fenders; and
 - (v) alter the course or otherwise interfere with navigable or non-navigable watercourses;
- (d) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders and pontoons) and lighting.

Licence to dredge and deposit

4.—(1) Subject to paragraph 103, the undertaker is permitted to undertake a capital dredge to a depth of 14.5 metres below chart datum (with an allowance for the tolerances of the dredging equipment) of the berth pocket, the grid coordinates for which are specified in paragraph 103(2).

(2) The materials dredged may not exceed the approximate quantities and must be deposited at the locations set out in the following table—

<i>Material</i>	<i>Volume (m3)</i>	<i>Specific gravity</i>	<i>Maximum tonnage (wet tonnes)</i>	<i>Disposal site</i>
Unconsolidated	3,900	1.35	5,265	HU060
Consolidated	100	2.26	226	HU056

(3) It is acknowledged that pursuant to section 75 of the 2009 Act the undertaker does not need a marine licence to carry out maintenance dredging within the statutory harbour authority area of the Port of Immingham and that the disposal of dredged arisings for such maintenance dredging is permitted in accordance with the existing marine licence.

(4) Arisings of consolidated and unconsolidated materials from the capital dredge must be deposited at HU056 or HU060.

(5) It is noted that arisings of unconsolidated materials from maintenance dredging must be deposited at HU060 in accordance with the existing marine licence.

Details of licensed marine activities

5.—(1) The grid coordinates within the UK marine area within which the undertaker may carry out a licensed activity (save for the capital dredge and disposal of any arisings from such dredge to which paragraph 101(2)(b) refers) are specified below—

<i>Point reference</i>	<i>Latitude</i>	<i>Longitude</i>
1	53.622880	-0.169136
2	53.623860	-0.167200

3	53.627714	-0.157052
4	53.630360	-0.155051
5	53.628116	-0.145503
6	53.624711	-0.147881
7	53.624489	-0.153444
8	53.621258	-0.164738

(2) No capital dredging may be carried out by the undertaker other than within the area of the River Humber bounded by the grid coordinates specified below and identified as Work No. 1 on sheets 1, 2, 3 and 4 of the works plans—

<i>Point reference</i>	<i>Latitude</i>	<i>Longitude</i>
1	53.627888	-0.155204
2	53.628925	-0.154488
3	53.627495	-0.148612
4	53.626455	-0.149329

PART 2

CONDITIONS APPLYING TO ALL LICENSABLE ACTIVITIES

General

6.—(1) With respect to any provision of this Schedule which requires the licensed activities to be carried out in accordance with documents, strategies, information, plans, protocols or statements approved by the MMO prior to or under this licence, the documents, strategies, information, plans, protocols or statements so approved are taken to include amendments approved in writing by the MMO subsequent to the first approval of those documents, strategies, information, plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

(2) When any approval or agreement is required of, or with, the MMO pursuant to this Schedule such approval or agreement must not be given if it would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

Before licensed activities

Notifications regarding licensed activities

7.—(1) The undertaker must inform the MMO—

- (a) at least five business days prior to the commencement of the first licensed activity; and
- (b) within five business days following the completion of the final licensed activity,

of the commencement or the completion (as applicable).

(2) The undertaker must provide the following information to the MMO—

- (a) the name and function in writing of any agent or contractor or sub-contractor that will carry on any licensed activity on behalf of the undertaker; and
- (b) such notification must be received by the MMO in writing not less than 24 hours before the commencement of the licensed activity.

(3) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors, and sub-contractors that will be carrying out any licensed activity on behalf of the undertaker.

(4) The undertaker must keep a copy of this license and any subsequent revisions or amendments available for inspection at its registered address and any site office location at or adjacent to a construction site.

(5) Any changes to details supplied under sub-paragraph (2) must be notified to the MMO in writing no less than 24 hours prior to the agent, contractor or vessel engaging in the licensed activity in question.

(6) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

(7) Copies of this licence must be available for inspection at the following locations—

- (a) the undertaker's office at the Port of Immingham; and
- (b) during the construction of the authorised development only, at any site office which is adjacent to or near the River Humber and which has been provided for the purposes of the construction of the authorised development.

(8) The undertaker must request that the masters responsible for the vessels that will be carrying out any licensed activity on behalf of the undertaker as notified to the MMO under sub-paragraph (6) make a copy of this licence available for inspection on board such vessels during the carrying out of any licensed activity.

Construction environmental management plan

8.—(1) No licensed activities may be commenced until a construction environmental management plan for them has been submitted to and approved by the MMO following consultation with the relevant planning authority, the Environment Agency and Natural England on matters related to their function; and the submitted construction environmental management plan must be in accordance with the outline construction environmental management plan, unless otherwise approved in writing by the MMO.

(2) Any construction environmental management plan submitted pursuant to sub-paragraph (1) and any construction environmental management plan submitted pursuant to paragraph 83(1) of Schedule 2 (requirements) of the Order may be comprised in the same document or separate documents.

Sediment sampling

9.—(1) Any sediment sampling analyses undertaken by a laboratory validated by the MMO and approved by the MMO as part of either the 2023 sediment sampling plan or any further sediment sampling plan are valid for a period of 3 years from the date when those analyses were undertaken.

(2) Where the validity period for sediment sampling analyses set out in sub-paragraph (1) above expires, the undertaker must submit a further sediment sampling plan request to the MMO for its approval and any sediment sampling analyses from such further sediment sampling plan must be submitted to the MMO.

Agents, contractors and sub-contractors

10.—(1) The undertaker must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in paragraph 101 of this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

(2) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-

contractors that will carry on any licensed activity listed in section 3 of this licence on behalf of the undertaker.

Cold weather construction restriction strategy

11.—(1) No construction operations for any licensed activity are to commence until a cold weather construction restriction strategy is submitted to and agreed by the MMO in consultation with Natural England. The strategy must include the following—

- (a) A provision that no construction operations (other than to finish driving any pile that is in the process of being driven at the point that the cold weather restriction comes into force) within 200 metres of exposed mudflat and at least 200 metres seaward of mean low water springs may take place following seven consecutive days of zero or sub zero temperatures (where the temperature does not exceed zero degrees centigrade for more than six hours in any day or any other formula as may be agreed with the MMO to define short periods of thaw);
- (b) The establishment of three temperature monitoring points within the Humber Estuary;
- (c) A provision that if the construction restriction comes into effect as a consequence of cold weather conditions, it will be reviewed as follows—
 - (i) after 24 hours of above freezing temperatures the restriction will be lifted on a temporary basis provided that the weather forecast relevant for the area including the Port of Immingham, (as agreed with the MMO) indicates that freezing conditions will not return within five days; and
 - (ii) after a further five clear days of above-freezing temperatures, the restrictions will be lifted entirely.

(2) All licensed activities must be carried out in accordance with the cold weather construction restriction strategy approved pursuant to sub-paragraph (1), unless otherwise approved by the MMO.

Marine Noise Registry

12.—(1) Only when impact driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of the licensed activities, information on the expected location, start and end dates of impact pile driving or detonation of explosives to satisfy the Marine Noise Registry's Forward Look requirements; and
- (b) within 12 weeks of completion of impact pile driving or detonation of explosives, information on the exact locations and specific dates of impact pile driving or detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements.

(2) The undertaker must notify the MMO of the successful provision to the Marine Noise Registry of Forward Look and Close-out requirements within 7 days of the submission.

Marine written scheme of archaeological investigation

13. Archaeological method statements, together with a written report on any consultation carried out with Historic England and the relevant planning authority on matters related to their respective functions in their preparation, must be submitted to and approved by the MMO in writing in accordance with the provisions of the outline marine written scheme of investigation and a subsequent update must be provided to the MMO six weeks before commencement of any licensed activity to which the method statement relates.

During licensed activities

Flood risk assessment

14.—(1) All licensed activities must be carried out in accordance with the flood risk assessment, unless otherwise approved by the MMO.

(2) No part of the licensed activities may be brought into operational use until a flood emergency response plan to apply during operation of that part has been submitted to and approved by the MMO, following consultation with the Environment Agency on matters related to its functions.

(3) Any a flood emergency response plan submitted and approved under sub-paragraph (2) must (so far as applicable) be in general accordance with the flood risk assessment.

(4) Each part of the licensed activities must be operated in accordance with the plan approved under sub-paragraph (2) for that part, unless otherwise approved by the MMO.

Construction environmental management plan

15. All licensed activities must be carried out in accordance with the construction environmental management plan for those activities approved pursuant to paragraph 106 of this Schedule where applicable, unless otherwise approved by the MMO.

Piling and marine construction works

16.—(1) Subject to sub-paragraph (2) below, the piling of marine piles in connection with the authorised development must be subject to the following conditions—

- (a) There must be at least a 20 minutes “soft start” period at the commencement of any piling;
- (b) The form of soft start must be agreed with the MMO following consultation with Natural England on matters related to its functions prior to the commencement of piling;

(2) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, must be created, and 30 minutes prior to the commencement of percussive piling a search should be undertaken of the zone, with the purpose of identifying whether any marine mammals enter the zone, and if such mammals are observed within the zone, percussive piling should not be commenced until the mammals have cleared the zone or until 20 minutes after the last visual detection, subject to sub-paragraph (4).

(3) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, must be maintained during percussive piling with the purpose of identifying whether any marine mammals enter the zone and if such mammals are observed, percussive piling will cease until the mammals have cleared the zone and there is no further detection after 20 minutes.

(4) Where during operations percussive piling is paused for any reason other than the detection of marine mammals, then recommencing of the percussive piling must be subject to the provisions of sub-paragraph (2) save for where the active and mobile 500 metre marine mammals observation zone has been observed throughout the period of the pause in operations and no such mammals were observed entering the zone, in which case percussive piling may be recommenced immediately.

(5) Wherever possible the undertaker will use vibro-piling methodology whilst it is recognised that percussive piling may be required to drive the piles to their ultimately required depth.

(6) Subject to sub-paragraph (7) below, the undertaker must ensure that no construction activity for the approach jetty or decommissioning of topsides located within 200 metres of mean low water springs takes place between 1 October and 31 March inclusive in any year.

(7) During the restricted period between 1 October and 31 March inclusive in any year, marine construction activity or decommissioning of topsides may be undertaken at distances less than 200 metres of mean low water springs provided that—

- (a) an acoustic barrier or visual screening is installed on both sides of any semi-completed structure;
- (b) construction activity is then undertaken on the approach jetty itself, behind the screening; and
- (c) noise levels are less than 70 dB(A) on exposed intertidal foreshore.

(8) No piling of marine piles within the waterbody may take place between 1 April and 31 May (inclusive) in any one calendar year, except for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water.

(9) Subject to sub-paragraph 87, no piling of marine piles within the waterbody is to take place between the hours of 7pm and 7am from 1 March to 31 March (inclusive) and from 1 September to 31 October (inclusive) or between the hours of sunset and sunrise from 1 June to 30 June (inclusive) and from 1 August to 31 August (inclusive) in any one calendar year.

(10) Sub-paragraph 86 does not apply in relation to any—

- (a) percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water;
- (b) emergency works; and
- (c) percussive piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.

(11) Percussive piling of marine piles is to be restricted at other times—

- (a) subject to sub-paragraph (18), from 1 June to 30 June (inclusive) in any one calendar year the maximum amount of percussive piling permitted within any 24 hour period must not exceed 270 minutes;
- (b) subject to sub-paragraph (18), from 1 August to 31 October (inclusive) in any one calendar year, the maximum amount of percussive piling permitted within any 24 hour period must not exceed 270 minutes,

except (in each case) for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water and save for percussive piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.

(12) The measurement of time during each work-block described in sub-paragraph (11) of this Schedule must begin at the start of each timeframe, roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works.

(13) Percussive piling must only be carried out in accordance with the cold weather piling restriction strategy.

(14) A noise suppression system consisting of a piling sleeve with noise insulating properties must be employed for percussive piling on the approach jetty comprised in the authorised development.

(15) The undertaker must submit weekly reports to the MMO of the duration of percussive piling that is undertaken on any given day on which piling takes place during the construction of the authorised development, unless otherwise agreed in writing with the MMO.

(16) The reports submitted to the MMO pursuant to sub-paragraph (15) must include a log of the number and approximate location of piling rigs which are in operation on any given day, along with the number of piles driven.

(17) The undertaker must hold fortnightly meetings with the MMO to discuss the weekly reports submitted pursuant to sub-paragraph (15) and agree any corrective action if required, unless otherwise agreed in writing with the MMO.

(18) Where percussive piling is paused the recommencement of such percussive piling may take place for a contingency period of up to a total of 60 minutes within any 24 hour period in addition to the otherwise maximum amount of percussive piling permitted within any 24 hour period specified in sub-paragraph (11).

Marine written scheme of archaeological investigation

17. All licensed activities must be carried out in accordance with the marine written scheme of investigation.

Concrete and cement

18. Waste concrete, slurry or wash water from concrete or cement activities must not be discharged, intentionally or unintentionally, into the marine environment. Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any water body or surface water drain.

Coatings and treatment

19. The undertaker must ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with relevant guidelines approved by the Health and Safety Executive and the Environment Agency.

Pollution and spills

20.—(1) Bunding and storage facilities must be installed to contain and prevent the release of fuel, oils and chemicals associated with plant, refuelling and construction equipment into the marine environment. Secondary containment must be used with a capacity of no less than 110% of the container's storage capacity.

(2) Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of being identified in accordance with the following, unless otherwise advised in writing by the MMO—

- (a) within business hours on any business days: 0300 200 2024;
- (b) any other time: 07770 977 825; or
- (c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemanagement.org.uk.

(3) All wastes must be stored in designated areas that are isolated from surface water drains, open water and contained to prevent any spillage.

(4) The undertaker must comply with the existing marine pollution contingency plan in place for the Port of Immingham as detailed in the construction environmental management plan.

Disposal at sea

21.—(1) The undertaker must inform the MMO of the location and quantities of material deposited each month under the licence. This information must be submitted to the MMO by 15 February each year for the months August to January inclusive and by 15 August each year for the months February to July inclusive.

(2) The undertaker must ensure that only inert material of natural origin produced during dredging must be deposited in the disposal sites—

- (a) HU060 (unconsolidated); and
- (b) HU056 (consolidated),

or any other site approved in writing by the MMO.

(3) The material to be disposed of within the disposal sites referred to in sub-paragraph (2) must be placed evenly within the relevant site's boundaries.

(4) During the course of disposal at sea, deposited material must be distributed evenly over the disposal site.

Dropped objects

22.—(1) The undertaker must report all dropped objects to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of becoming aware of an incident.

(2) On receipt of the Dropped Object Procedure Form, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys. The undertaker must carry out surveys in accordance with the MMO's reasonable requirements and must report the results of such surveys to the MMO.

(3) On receipt of such survey results the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the seabed. The undertaker must carry out removals of the specific obstructions from the seabed in accordance with the MMO's reasonable requirements and its own expense.

Notice to Mariners

23.—(1) Local mariners, fishermen's organisations and the UK Hydrographic Office must be notified of any licensed activity or phase of licensed activity through a local Notice to Mariners.

(2) A Notice to Mariners must be issued at least 5 days before the commencement of each licensed activity or phase of licensed activity.

(3) The MMO and Maritime and Coastguard Agency must be sent a copy of the notification within 24 hours of issue. The Notice to Mariners must include—

- (a) the start and end dates of the work;
- (b) a summary of the works to be undertaken;
- (c) the location of the works area, including coordinated in accordance with WGS84; and
- (d) any markings of the works area that will be put in place.

(4) A copy of the notice must be provided to the MMO via MCMS within 24 hours of issue of a notice under sub-paragraph (1).

PART 3

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Approvals and appeals

24. Schedule 17 (procedure regarding certain approvals, etc.) of the Order has effect in relation to any submission by the undertaker for approval by or agreement of the MMO in respect of any document, strategy, information, plan, protocol or statement under this Schedule.

SCHEDULE 4

Article 7

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the street works</i>
North East Lincolnshire	Unnamed access road	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in the area between the point marked B on sheet 4 of the street works and accesses plan and the point marked C on sheets 4 and 5 of that plan.
North East Lincolnshire	Laporte Road	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in the area between the point marked E on inset 1 of the street works and accesses plan and the point marked D on sheets 4 and 5 of that plan.
North East Lincolnshire	Unnamed private road to water treatment works	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in the area between the point marked F on sheets 4 and 5 of the street works and accesses plan and the point marked G on sheet 4 of that plan.
North East Lincolnshire	Queens Road	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in the area marked C on sheets 4 and 5 of the street works and accesses plan and the point marked I on sheets 5 and 6 of that plan.
North East Lincolnshire	Kings Road	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in each of the area between the point marked V on sheets 6 and 7 of the street works and accesses plan and the point marked W on sheet 7 of that plan, the area between the point marked AI on sheets 6 and 7 of the street works and accesses plan and the points marked AH and AJ on sheet 7 of that plan, the area between the points marked AK and AL

		on sheet 7 of the street works and accesses plan, the area between the points marked AM and AN on sheet 7 of the street works and accesses plan and the area between the points marked AO, AP and AQ on sheet 7 of the street works and accesses plan.
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SCHEDULE 5

Article 9

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of alteration, etc.</i>
North East Lincolnshire	Unnamed access road	Works for the provision of a permanent means of access, altered layout and revised signage and markings within the area edged purple and marked A on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Laporte Road	Works for the provision of a permanent means of access, altered layout and revised signage and markings within each of the areas edged purple and marked respectively J, K and L on sheet 4 of the street works and accesses plan.
North East Lincolnshire	Unnamed private road to water treatment works	Works for the provision of a permanent means of access, altered layout and revised signage and markings within the area edged purple and marked M on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Laporte Road	Works for the provision of an altered layout and revised signage and markings in relation to the provision of the permanent speed limit change to which Part 1 (permanent speed limits) of Schedule 10 (traffic regulation measures) refers within the area shaded blue between the points marked D on sheets 4 and 5 and BC on sheet 4 of the street works and accesses plan and the area shaded yellow between the points marked BC on sheet 4 of the street works and accesses plan and point E on inset 1 of that plan.
North East Lincolnshire	A1173	Works for the provision of a

		permanent means of access, altered layout and revised signage and markings within the area edged purple and marked AB on sheet 6 of the street works and accesses plan.
North East Lincolnshire	Kings Road	Works for the provision of a permanent means of access, altered layout and revised signage and markings within each of the areas edged purple and marked respectively Z and AA on sheets 6 and 7 of the street works and accesses plan.

PART 2
TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
North East Lincolnshire	Laporte Road	Works for the provision of a temporary means of access, altered layout and revised signage and markings within each of the areas shaded orange and marked respectively N and P on sheet 4 of the street works and accesses plan and the area shaded orange and marked O on sheet 4 of that plan.
North East Lincolnshire	Unnamed private road to water treatment works	Works for the provision of a temporary means of access, altered layout and revised signage and markings within the area shaded orange and marked M on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Queens Road	Works for the provision of a temporary means of access, altered layout and revised signage and markings within the area shaded orange and marked U on sheets 5 and 6 of the street works and accesses plan.
North East Lincolnshire	A1173	Works for the provision of a temporary means of access, altered layout and revised signage and markings within the areas shaded orange and

		marked AB and AC on sheet 6 of the street works and accesses plan.
North East Lincolnshire	Kings Road	Works to enable the passage of abnormal indivisible loads including the removal of signage and street furniture within the area shaded red and marked AI, AD, AH and AJ on sheet 7 of the street works and accesses plan and within the area shaded red and marked AE, AQ, AO and AP on sheet 7 of that plan.
North East Lincolnshire	Kings Road	Works to enable the temporary modification of existing overhead cables and lines within the area shaded purple and marked AG, AM and AN on sheet 7 of the street works and accesses plan and within the area shaded purple and marked AF, AL and AK on that plan.
North East Lincolnshire	Kings Road	Works for the provision of a temporary means of access, altered layout and revised signage and markings within the area shaded orange and marked AA on sheets 6 and 7 of the street works and accesses plan.

SCHEDULE 6

Article 11

PERMANENT STOPPING UP OF HIGHWAYS

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up Public right of way	<i>(3)</i> Extent of stopping up
North East Lincolnshire	Unnamed highway adjacent to Laporte Road	All of each of the areas hatched pink (including any areas shaded green which underlie the areas hatched pink) marked respectively AT and AW on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Kings Road	All of the area hatched pink (including any area shaded green which underlies the area hatched pink) marked AX on

		sheets 6 and 7 of the stopping up and restriction of use of streets and public rights of way plan.
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SCHEDULE 7

Article 12

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Extent of stopping up</i>
North East Lincolnshire	The area including the sea wall north west along the coast from but excluding Bridleway Number 36 hatched pink and marked AR on sheets 3 and 4 of the stopping up and restriction of use of streets and public rights of way plan	All of the area hatched pink and marked AR on sheets 3 and 4 of the stopping up and restriction of use of streets and public rights of way plan.

SCHEDULE 8

Article 13

TEMPORARY RESTRICTION OR ALTERATION, ETC. OF THE USE OF STREETS OR PUBLIC RIGHTS OF WAY

PART 1

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OR DIVERSION OF STREETS OR PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or public right of way</i>	<i>(3)</i> <i>Measure</i>
North East Lincolnshire	Bridleway Number 36	Temporary closure of that part of Bridleway Number 36 to the extent shown by the dashed green line between the points marked BA and BB on sheet 4 of the stopping up and restriction of use of streets and public rights of way plan (with a length of that part of Bridleway Number 36 being shown dashed green on sheet 3 of that plan) and the temporary diversion of Bridleway Number 36 along any alignment within Work No. 9 between those marked points.
North East Lincolnshire	Unnamed area shaded green and marked AY on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan	Temporary closure of the area shaded green and marked AY on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Unnamed access road	Temporary closure of the area

		shaded green and marked A on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Laporte Road	Temporary closure of each of the areas within Laporte Road shaded green and marked respectively J, K, L, N, O and P on sheet 4 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Unnamed private road to water treatment works	Temporary closure of the area shaded green and marked M on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Laporte Road	Temporary closure to all traffic save for traffic under the direction of the undertaker of the area shaded green between the point marked S on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan and the point marked T on sheet 4 of that plan.
North East Lincolnshire	Queens Road	Temporary closure of the area shaded green and marked U on sheets 5 and 6 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	A1173	Temporary closure of the areas within the A1173 shaded green and marked AB and AC on sheet 6 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Kings Road	Temporary closure of the area shaded green and marked Z on sheets 6 and 7 of the stopping up and restriction of use of streets and public rights of way plan.

PART 2

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

<i>(1)</i> Area	<i>(2)</i> Public right of way	<i>(3)</i> Measure
North East Lincolnshire	Bridleway Number 36	Motor vehicles under the

		direction of the undertaker may temporarily use and cross that part of Bridleway Number 36 shown dashed green between the points marked BA and BB on sheet 4 of the stopping up and restriction of use of streets and public rights of way plan (with a length of that part of Bridleway Number 36 being shown dashed green on sheet 3 of that plan).
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SCHEDULE 9
ACCESS TO WORKS

Article 15

PART 1
PERMANENT MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Means of access</i>
North East Lincolnshire	Laporte Road	Permanent means of access within each of the areas edged purple and marked respectively J, K and L on sheet 4 of the street works and accesses plan.
North East Lincolnshire	Unnamed private road to water treatment works	Permanent means of access within the area edged purple and marked M on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Unnamed private access road	Permanent means of access within the area edged purple and marked A on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	A1173	Permanent means of access within the area edged purple and marked AB on sheet 6 of the street works and accesses plan.
North East Lincolnshire	Kings Road	Permanent means of access within each of the areas edged purple and marked respectively Z and AA on sheets 6 and 7 of the street works and accesses plan.

PART 2
TEMPORARY MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Means of access</i>
North East Lincolnshire	Laporte Road	Temporary means of access within each of the areas shaded orange and marked respectively N and P on sheet 4 of the street works and accesses plan and shaded orange and marked O on sheets 4 and 5 of that plan.
North East Lincolnshire	Unnamed private road to water treatment works	Temporary means of access within the area shaded orange and marked M on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Queens Road	Temporary means of access within the area shaded orange and marked U on sheets 5 and 6 of the street works and accesses plan.
North East Lincolnshire	A1173	Temporary means of access within each of the areas shaded orange and marked respectively AB and AC on sheet 6 of the street works and accesses plan.
North East Lincolnshire	Kings Road	The provision of a temporary means of access within the area shaded orange and marked AA on sheets 6 and 7 of the street works and accesses plan.

SCHEDULE 10
TRAFFIC REGULATION MEASURES

Article 56

PART 1
PERMANENT SPEED LIMITS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name and length</i>	<i>(3)</i> <i>Permanent speed limit</i>
North East Lincolnshire	That part of Laporte Road shaded blue and between the point marked D on sheets 4 and 5 of the traffic regulation measures plan and the point marked BC on sheet 4 of that plan, a distance of	30 miles per hour

	approximately 365 metres.	
North East Lincolnshire	That part of Laporte Road shaded yellow and between the point marked BC on sheet 4 of the traffic regulation measures plan and the point marked E on inset 1 of that plan, a distance of approximately 545 metres	40 miles per hour

PART 2

TEMPORARY PROHIBITION OF PARKING

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name and length</i>	<i>(3)</i> <i>Measure</i>
North East Lincolnshire	That part of Laporte Road, Queens Road and Kings Road hatched dark blue between the point marked BC on sheet 4 of the traffic regulation measures plan and the point marked BD on sheet 8 of that plan (with the remainder of that part of those roads shown on sheets 5, 6 and 7 of that plan), a distance of approximately 2,890 metres.	Temporary parking suspension

PART 3

TEMPORARY ROAD CLOSURES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name and length</i>	<i>(3)</i> <i>Measure</i>
North East Lincolnshire	That part of Laporte Road, Queens Road and Kings Road hatched dark blue between the point marked BC on sheet 4 of the traffic regulation measures plan and the point marked BD on sheet 8 of that plan (with the remainder of that part of those roads shown on sheets 5, 6 and 7 of that plan), a distance of approximately 2,890 metres.	Temporary road closure between the hours of 11pm and 6am to all traffic save for traffic under the direction of the undertaker.

PART 4
PRIORITY OF VEHICULAR TRAFFIC

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name and length</i>	<i>(3)</i> <i>Measure</i>
North East Lincolnshire	That part of Laporte Road edged green between the point marked BE on sheets 4 and 5 of the traffic regulation measures plan and the point marked BF on sheet 4 of that plan.	Priority of vehicular traffic to be regulated by temporary traffic lights at the direction of the undertaker.

SCHEDULE 11

Article 24

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR THE CREATION OF NEW
RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right, by the creation of a new right or imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 125(5)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

(3) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(4) For Section 5A (relevant valuation date) of the 1961 Act, omit the words after “If” and substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 125(7) of Schedule 11 to the Associated British Ports (Immingham Green Energy Terminal) Order 202*);
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 125(10) of Schedule 11 to the Associated British Ports (Immingham Green Energy Terminal) Order 202* to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

(a) 1973 c. 26.

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land must be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(2) Without limitation on the scope of sub-paragraph (1) Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

(3) Section 4 (time limit for giving notice to treat) is omitted.

(4) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 23 of the Associated British Ports (Immingham Green Energy Terminal) Order 202*;

(5) For section 7 of the 1965 Act (measure of compensation) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act”.

(6) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(7) Section 11(a) of the 1965 Act (powers of entry) is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive

(a) 1965 c. 56. Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and

covenant, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(a), 11B (counter-notice requiring possession to be taken on specified date)(b), 12(c) (penalty for unauthorised entry) and 13(d) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(8) Section 20(e) of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(9) Section 22 of the 1965 Act (interests omitted from purchase), as modified by article 30(4) (modification of Part 1 of the 1965 Act), is modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(10) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 29 (application of the 1981 Act) of the Associated British Ports (Immingham Green Energy Terminal) Order 202* in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.

(a) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
(b) 1965 c. 56. Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
(c) 1965 c. 56. Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
(d) 1965 c. 56. Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Upper Tribunals, Courts and Enforcement Act 2007 (c. 15).
(e) 1965 c. 56. Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

6. The authority must serve notice of its decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal make its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”

(11) In this Schedule, references to entering on and taking possession of land do not include doing so under articles 20 (protective works), 31 (temporary use of land for constructing the authorised project) or 32 (temporary use of land for maintaining the authorised development) of this Order.

SCHEDULE 12

Article 24

LAND IN WHICH ONLY NEW RIGHTS AND RESTRICTIVE COVENANTS, ETC. MAY BE ACQUIRED

<i>(1) Land Plans - Sheet</i>	<i>(2) Plot reference number shown on land plans</i>	<i>(3) Purpose for which rights over land may be acquired or restrictive covenants imposed</i>	<i>(4) Relevant part of the authorised development</i>
4	4/17	<p>The right to enter and remain upon the land for the purposes of the installation, operation, use, maintenance and decommissioning of the authorised project and to—</p> <ul style="list-style-type: none"> (a) pass re-pass with or without vehicles machinery plant and equipment to construct lay maintain retain and use apparatus; (b) break up or open the surface construct, lay maintain retain and use apparatus together with ancillary equipment including cathodic protection to include installation by way of directional drilling; (c) construct maintain retain and use matting, trackways and hard standings for the purposes of access to construct lay and maintain apparatus and associated works, plant and equipment, and to restore and re-instate the land to its prior condition following the use of the new rights; (d) remove, store and stockpile topsoil and subsoil, employ water barriers and pumping equipment, remove materials and to restore and re-instate the land to its prior condition; (e) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired; (f) erect permanent fencing as is reasonably necessary for the purposes of security and protection of the authorised project; (g) benefit from continuous vertical and lateral support for the apparatus installed as part of the authorised project; (h) erect temporary signage and provide measures for benefit of public and personnel safety. 	<p>Work No. 4 and the further associated development to which paragraph 76 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers</p>

		<p>A restrictive covenant over the land for the benefit of the remainder of the Order land—</p> <ul style="list-style-type: none"> (i) not to undermine or damage the apparatus installed as part of the authorised project nor to do anything which may interfere with apparatus or support for the apparatus within that part of the land over which the new rights are acquired; (j) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land over which the new rights are acquired in such manner as to render the access to apparatus impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired; (k) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on or within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed. 	
5	5/23, 5/24, 5/25	<p>The right to enter and remain upon the land for the purposes of the installation, operation, use, maintenance and decommissioning of the authorised project and to—</p> <ul style="list-style-type: none"> (l) pass re-pass with or without vehicles machinery plant and equipment to construct lay maintain retain and use apparatus; (m) break up or open the surface construct, lay maintain retain and use apparatus together with ancillary equipment including cathodic protection to include installation by way of directional drilling; (n) construct maintain retain and use matting, trackways, hard standings for the purposes of access to construct lay and maintain apparatus and associated works, plant and equipment, and to restore and re-instate the land to its prior condition following the use of the new rights; (o) remove, store and stockpile topsoil and subsoil, employ water barriers and pumping equipment, remove materials and to restore and re-instate the land to 	<p>Work No. 6 and the further associated development to which paragraph 76 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers</p>

		<p>its prior condition;</p> <p>(p) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired;</p> <p>(q) erect permanent fencing as is reasonably necessary for the purposes of security and protection of the authorised project;</p> <p>(r) benefit from continuous vertical and lateral support for the apparatus installed as part of the authorised project;</p> <p>(s) erect temporary signage and provide measures for benefit of public and personnel safety.</p> <p>A restrictive covenant over the land for the benefit of the remainder of the Order land—</p> <p>(t) not to undermine or damage the apparatus installed as part of the authorised project nor to do anything which may interfere with apparatus or support for the apparatus within that part of the land over which the new rights are acquired;</p> <p>(u) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land over which the new rights are acquired in such manner as to render the access to apparatus impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired;</p> <p>(v) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on or within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.</p>	
5, 6	5/7, 5/8, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/20, 5/22, 5/23, 5/24, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/33, 5/34, 5/38, 6/14, 6/15	<p>The right to enter and remain upon the land for the purposes of the installation, operation, use, maintenance and decommissioning of the authorised project and to—</p> <p>(w) pass re-pass with or without machinery plant and equipment to construct at a depth no less than 3 metres maintain retain and use apparatus;</p>	Work No. 6 and the further associated development to which paragraph 76 of Part 1 (authorised

		<p>(x) construct and lay at a depth no less than 3 metres maintain retain and use apparatus together with ancillary equipment including cathodic protection to include installation by way of directional drilling;</p> <p>(y) benefit from continuous vertical and lateral support for the apparatus installed as part of the authorised project;</p> <p>(z) erect temporary signage and provide measures for benefit of public and personnel safety.</p> <p>A restrictive covenant over the land for the benefit of the remainder of the Order land—</p> <p>(aa) not to undermine or damage apparatus nor to do anything which may interfere with the apparatus or support for the apparatus within that part of the land over which the new rights are acquired;</p> <p>(bb) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land over which the new rights are acquired in such manner as to render the access to the apparatus impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired;</p> <p>(cc) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on or within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.</p>	<p>development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers</p>
5, 6	5/18, 6/6, 6/16, 6/18	<p>The right to—</p> <p>(dd) pass re-pass with or without vehicles machinery plant and equipment for the purpose of connection inspection repair and maintenance of the watercourse;</p> <p>(ee) connect into, use, drain into, inspect, repair, clear and maintain the watercourse;</p> <p>(ff) fell or lop any trees and remove any vegetation (including hedgerows) within or overhanging the watercourse.</p>	<p>The further associated development to which paragraph 76 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2</p>

			(ancillary works) of Schedule 1 (authorised project) refers
4, 6, 7	4/8, 4/17, 4/22, 4/23, 5/37, 7/12	<p>The right to enter and remain within the land for the purposes of the installation, operation, use, maintenance and decommissioning of the authorised project and to—</p> <p>(gg) pass re-pass with or without machinery plant and equipment to construct lay maintain retain and use apparatus;</p> <p>(hh) construct, lay maintain, retain and use apparatus together with ancillary equipment including cathodic protection to include installation by way of directional drilling;</p> <p>(ii) benefit from continuous vertical and lateral support for the apparatus installed as part of the authorised project;</p> <p>(jj) provide measures for benefit of public and personnel safety.</p>	The further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers

SCHEDULE 13

Article 31

LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Land plans sheet</i>	<i>(2) Plot reference number shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>
3, 4	3/2, 4/26, 4/28, 4/29, 4/30, 4/32	Work No. 9 and the further associated development to which paragraph 76 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers
5, 6	5/45, 6/19	The further associated development to which paragraph 76 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers
7	7/1, 7/2, 7,3, 7/4, 7/5, 7/6, 7/7,	Work No. 10 and the further

	7/8, 7/9, 7/10, 7/11	associated development to which paragraph 76 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers
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SCHEDULE 14 PROTECTIVE PROVISIONS

Article 59

PART 1

FOR THE PROTECTION OF THE STATUTORY CONSERVANCY AND NAVIGATION AUTHORITY FOR THE HUMBER

Interpretation

1. In this Part of this Schedule—

“authorised works” means any work, operation or activity that the Undertaker is authorised by this Order to construct or carry out;

“environmental document” means—

- (a) the environment statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the undertaker to the Statutory Conservancy and Navigation Authority or Trinity House in connection with any direction under article 49 (provision against danger to navigation), article 50 (lights on tidal works during construction) or article 51 (permanent light on tidal works); and

“the river” means the River Humber.

General

2.—(1) The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and the Statutory Conservancy and Navigation Authority, have effect until the commencement of the operation of the authorised development, for the protection of the Statutory Conservancy and Navigation Authority and the users of the river.

(2) For the purposes of this Part of this Schedule, the definition of “tidal work” is taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the Statutory Conservancy and Navigation Authority, whether or not that authorised work is within the limits of the Statutory Conservancy and Navigation Authority.

Approval of detailed design of tidal works

3.—(1) Prior to the commencement of the authorised development in the marine environment the undertaker must submit to the Statutory Conservancy and Navigation Authority plans

(including method statements) and sections of the tidal works or operation and such further particulars as the Statutory Conservancy and Navigation Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) Any approval of the Statutory Conservancy and Navigation Authority required under this paragraph is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1) and must not be unreasonably withheld but may be given subject to such reasonable requirements as the Statutory Conservancy and Navigation Authority may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(3) Requirements made under sub-paragraph (2) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the undertaker does not commence construction of the tidal work approved within a prescribed period.

(4) Whenever the undertaker provides the Secretary of State with an environmental document it must at the same time send a copy to the Statutory Conservancy and Navigation Authority.

Commencement of tidal works

4. Any operations for the construction of any tidal work approved in accordance with this Order, once commenced, must be carried out by the undertaker without unnecessary delay and to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority so that river traffic, the flow or regime of the river and the exercise of the Statutory Conservancy and Navigation Authority's functions do not suffer more interference than is reasonably practicable, and an authorised officer of the Statutory Conservancy and Navigation Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Discharges, etc.

5.—(1) The undertaker must not without the Consent of the Statutory Conservancy and Navigation Authority—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Statutory Conservancy and Navigation Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Statutory Conservancy and Navigation Authority may reasonably impose.

(3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 18 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

(5) The undertaker must not, in exercise of the powers conferred by article 18 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Statutory Conservancy and Navigation Authority.

Obstruction in river

6. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the undertaker, as soon as reasonably practicable after the receipt of notice in writing from the Statutory Conservancy and Navigation Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river as the Statutory Conservancy and Navigation Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Statutory Conservancy and Navigation Authority may reasonably require.

Removal, etc. of the Statutory Conservancy and Navigation Authority's moorings and buoys

7. If—

- (a) by reason of the construction of any tidal work it is reasonably necessary for the Statutory Conservancy and Navigation Authority to incur reasonable costs in temporarily or permanently altering, removing, resiting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Statutory Conservancy and Navigation Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the Statutory Conservancy and Navigation Authority gives to the undertaker not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the undertaker may make in response to the notice within 14 days of the receipt of the notice,

the undertaker must pay the costs reasonably so incurred by the Statutory Conservancy and Navigation Authority.

Navigational lights, buoys, etc.

8. In addition to any requirement set out in articles 50 (lights on tidal works during construction) and 51 (permanent light on tidal works) the undertaker, at or near every tidal work, and any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the River Humber), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Statutory Conservancy and Navigation Authority may from time to time reasonably require.

Removal of temporary works

9. On completion of the construction of any part of a permanent authorised work, the undertaker must as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and
- (b) any materials, plant and equipment used for such construction,

and must make good the site to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority.

Protective action

10.—(1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph (3) (approval of detailed design of tidal works) or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
 - (i) this Part of this Schedule; or
 - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so, the Statutory Conservancy and Navigation Authority may in writing require the undertaker to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to its former condition; or
- (b) take such other action as the Statutory Conservancy and Navigation Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the undertaker, in compliance with its duties under any enactment and, in particular, under section 48A of the Harbours Act 1964(a), must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Statutory Conservancy and Navigation Authority.

(5) If the Statutory Conservancy and Navigation Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Statutory Conservancy and Navigation Authority must notify the undertaker of that environmental impact, the reasons why the Statutory Conservancy and Navigation Authority believes that the environmental impact is being caused by the tidal work and of measures that the Statutory Conservancy and Navigation Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(6) The undertaker must implement the measures that the Statutory Conservancy and Navigation Authority has notified to the undertaker or must implement such other measures as the undertaker believes are necessary to counter the environmental impact identified, giving reasons to the Statutory Conservancy and Navigation Authority as to why it has implemented such other measures.

Abandoned or decayed works

11.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be

(a) 1964 c.40.

specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the tidal work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Statutory Conservancy and Navigation Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

Facilities for navigation

12.—(1) The undertaker must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Statutory Conservancy and Navigation Authority and must ensure that access to such aids remains available during and following construction of any tidal works.

(2) The undertaker must provide at any tidal works, or must afford reasonable facilities at such works (including an electricity supply) for the Statutory Conservancy and Navigation Authority to provide at the undertaker's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Statutory Conservancy and Navigation Authority may deem necessary by reason of the construction of any tidal works, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The undertaker must comply with the directions of the harbour master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Sedimentation, etc. and remedial action

13.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Statutory Conservancy and Navigation Authority be removed or made good.

(2) The undertaker must either—

- (a) pay to the Statutory Conservancy and Navigation Authority any additional expense to which the Statutory Conservancy and Navigation Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Statutory Conservancy and Navigation Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Statutory Conservancy and Navigation Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Indemnity

14.—(1) The undertaker is responsible for and must make good to the Statutory Conservancy and Navigation Authority all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Statutory Conservancy and Navigation Authority by reason of—

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy under paragraph 133 (navigational lights, buoys, etc.); or
- (c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,

and the undertaker must indemnify the Statutory Conservancy and Navigation Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the Statutory Conservancy and Navigation Authority on behalf of the undertaker; or
- (b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Statutory Conservancy and Navigation Authority, or in a manner approved by the Statutory Conservancy and Navigation Authority, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the Statutory Conservancy and Navigation Authority or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Statutory Conservancy and Navigation Authority must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

Statutory functions

15.—(1) Subject to the modification of any enactments in this Order and this paragraph, any function of the undertaker or any officer of the undertaker, whether conferred by or under this Order or any other enactment, is subject to—

- (a) any enactment relating to the Statutory Conservancy and Navigation Authority;
- (b) any byelaw, direction or other requirement made by the Statutory Conservancy and Navigation Authority or the harbour master under any enactment;
- (c) any other exercise by the Statutory Conservancy and Navigation Authority or the harbour master of any function conferred by or under any enactment.

(2) The undertaker must not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 4 (incorporation of the Act of 1847) except with the consent of the harbour master, which must not be unreasonably withheld.

(3) The dock master must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 4 (incorporation of the Act of 1847), if to do so would conflict with a special direction given to the same vessel by the harbour master.

(4) The Statutory Conservancy and Navigation Authority must consult the undertaker before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the authorised development.

(5) The Statutory Conservancy and Navigation Authority or the harbour master (as appropriate) must consult the undertaker before giving any general direction which directly affects the construction, operation or maintenance of the authorised development.

Operating procedures

16. Before commencing marine commercial operations the undertaker must submit to the harbour master for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development and must operate the authorised development only in accordance with such procedure as is approved, including any approved alteration made from time to time.

Removal of wrecks and obstructions, etc.

17.—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995 or under section 56 of the 1847 Act, the dock master must notify the harbour master.

(2) The dock master must comply with any reasonable instructions that the harbour master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

Oil spillage plan

18. The undertaker must consult the harbour master before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Statutory Conservancy and Navigation Authority's existing plan known as "Humber Clean" or such other plan as supersedes "Humber Clean".

PART 2

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Application

19.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

Definitions

20. In this Part of this Schedule—

“Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” are to be construed accordingly;

“drainage work” means—

- (a) any main river;
- (b) any land which provides or is expected to provide flood storage capacity for any main river;
- (c) any bank, wall, embankment or other structure or any appliance (in each aforementioned case) constructed or used for land drainage, flood defence or tidal monitoring in connection with a main river;

“emergency” means an occurrence which presents a risk of —

- (d) serious flooding
- (e) serious detrimental impact on drainage
- (f) serious harm to the environment

“fishery” means any waters containing fish and fish in, or mitigating to or from, such waters and the spawn, spawning ground, habitat or food or such fish;

“Habrough Marsh Drain outfall channel” means the naturally scoured channel over the intertidal area fronting the outfall structure marked ‘Structure A’, being the Habrough Marsh Drain, on the plan of Habrough Marsh Drain and Stallingborough North Beck which provides passive gravity drainage during favourable tidal conditions;

“licences” means—

- (g) the licence with reference 35/Licence/10300 granted by the British Transport Docks Board to Anglian Water Authority on 18 January 1980;
- (h) the licence with reference 35/Licence/10406 granted by the Company to the Agency on 26 November 1999; and
- (i) the licence with reference 35/Licence/10408 granted by the Company to the Agency on 26 November 1999;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“non-tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

“the plan of Habrough Marsh Drain and Stallingborough North Beck” means the plan of that name identified in the table at Schedule 15 (documents and plans to be certified) and which is certified by the Secretary of State as the plan of Habrough Marsh Drain and Stallingborough North Beck for the purposes of the Order;

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

“protected site” means a site of special scientific interest, a special area of conservation, a special protection area, a Ramsar wetland or a marine conservation zone or legal equivalent;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“sea defence” means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency’s area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within—

- (j) 16 metres of the base of a sea defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence; or
 - (ii) interfere with the Agency’s access to or along that sea defence;
- (k) 8 metres of the base of a remote defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or
 - (ii) interfere with the Agency’s access to or along that remote defence;
- (l) 16 metres of a drainage work involving a tidal main river;
- (m) 8 metres of a drainage work involving a non-tidal main river;

- (n) any distance of a drainage work and is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) cause obstruction to the free passage of fish or damage to the fishery;
 - (iii) affect the conservation, distribution or use of water resources; or
 - (iv) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

- (o) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
- (p) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;

“tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

“Stallingborough North Beck outfall channel” means the naturally scoured channel over the intertidal area fronting the outfall structure marked ‘Structure B’, being the Stallingborough North Beck, on the plan of Habrough Marsh Drain and Stallingborough North Beck which provides passive gravity drainage during favourable tidal conditions;

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

Crossing flood management infrastructure

21. The Agency agrees that development comprised in Work No. 1 may go up and over the sea defences (and may be part of the same structure as any sea defences) within the area shown on the works plans for Work No. 1 subject always to the terms of this Part of this Schedule.

Submission and approval of plans

22.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of receipt of the plans reasonably request.

(2) Any submission made by the undertaker under sub-paragraph (1) and any approval given by the Agency under this paragraph, may be in respect of all or part of a specified work.

(3) Any specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency under this paragraph or determined under paragraph 157 (disputes).

(4) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) subject to sub-paragraph (6), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been reasonably requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources or for the prevention of flooding or pollution or for nature conservation in the discharge of its environmental duties.

(5) The Agency must use its reasonable endeavours to approve or refuse approval pursuant to the submission of any plans under this paragraph before the expiration of the period mentioned in sub-paragraph (4)(b).

(6) Where the plans or any further particulars submitted to the Agency for approval under sub-paragraph (1) relate to activities which are situated within or might otherwise affect a protected site the period of time specified in sub-paragraph (4)(b) is extended to 3 months to allow the Agency to consult Natural England before responding to the request for approval and the Agency's response to that request for approval must take into account any comments received from Natural England.

(7) In the case of a refusal, the Agency must provide a written statement of the reasons for the grounds of refusal.

(8) In the event that the Agency gives an approval under this paragraph in respect of a specified work, or part of it, that specified work, or the relevant part of it, may be constructed, maintained, used, operated or decommissioned by the undertaker in accordance with the plans and particulars approved by the Agency or determined under paragraph 157 (disputes) notwithstanding anything in the licences.

Construction of protective works

23. Without limiting paragraph 147, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

(in each case) by reason of any specified work.

Timing of works and service of notices

24.—(1) Subject to sub-paragraphs (2) and (3), once the construction of any specified work, and any protective work required by the Agency under paragraph 148 (construction of protective works), has begun it must be constructed—

- (a) without unreasonable delay in accordance with the plans and particulars approved under this Part of this Schedule by the Agency or determined under paragraph 157 (disputes); and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to begin construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it has been completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Part of this Schedule

25.—(1) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with this Part of this Schedule and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2) arising from the absence of such consent or from such non-compliance, the Agency may serve written notice requiring the undertaker to immediately cease all or part of the specified works to which the consent or conditions relate, as the same may be specified within the notice served, and the undertaker must immediately cease constructing such specified works or part of them until such

time as it has obtained the consent or complied with the condition specified within the notice served unless the undertaker concludes, acting reasonably, that immediate cessation of the specified works or part of them would cause greater environmental damage than proceeding with the work in question and in those circumstances the undertaker must immediately serve a counter-notice on the Agency specifying its reasoning for reaching that conclusion.

(2) The risks specified in sub-paragraph (1) are—

- (a) risk of flooding;
- (b) risk of harm to the environment;
- (c) risk of detrimental impact on drainage.

(3) If any part of a specified work, or any protective work required by the Agency pursuant to this Part of this Schedule, is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in the case of an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 157.

Maintenance of works during construction

26.—(1) Notwithstanding anything in the licences, the undertaker must during the construction of any specified works maintain in good repair and condition and free from obstruction any drainage work to which all of the following paragraphs apply, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence—

- (a) The drainage work is within the Order limits;
- (b) The drainage work is one to which the specified works in question relate or which they affect (in each case) in the manner set out in the meaning given to “specified works” in paragraph 144; and
- (c) The drainage work in question falls within a temporary construction compound under the control of the undertaker.

(2) If a drainage work to which sub-paragraph (1) refers is not maintained to the reasonable satisfaction of the Agency on the terms of that sub-paragraph, the Agency may by notice in writing require the undertaker to repair and restore it, or any part of it, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove the drainage work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of a drainage work to which sub-paragraph (1) refers is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is

necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3) the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 157 (disputes).

(5) This paragraph does not apply to any obstruction of a drainage work expressly authorised in plans or particulars approved in writing by the Agency or determined under paragraph 157 (disputes) and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

27.—(1) If by reason of the construction of any specified work or of the failure of any such work, the efficiency for flood defence purposes of any drainage work within the Order limits is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

28.—(1) If by reason of construction of any specified work or the failure of such work, the Agency's access within the Order limits to any flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access within the Order limits that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becoming aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

(2) Sub-paragraph (1) does not apply to the extent that an alternative access arrangement has been agreed in writing between the undertaker and the Agency or determined in accordance with paragraph 157 (disputes).

Free passage of fish

29.—(1) The undertaker must during the construction of any specified work take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery by reason of the construction of the specified work in question.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of such work;

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure properly and reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are

reasonable for the purpose, and may recover from the undertaker any expenditure properly and reasonably incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced taking, the steps specified in the notice.

Outfall channels

30.—(1) The undertaker must for a period of 10 years beginning with the date on which this Order comes into force monitor the paths of each of the Habrough Marsh Drain outfall channel and the Stallingborough North Beck outfall channel and report to the Agency annually whether any substantial changes to the flow or path of either such outfall channel have occurred as a result of the authorised project, such monitoring to be based on appropriate methods.

(2) In the event that, during the period of 10 years beginning with the date on which this Order comes into force, as a direct result of the construction or operation of the authorised project either of the Habrough Marsh Drain outfall channel or the Stallingborough North Beck outfall channel have been obstructed or impaired and either—

- (a) the obstruction or impairment has the potential to impede or affect the flow of water from the outfall channel into the River Humber; or
- (b) the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action,

the undertaker must as soon as reasonably practicable (and in any event within 28 days, unless otherwise agreed with the Agency in writing) set out in writing for approval by the Agency the steps it proposes for making good such obstruction or impairment to the outfall channel and the timescales for it doing so.

(3) The undertaker must carry out the steps approved by the Agency within the timescales it has approved (in each case) pursuant to sub-paragraph (2) to the reasonable satisfaction of the Agency and, if the undertaker fails to do so, the Agency may carry them out and recover from the undertaker the expense reasonably incurred by it in so doing.

Costs and indemnity

31.—(1) The undertaker must repay the Agency all proper and reasonable costs, charges and expenses which the Agency reasonably incurs—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works or any protective works,

and, for the avoidance of doubt, sub-paragraph (2) does not apply to the costs, charges and expenses to which this sub-paragraph refers.

(2) Subject always to sub-paragraphs (3) to (7) (inclusive), the undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(3) For the avoidance of doubt, but subject always to sub-paragraphs (4) to (7) (inclusive), in sub-paragraph (2)—

- (a) “costs” includes—

- (i) expenses and charges;
- (ii) staff costs and overheads;
- (iii) legal costs;
- (b) “losses” includes physical damage.
- (c) “claims” and “demands” include as applicable—
 - (i) costs (within the meaning of paragraph 156(3)(a) incurred in connection with any claim or demand;
 - (ii) any interest element of sums claimed or demanded;
- (d) “liabilities” includes—
 - (i) contractual liabilities;
 - (ii) tortious liabilities (including liabilities for negligence or nuisance);
 - (iii) liabilities to pay statutory compensation or for breach of statutory duty;
 - (iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(4) The Agency must give to the undertaker reasonable notice of any such costs or losses, liabilities, claims or demands and must not settle or compromise any of them without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(5) The Agency must at all times take all reasonable steps to prevent and mitigate any such claims, demands, proceedings, liabilities, costs, damages, expenses or losses.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(7) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any costs or losses, liabilities, claims or demands to the extent that they are attributable to the neglect, default or wilful misconduct of the Agency, its officers, servants, contractors or agents.

Disputes

32. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 62 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 3

FOR THE PROTECTION OF NORTHERN POWERGRID

Application

33. For the protection of Northern Powergrid, unless otherwise agreed in writing between the undertaker and Northern Powergrid, the following provisions have effect for the duration of the construction of the authorised works, including (for the avoidance of doubt)—

- (a) where a diversion or replacement of Northern Powergrid’s apparatus directly related to the authorised project is required during the construction phase of this Order and is undertaken pursuant to this Order (or any related correction or non-material amendment order);

- (b) where decommissioning works of Northern Powergrid’s apparatus directly related to the authorised project are required and are undertaken pursuant to this Order (or any related correction or non-material amendment order),

the following provisions have effect for as long as it takes for the diversion, replacement or decommissioning to be completed.

Interpretation

34. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect existing Northern Powergrid’s apparatus within the Order limits;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“Northern Powergrid” means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and must include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid’s undertaking.

Acquisition of land

35.—(1) Regardless of any provision in this Order or anything shown on the land plans the undertaker must not acquire any apparatus or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

Removal of Apparatus

36.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which must include rights to retain and subsequently maintain the apparatus being replaced or diverted and any access rights to it for the lifetime of that alternative apparatus all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days’ advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph

(3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed. For the avoidance of doubt this sub-paragraph only applies in relation to the voluntary acquisition of the other land or rights and does not include or require the use of Northern Powergrid's compulsory purchase powers.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 62 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 62 (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

37.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 62 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

38.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment), or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 161 (removal of apparatus), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 161 (removal of apparatus) and 162 (facilities and rights for alternative apparatus) apply as if the removal of the apparatus had been required by the undertaker under paragraph 161 (removal of apparatus).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

39.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 50 days of receipt of a valid VAT invoice all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 161(3) (removal of apparatus) including without limitation—
 - (i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 161(4) (removal of apparatus) all costs reasonably incurred as a result of such action;
 - (ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
 - (iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (iv) the approval of plans;
 - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
 - (vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 161(2) (removal of apparatus) having first decommissioned such apparatus.

(2) Where any payment falls due pursuant to sub-paragraph (1) Northern Powergrid—

- (a) must provide an itemised invoice or reasonable expenses claim to the undertaker; and

- (b) must provide ‘reminder letters’ to the undertaker for payment to be made within the 50 days on the following days after the invoice or reasonable expenses claim to the undertaker—
 - (i) 15 days (‘reminder letter 1’);
 - (ii) 29 days (‘reminder letter 2’);
 - (iii) 43 days (‘reminder letter 3’);
- (c) may commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim on the fifty first day of receipt of the same where payment has not been made.

(3) Nothing in sub-paragraph (1) requires the undertaker to repay any expense cost or charge for which Northern Powergrid is liable to the undertaker or a third party as a consequence of any default, negligence or omission by Northern Powergrid, its officers, employees, servants, contractors or agents.

(4) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) if in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 62 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such an extension is required in consequence of the execution of any such works as are referred to in paragraph 161(2) (removal of apparatus); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) The undertaker will not be liable for any claim by Northern Powergrid for charges, costs or expenses under this paragraph 164 unless prior to Northern Powergrid undertaking the relevant works or incurring those charges, costs or expenses, the undertaker has—

- (a) received an estimate of that charge, cost or expense along with all necessary supporting information required to evidence the amount and reasonableness of, and the reasonable steps taken to minimise, the charge, cost or expense and a timescale in which the undertaker will be required to make payment, and
- (b) approved the estimate in writing (such approval not to be unreasonably withheld or delayed),

and Northern Powergrid must not commence any work in relation to which an estimate is submitted until it has been agreed in writing by the undertaker.

(7) The undertaker will use reasonable endeavours to agree the amount of any estimates submitted to it under sub-paragraph (6) within 15 working days of receipt, and must acknowledge as part of its approval that any estimate is only an estimate and may be subject to change.

(8) Subject to Northern Powergrid updating the undertaker by way of submission of an updated estimate for approval under sub-paragraph (6) where any charges, costs or expenses are anticipated to exceed an approved estimate, the undertaker's approval of an estimate must in no way limit Northern Powergrid's recovery under this paragraph 164, and the undertaker must pay the actual costs incurred by Northern Powergrid and submitted for payment whether such costs are above or below the estimate provided and upon making payment under this paragraph, the undertaker may—

- (a) confirm to Northern Powergrid that the charge, cost or expense is accepted; or
- (b) confirm to Northern Powergrid that the charge, cost or expense is not accepted and the reasons why it considers this to be the case,

and Northern Powergrid must take into account any representations made by the undertaker in accordance with sub-paragraph (8)(b) and must following receipt of such representations confirm whether or not the requested refund, or any part thereof, is accepted or rejected, and the reasons why it considered this to be the case; and make payment of the requested refund, or part of it which is not rejected, as applicable (such confirmation or payment not to be unreasonably withheld or delayed).

(9) Either party may refer any difference or dispute arising out of sub-paragraph (8)(b) to arbitration in accordance with article 62 (arbitration) of the Order.

Damage to property and other losses

40.—(1) Subject to sub-paragraphs (2) to (5), if by reason or in consequence of the construction of any of the works referred to in paragraph 161(3) (removal of apparatus) or in consequence of the maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule any subsidence resulting from any of these works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
 - (b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,
- by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 165 applies. If requested to do so by the undertaker, Northern Powergrid must provide

an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker is only liable under this paragraph 165 for claims reasonably incurred by Northern Powergrid.

(5) Where Northern Powergrid is liable to pay any amount to a third party as described in sub-paragraph (1), the total liability of the undertaker to Northern Powergrid under sub-paragraph ((1) in respect of each third party claim must be limited to the extent that Northern Powergrid has properly paid expenses, losses, demands, damages, claims, penalties, costs, interest or any other liability arising from any proceedings to such third party pursuant to—

- (a) any statutory compensation scheme, obligation pursuant to its transmission license, or any agreement regulated thereby;
- (b) an award of damages by a court or a settlements or compromise of a claim, demand or proceeding provided that Northern Powergrid will not admit liability or offer to settle with a third party without the undertaker's consent (not to be unreasonably withheld or delayed).

Enactments and agreements

41. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made; except that in the event of an inconsistency between a term of this Part of this Schedule and a term of—

- (a) the wayleave between (1) Lord Worsley and (2) Yorkshire Electricity Board entered into on or around 1966;
- (b) the wayleave between (1) The Right Honourable Kenneth Peter Lyle Fourth Earl of Inchape and (2) Northern Powergrid dated 26 May 2016;
- (c) the licence between (1) British Transport Docks Board and (2) Yorkshire Electricity Board dated 27 November 1973;
- (d) the licence between (1) British Transport Commission and (2) Yorkshire Electricity Board dated 16 October 1962;
- (e) the licence between (1) Lord Worsley and (2) Yorkshire Electricity Board dated 19 July 1962;
- (f) the licence between (1) Lord Worsley and (2) Yorkshire Electricity Board dated 25 October 1957; and
- (g) the licence between (1) British Transport Docks Board and (2) Yorkshire Electricity Board dated 14 May 1965,

the term of this Part of this Schedule applies.

Cooperation

42. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 161 (removal of apparatus) or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 163 (retained apparatus), the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid must use all reasonable endeavours to co-operate with the undertaker for those purposes.

Miscellaneous

43. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

44. Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction of the authorised development. Such liaison must be carried out where any works are—

- (a) within 15 m of any above ground apparatus; or
- (b) are to a depth of between 0-4 m below ground level.

PART 4

FOR THE PROTECTION OF ANGLIAN WATER

Application

45. For the protection of Anglian Water the following provisions have effect until the commencement of the operation of the authorised development, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

46. In this Part of this Schedule—

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

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage including for the avoidance of doubt any decommissioned works, mains, pipes or other apparatus;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991(a);
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act;
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and
- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus, and for the purpose of this definition, where words are defined by section 219 of that Act, they are taken to have the same meaning;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

(a) 1991 c. 56.

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

Protective works to buildings

47. The undertaker, in the case of the powers conferred by article 20 (protective works), must (unless otherwise agreed with Anglian Water in writing) exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

48. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

49.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 175 (facilities and rights for alternative apparatus).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days’ written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of Anglian Water’s apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 62 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 62 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian

Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which must remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker must, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements;
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

50.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 62 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016(a) or other legislation.

Retained apparatus

51.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 174, the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(a) S.I. 2016/1154.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3), (6) and (7), apply as if the removal of the apparatus had been required by the undertaker under paragraph 174(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (2) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 3 metres where the diameter of the pipe is between 250 and 400 millimetres; and
- (c) where works fall within 7 metres of pipes with a diameter exceeding 400 millimetres a distance not exceeding 7 metres to be agreed on a case by case basis (both parties acting reasonably) and before the submission of the plan under sub-paragraph (1).

Expenses and costs

52.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 62 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

53.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in articles 172 (protective works to buildings) or 174(2) (removal of apparatus), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

54. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 174(2) (removal of apparatus) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 174(4) (removal of apparatus), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

55. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it must inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

Enactments and agreements

56. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made; except that in the event of an inconsistency between a term of this Part of this Schedule and a term of—

- (a) the licence between (1) Humber Conservancy Board and (2) Grimsby Rural District Council dated 1 July 1920;
- (b) the licence between (1) British Transport Docks Board and (2) Grimsby Rural District Council dated 28 March 1969; and
- (c) the licence between (1) British Transport Docks Board and (2) North East Lincolnshire Water Board dated 18 May 1970,

the term of this Part of this Schedule applies.

Substitution of agreed periods of time

57. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 5

FOR THE PROTECTION OF NETWORK RAIL

Application

58. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 185, any other person on whom rights or obligations are conferred by that paragraph.

Interpretation

59. In this Part of this Schedule—

“asset protection agreement” means an agreement, should such be required, to regulate the construction and maintenance of the specified work in a form to be agreed from time to time between the undertaker and Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of their powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited with company number 02904587 and whose registered office is at Waterloo General Office, London SE1 8SW, and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited, and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means any works specified by the engineer under paragraph 187(4);

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or a tenant or licensee of Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“regulatory consents” means any consent or approval required under—

- (c) the Railways Act 1993;
- (d) the network licence; or
- (e) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (extent of certain works) in respect of such works.

60.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

61.—(1) The undertaker must not exercise the powers conferred by article 33(1)(b) (extinguishment of rights of statutory undertakers) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not under the powers of this Order do anything—

- (a) which would result in railway property being incapable of being used or maintained except where the incapability of such use and maintenance is temporary and is with the consent of Network Rail; or
- (b) which would affect the safe running of trains on the railway but, for the avoidance of doubt, this does not apply where Network Rail upon prior written request by the undertaker has consented not to run trains on the railway temporarily.

(3) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

(4) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it will never be unreasonable to withhold consent on reasonable operational or railway safety grounds.

62.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 62 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the

grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

63.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 187 must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under article 62 (arbitration);
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

64.—(1) The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

65. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

66.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work because which in the opinion of the engineer it is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any approval of the specified work or protective work in question under paragraph 187, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 192 provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

67.—(1) The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 188(1) or in constructing any protective works under the provisions of paragraph 188(1) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer be required to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

68.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 187(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures reasonably necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 187(1)) in order to identify all potential causes of EMI and the measures reasonably required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be approved by Network Rail, acting reasonably, and in relation to such modifications paragraph 187(1) has effect subject to this sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker must test the use of the authorised development in a manner that must first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures reasonably necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI;

- (c) Network Rail must make available to the undertaker any additional material information in its possession requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker must not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the undertaker in accordance with paragraph (6).

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 197(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 192(1)(a), any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

69. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as not adversely to affect railway property.

70. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

71. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

72.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance or operation of a specified work or a protective work or the failure of it;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work;
- (c) by reason of any act or omission of the undertaker or any person in its employment or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as

a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker indemnifies and must keep indemnified Network Rail in respect of such costs, from and against all claims and demands arising out of or in connection with a specified work or protective work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) if, relevant, include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work, including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

73. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 197(5) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

74. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

75.—(1) The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;

- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

76. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

77.—(1) The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 46 (benefit of Order), except in respect of the deemed marine licence, and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

78. The undertaker must no later than 28 days from the date that the plans and documents referred to in article 64 (certification of documents, public register, etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail.

PART 6

FOR THE PROTECTION OF NORTH EAST LINCOLNSHIRE COUNCIL (AS LEAD LOCAL FLOOD AUTHORITY)

Application

79. The provisions of this Part of this Schedule apply whilst any part of the authorised project is being constructed for the protection of the authority unless otherwise agreed between the undertaker and the authority.

Interpretation

80. In this Part of this Schedule—

“authority” means North East Lincolnshire Council (as lead local flood authority within the meaning of the Flood and Water Management Act 2010);

“authorised officer” means an officer authorised by the authority;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“drainage work” means any ordinary watercourse and includes any land which is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

“ordinary watercourse” has the meaning as given in section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means any works carried out in relation to or which may affect any ordinary watercourse, drain or culvert in a manner that would be likely to affect the flow of the watercourse, drain or culvert.

81.—(1) Before beginning to construct any specified work, the undertaker must submit to the authority plans of the specified work and such further particulars available to it as the authority may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the authority, or determined under sub-paragraph (3).

(3) Any approval of the authority required under sub-paragraph (2)—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 28 days of the receipt of the plans for approval or where further particulars are submitted under sub-paragraph (1) within 28 days of the submission of those particulars, and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as it may make for the protection of any drainage work or for the prevention of flooding and
- (d) the authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (b).

82.—(1) Without limitation on the scope of paragraph 206 the requirements which the authority may make include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including any new works as well as alterations to existing works) as are reasonably necessary—

- (a) to safeguard any drainage work against damage, or
- (b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of the specified work.

83.—(1) Subject to sub-paragraph (3), any specified work, and all protective works required by the authority under paragraph 207 must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the authority,

and an authorised officer of the authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by the authority over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of Schedule, the authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the authority reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 206, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the authority may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the authority must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

84.—(1) Subject to sub-paragraph (2) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from

obstruction any drainage work which is situated on land held by the undertaker for the purposes of or in connection with the specified works within the Order limits, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the authority it may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the authority reasonably requires.

(3) Subject to sub-paragraph (4) and paragraph 206, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the authority must not, except in a case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the authority, or which the authority or another person is liable to maintain and is not precluded by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

85. Subject to paragraph 209, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the authority and if the undertaker fails to do so, the authority may make good the same and recover from the undertaker the proper and reasonable expense reasonably incurred by it in so doing.

86.—(1) The undertaker must repay the authority all proper and reasonable costs, charges and expenses which the authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of the specified work in respect of an ordinary watercourse or any protective works required by the authority under this Part of this Schedule.

(2) The maximum amount payable to the authority under sub-paragraph (1)(a) or (1)(b) is to be the same as would have been payable to the authority in accordance with the scale of charges for pre-application advice and land drainage consent applications published by the authority from time to time.

87.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify the authority from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, the authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for flood defence or land drainage purposes;
- (b) any raising or lowering of the water table in land adjoining or affected by a specified work or adjoining any sewers, drains and watercourses; or
- (c) any flooding, increased flooding or impaired drainage of any such lands as are mentioned in paragraph 210,

- (d) any claim in respect of pollution under the Control of Pollution Act 1974;
- (e) damage to property including property owned by third parties; or
- (f) injury to or death of any person,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The authority must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(3) The authority must at all times take reasonable steps to prevent and mitigate any such claims demands proceedings costs charges penalties damages expenses and losses.

88. The fact that any work or thing has been executed or done by the undertaker in accordance with plans approved by the authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not (in the absence of negligence on the part of the authority, its officers, contractors or agents) relieve the undertaker from any liability under the provisions of this Part of this Schedule.

89. Any dispute arising between the undertaker and the authority under this Part of this Schedule is to be determined by arbitration in accordance with article 62 (arbitration).

PART 7

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

90. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect during the construction of the authorised works (as defined in this Part of this Schedule) and for a further period of 18 months from completion of the authorised works (as defined in this Part of this Schedule).

Interpretation

91. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus (including transformed rectifiers and any associated groundbeds or cables) belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by this Order;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

“commence” has the same meaning as in Schedule 2 (requirements) of this Order and “commencement” is to be construed to have the same meaning save that for the purposes of this Part of this Schedule the terms “commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and

equipment, and non-intrusive investigations for the purpose of assessing ground operations for the purposes of archaeological or ecological investigations and investigations of the existing condition of the ground or of structures and the diversion, laying and construction of services;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed and setting out the necessary measures (if any) for a ground subsidence event);

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 221(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 221(2) or otherwise; or
- (c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent’s policies for safe working in the vicinity of Cadent’s Assets).

On street apparatus

92.—(1) Except for paragraphs 218 (apparatus of Cadent in stopped up streets), 221 (removal of apparatus) in so far as sub-paragraph 221(2) applies, 222 (facilities and rights for alternative apparatus) in so far as its sub-paragraph 222(1) applies, 223 (retained apparatus: protection of Cadent), 224 (expenses) and 225 (indemnity) which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of Cadent, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 221 (removal of apparatus) and 222 (facilities and rights for alternative apparatus) of this Agreement will apply to diversions even where carried out under the 1991 Act,

in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 8 (application of the 1991 Act) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made under it will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in stopped up streets

93.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in this Order, where any street is stopped up under article 11 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 221 (removal of apparatus).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up and prohibition or restriction of use of streets and public rights of way), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

94.—(1) The undertaker, in the case of the powers conferred by article 20 (protective works), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to Cadent for any loss sustained by it; and
- (b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent must give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise of it must be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

95.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of Cadent otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that

will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus, and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 223 (retained apparatus: protection of Cadent) or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement between the parties in sub-paragraph (1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and any other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 221 (removal of apparatus) do not apply, the undertaker must—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

96.—(1) If, in the exercise of the agreement reached in accordance with paragraph 220 (acquisition of land) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 222(1) (facilities and rights for alternative apparatus)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraphs (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

97.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under paragraph 221(2) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's reasonable opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 230 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

98.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant, etc.;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.
- (4) Any approval of Cadent required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and;
 - (b) must not be unreasonably withheld.
- (5) In relation to any work to which sub-paragraphs (1) or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.
- (7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's reasonable satisfaction prior to the commencement of any specified works (or any relevant part of them) for which protective works are required prior to commencement.
- (8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 221 (removal of apparatus), 222 (facilities and rights for alternative apparatus), 224 (expenses), 225 (indemnity) and 227 (co-operation) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 221(2) (removal of apparatus).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works must comply with—
- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
 - (b) sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets" and HSE's "HS(-G)47 Avoiding Danger from underground services".
- (12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in accordance with paragraph 224. (expenses).

Expenses

99.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably incurred by Cadent in, or in

connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 221(3) (removal of apparatus) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and
- (g) any watching brief pursuant to paragraph 223(6) (retained apparatus).

(2) Nothing in sub-paragraph (1) requires the undertaker to repay any charge, cost or expense for which Cadent is liable to a third party or the undertaker as a consequence of any default, negligence or omission by Cadent, its officers, employees, servants, contractors or agents except insofar as such default or omission is caused by a breach of this Part of this Schedule by the undertaker or is in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker.

(3) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(4) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 62 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

100.—(1) Subject to sub-paragraphs (2) to (4) if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by Cadent with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 177 (benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 225; and
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use revenue profit contract production increased cost of working or business interruption arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1)).

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory

compensation scheme, be made without first consulting the promoter and considering their representations.

Enactments and agreements

101. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made; except that in the event of an inconsistency between a term of this Part of this Schedule and a term of—

- (a) the deed of easement between (1) Mr G.M.V. Winn and others (2) and The British Gas Corporation dated 25 April 1975; and
- (b) the deed of easement between (1) Mr G.M.V. Winn and others (2) and The British Gas Corporation dated 6 May 1980,

the term of this Part of this Schedule applies.

Co-operation

102. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 221(2) (removal of apparatus) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 223 (retained apparatus), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

103. For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

104. If in consequence of the agreement reached in accordance with paragraph 220(1) (acquisition of land) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

105. Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 62 (arbitration) and in settling any difference or dispute, the arbitrator must have regard to the reasonable requirements of Cadent for ensuring the safety and economic and efficient operation of Cadent's apparatus and of the authorised development.

Notices

106. The plans submitted to Cadent by the undertaker pursuant to sub-paragraph 223(1) (retained apparatus) must be sent to Cadent Gas Limited Plant Protection by e-mail to plantprotection@cadentgas.com copied by e-mail to landservices@cadentgas.com and sent to the

General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 8

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

Application

107. For the protection of any operator, referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

Interpretation

108. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003;

“the code rights” has the same meaning as in the Paragraph 3 of the electronic communications code;

“electronic communications apparatus” has the same meaning as in electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“the electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code;

“operator” means the operator of an electronic communications code network.

109. The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

110.—(1) Subject to paragraphs 236 and 237, if as the result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 62 (arbitration).

111. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

112. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made; except that in the event of an inconsistency between a term of this Part of this Schedule and a term of the wayleave between (1) The London and North Eastern Railway Company and (2) Her Majesty's Postmaster General dated 24 May 1933, the term of this Part of this Schedule applies.

PART 9

FOR THE PROTECTION OF THE NORTH EAST LINDSEY DRAINAGE BOARD

Application

113. The provisions of this Part of this Schedule have effect for the protection of the Board unless otherwise agreed in writing between the undertaker and the Board.

Interpretation

114. In this part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage work” means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

“ordinary watercourse” has the meaning given in section 72 (Interpretation) of the Land Drainage Act 1991(a);

“plans” includes sections, drawings, specifications and method statements;

“specified works” means—

- (a) the making of any opening into or connections with any watercourse or drain in connection with the authorised development; and/or

(a) 1991 c. 59. There are amendments to section 72 but none are relevant.

- (b) so much of any work or operation of the authorised development as is in, on, under, over or within 9 metres of a drainage work for which the Board has responsibility or is otherwise likely to—
 - (i) affect any such drainage work;
 - (ii) affect the total volume or volumetric rate of flow of water in or flowing to or from any such drainage work;
 - (iii) affect the flow of water in any such drainage work; or
 - (iv) affect the conservation, distribution or use of water resources.

115. The undertaker must not make any opening into or connections with any watercourse or drain in connection with the authorised development or carry out any specified work except—

- (a) in accordance with plans approved by the Board in accordance with this Part of this Schedule or determined under paragraph 247; and
- (b) where the Board has been given the opportunity to supervise the making of the opening or connection,

and no discharge of water under article 18 (discharge of water) shall be made until details of the location and maximum rate of discharge have been submitted to and approved in writing by the Board (unless such location or maximum rate of discharge is in accordance with a drainage strategy approved under paragraph 89(1) of Schedule 2 (requirements)).

(2) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, and any such further particulars available to it as the Board may within 28 days of the submission of the plans reasonably require.

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 247.

(4) Any approval of the Board required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or the submission of further particulars if applicable) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements and conditions as the Board may consider appropriate.

(5) The Board must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).

(6) Where under this Part of this Schedule the Board is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Board complies with its obligations to consult other appropriate agencies, to have regard to any guidance issued by any appropriate supervisory body and has regard to its obligations under statute.

116. Without limiting paragraph 240, the requirements which the Board may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of any specified work.

117.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Board under paragraph 241, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the Board, and an officer of the Board is entitled to give such notice as may be reasonably required in the circumstances to watch and inspect the construction of such works.

(2) The undertaker must give to the Board—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the Board is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Board may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Board in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Board reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Board may execute the works specified in the notice, and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Board must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally resolved by agreement or determined under paragraph 247.

118. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and, if the undertaker fails to do so, the Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

119. The undertaker must pay to the Board all costs, charges and expenses that the Board may reasonably incur, have to pay or may sustain:

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in inspecting the proposed site for and construction of any specified work or any protective works required by the Board under this Part of this Schedule; and
- (c) in carrying out any surveys or tests by the Board that are reasonably required in connection with the construction of the specified work.

120.—(1) Without limiting the other provisions of this Part of this Schedule, the undertaker must compensate the Board in respect of all claims, demands, proceedings, costs, damages, expenses or loss that are made or taken against, reasonably recovered from or reasonably incurred by the Board by reason of—

- (a) any damage to any drainage work arising out of construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work so as to impair its efficiency for the purposes of flood defence; and

(b) any flooding or increased flooding of any such land which is caused by, or results from, the construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Board must give to the undertaker reasonable notice of any such claims, demands, proceedings, costs, damages, expenses or loss and no settlement or compromise may be made without the agreement of the undertaker, which agreement must not be unreasonably withheld or delayed.

(3) The Board must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses and losses. For the avoidance of doubt, any costs, expenses, losses or liabilities reasonably incurred by the Board arising out of or relating to its taking of such reasonable steps will be recoverable from the undertaker on the terms of sub-paragraph (1) (and, where any such reasonable step is considered by the Board (acting reasonably) to have the potential to cause significant cost, liability, expense or loss recoverable from the undertaker on the terms of sub-paragraph (1), the Board may require prepayment by the undertaker of its reasonable estimate of such prior to taking the relevant step but this does not relieve the Board of its obligation under this sub-paragraph at all times to take reasonable steps to prevent and mitigate the claims, demands, proceedings, costs, damages, expenses and losses to which this paragraph refers).

(4) In no circumstances will the undertaker be liable to the Board under or in connection with this Part of this Schedule for loss of profit.

121. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

122. Any dispute between the undertaker and the Board under this Part of this Schedule, unless otherwise agreed, must be determined by arbitration under article 62 (arbitration).

PART 10

FOR THE PROTECTION OF CLDN PORTS KILLINGHOLME LIMITED

Application

123. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and CLdN, for the protection of CLdN during the construction and operation of the authorised development.

Interpretation

124.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this Part of this Schedule—

“CLdN” means CLdN Ports Killingholme Limited, company number 00278815, whose principal office is at 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU as statutory harbour authority for and operator of the Port and any successor in title or function to the Port;

“operation” means the commencement of the import or export of liquid bulk products through Work No.1 for commercial purposes (as opposed to commissioning or testing of Work No.1) as notified to CLdN by the undertaker in writing not later than 10 business days after this definition is satisfied;

“the Port” means any land (including land covered by water) at Killingholme for the time being owned or used by CLdN for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls or works held in connection with that undertaking; and

“specified work” means Work No. 1 or any activity or operation authorised by this Order related to the construction of Work No. 1 and any related vessel movements which may interfere with:

- (a) the Port or access (including over water) to and from the Port; or
- (b) the functions of CLdN as the statutory harbour authority for the Port.

Co-operation

125. The undertaker and CLdN must each act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part of this Schedule.

Notice and undue interference

126. The undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of the specified work at least 20 business days prior to the commencement of the specified work.

127. Any operations for the construction of the specified work must be carried out by the undertaker so that CLdN does not suffer undue interference with its own operations to and from the Port and, in so doing the undertaker—

- (a) must have reasonable regard, amongst other things, to scheduled vessel services to and from the Port notified to the undertaker; and
- (b) is not required to carry out any such operations otherwise than in a safe, efficient and economic manner.

Indemnity

128.—(1) During the construction of the specified work, the undertaker must indemnify CLdN against all financial losses, costs, charges, damages, expenses, claims and demands which may reasonably be incurred or occasioned to CLdN by reason or arising in connection with—

- (a) any obstruction which prevents, restricts or materially hinders access into or out of the Port, which is caused by or attributable to the undertaker or its agents or contractors in exercising the powers of this Order in respect of the specified work, save for where such an obstruction is as a result of the lawful actions of the Statutory Conservancy and Navigation Authority; or
- (b) the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port arising from the exercise by the undertaker of its powers under this Order in respect of the specified work.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CLdN, its officers, servants, contractors or agents.

(3) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify CLdN from and against all financial losses, costs, charges, damages, expenses, claims and demands to which that sub-paragraph refers until the commencement of the operation of the specified work and the undertaker must use its reasonable endeavours to give at least 20 business days’ notice of the date on which operation of the specified work is anticipated to commence.

Statutory powers

129. Save to the extent expressly provided for, nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in or enjoyed by CLdN at the date of this Order coming into force.

130. With the exception of any duty owed by CLdN to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon CLdN either directly or indirectly, any duty or liability to which CLdN would not otherwise be subject and which is enforceable by proceedings before any court.

Arbitration

131. Unless otherwise agreed in writing, any dispute arising between the Undertaker and CLdN under this Part of this Schedule is to be determined by arbitration as provided in article 62 (arbitration) of this Order.

SCHEDULE 15

Article 64

DOCUMENTS AND PLANS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
book of reference	TR030008/APP/3.1	4	15 August 2024
environmental statement (including environmental statement non-technical summary, environmental statement main report, environmental statement figures and environmental statement appendices)	TR030008/APP/6.1, TR030008/APP/6.2, TR030008/APP/6.3 TR030008/APP/6.4	0	21 September 2023
environmental statement (non-technical summary)	TR030008/APP/6.1	1	21 September 2023
environmental statement (chapter 1)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 1.1)	TR030008/APP/6.3	3	26 June 2024
environmental statement (appendices 1A – 1E)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 2)	TR030008/APP/6.2	3	26 June 2024
environmental statement (figures 2.1 – 2.5)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 2.6)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figure 2.7)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendices 2A – 2C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 3)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 3.1)	TR030008/APP/6.3	1	21 September 2023
environmental statement (chapter 4)	TR030008/APP/6.2	1	21 September 2023
environmental statement (chapter 5)	TR030008/APP/6.2	1	21 September 2023
environmental statement (chapter 6)	TR030008/APP/6.2	1	21 September 2023
environmental	TR030008/APP/6.3	2	26 June 2024

statement (figures 6.1 – 6.2)			
environmental statement (figure 6.3 A1– B2)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendices 6A – 6B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 7)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 7.1)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendices 7A – 7C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 8)	TR030008/APP/6.2	1	21 September 2023
environmental statement (appendices 8A – 8F)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 9)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 9.1)	TR030008/APP/6.3	1	21 September 2023
environmental statement (figures 9.2 – 9.4)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figures 9.5 – 9.7)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendices 9A – 9B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 10)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 10.1 – 10.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figure 10.6)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 10A)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 11)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 11.1 – 11.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendices 11A – 11B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 12)	TR030008/APP/6.2	1	21 September 2023
environmental	TR030008/APP/6.3	1	21 September 2023

statement (figures 12.1 – 12.5)			
environmental statement (appendices 12A – 12B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 13)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 13.1 – 13.7)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 13.8.1 - 13.8.13)	TR030008/APP/6.3	1	21 September 2023
environmental statement (figure 13.9.1 – 13.9.13)	TR030008/APP/6.3	1	21 September 2023
environmental statement (figure 13.10.1 – 13.10.6)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 13A – 13B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 14)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 14.1 – 14.3)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendix 14A – 14H)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 15)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 15.1 – 15.4)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figure 15.5)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 15A – 5B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 16)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 16.1 – 16.17)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 16A – 16C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 17)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 17.1 – 17.3)	TR030008/APP/6.3	2	26 June 2024
environmental	TR030008/APP/6.4	1	21 September 2023

statement (appendix 17A)			
environmental statement (chapter 18)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 18.1 – 18.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendix 18A)	TR030008/APP/6.4	3	26 June 2024
environmental statement (appendix 18B – 18C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 19)	TR030008/APP/6.2	1	21 September 2023
environmental statement (appendix 19A – 19C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 20)	TR030008/APP/6.2	1	21 September 2023
environmental statement (chapter 21)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 21.1 – 21.3)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 21.4)	TR030008/APP/6.3	1	21 September 2023
environmental statement (figure 21.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figures 21.6 – 21.7)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 21.8)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 21A – 21C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 22)	TR030008/APP/6.2	1	21 September 2023
environmental statement (chapter 23)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 23.1 – 23.4)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 23.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figure 23.6)	TR030008/APP/6.3	1	21 September 2023
environmental statement (chapter 24)	TR030008/APP/6.2	1	21 September 2023

environmental statement (chapter 25)	TR030008/APP/6.2	2	11 July 2024
environmental statement (figures 25.1 – 25.2)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendices 25A – 25C)	TR030008/APP/6.4	2	11 July 2024
environmental statement (chapter 26)	TR030008/APP/6.2	2	26 June 2024
hydrogen production facility building design code	TR030008/EXAM/9.7 6	1	4 June 2024
land plans	TR030008/APP/4.5	4	2 August 2024
long Strip construction environmental management plan	TR030008/EXAM/90	1	2 August 2024
outline construction environmental management plan	TR030008/APP/6.5	8	15 August 2024
outline construction traffic management plan	TR030008/APP/6.7	4	4 June 2024
outline decommissioning environmental management plan	TR030008/APP/6.6	2	11 July 2024
outline landscape and ecology management plan	TR030008/APP/6.9	2	4 June 2024
outline operational travel plan	TR030008/EXAM/9.3	2	4 June 2024
the plan of Habrough Marsh Drain and Stallingborough North Beck	TR030008/EXAM/9.9 9	1	15 August 2024
plan of potentially affected hedgerows and trees subject to preservation orders	TR030008/APP/4.9	4	26 June 2024
sediment sampling plan	TR030008/APP/7.10	1	21 September 2023
stopping up and restriction of use of streets and public rights of way plan	TR030008/APP/4.7	3	26 June 2024
street works and accesses plan	TR030008/APP/4.6	3	26 June 2024
traffic regulation measures plans	TR030008/APP/4.8	4	26 June 2024
works plans	TR030008/APP/4.1	4	26 June 2024
woodland compensation plan	TR030008/EXAM/9.3 4	4	15 August 2024

ARBITRATION RULES

Commencing an arbitration

1. The arbitration is deemed to have commenced when a party (“the claimant”) serves a written notice of arbitration on the other party (“the respondent”).

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs 259(2) to 259(4) below unless amended in accordance with paragraph 261(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

- (a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant’s contentions as to those issues, the amount of its claim or the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant’s statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with

- (a) a written statement of defence consisting of a response to the claimant’s statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant’s claim, its acceptance of any elements of the claimant’s claim and its contentions as to those elements of the claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the claimant’s statements, comments on the claimant’s expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph 259(3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

- (a) a written statement responding to the respondent’s submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the respondent’s submissions;
- (c) any expert report in response to the respondent’s submissions;

- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

- (a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

PROCEDURE REGARDING CERTAIN APPROVALS, ETC.

Interpretation

1. In this Schedule—

“appeal documentation” means a written statement of appeal which describes the nature of the differences between the parties, the factual issues, the undertaker’s case and evidence relied on;

“relevant authority” means, subject to article 63(5), any person, authority or body named in any of the provisions of this Order and whose consent, agreement or approval is sought; and

“consultee” means any body or authority named in a requirement or condition as a body to be consulted by the relevant authority in discharging that requirement or condition.

Applications made under provisions of this Order

2.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (except as provided in article 63(5)) the relevant authority must give notice to the undertaker of their decision on the application within—

- (a) in respect of all provisions a period of 42 days beginning with the day immediately following that on which the application is received by the relevant authority;
- (b) where further information is requested under paragraph 266 of this Schedule (further information and consultation), a period of 42 days beginning with the day immediately following that on which further information has been supplied by the undertaker; or
- (c) such period that is longer than the periods in sub-paragraphs (a) or (b) as may be agreed in writing by the undertaker and the relevant authority before the end of such period.

(2) In determining any application made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (except as provided in article 63(5)), the relevant authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to reasonable conditions the relevant authority must provide its reasons for that decision within the notice of the decision.

(3) Subject to sub-paragraph (4), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(4) Where an application has been made to the relevant authority for any consent, agreement or approval required by any of the provisions of this Order (except as provided in article 63(5)), and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement or in any environmental information supplied under the 2017 Regulations; or
- (b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new

or materially different environmental effects compared to those in the environmental statement or in any environmental information supplied under the 2017 Regulations,

then the application is to be taken to have been refused by the relevant authority at the end of that period.

(5) The undertaker must include in any application made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (except as provided in article 63(5)) a statement that the provisions of sub-paragraph (3) apply and, if the application fails to do so, it is to be null and void.

Further information and consultation

3.—(1) In relation to any application submitted pursuant to a requirement in Schedule 2 (requirements) or condition in schedule 3 (deemed marine licence), the relevant authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers further information to be necessary and the provision governing or requiring the application does not specify that consultation with a consultee is required the relevant authority must, within 10 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a consultee is required, the relevant authority must issue the consultation to the consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the consultee within 20 business days of receipt of the application.

(4) In the event that the relevant authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Appeals

4.—(1) The undertaker may (except as provided in article 63(5)) appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 265(4)) an application for any consent, agreement or approval required by an article, requirement or condition included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 266 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination giving rise to the appeal referred to in sub-paragraph (1) ;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any consultee required to be consulted pursuant to the provision of this Order which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all

correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);

- (d) the relevant authority and any consultee required to be consulted pursuant to the provision of this Order which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within 20 business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the undertaker must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the appeal parties to the appointed person on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of any written representations on the submitted further information to the appointed person within 10 business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (2)(f).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision or determination of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to

be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the relevant planning authority for the discharge of a requirement in Schedule 2 (requirements), a fee is to apply and must be paid to the relevant planning authority in accordance with sub-paragraph (2).

(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 by the relevant planning authority of each of the requirements in paragraphs 81 (detailed approval), 82(1) (phasing), 83 (construction environmental management plan), 84 (construction traffic management plan), 85 (highway works), 87 (landscape and ecology management plan), 89 (surface water drainage), 92 (contaminated land), 93 (external lighting), 94 (control of noise during operational use), 95 (decommissioning environmental management plan), 96 (operational travel plan), and 97 (operational phase flood emergency response plans);
- (b) a fee of £578 for each subsequent application for the discharge by the relevant planning authority of each of the requirements listed in paragraph (a) (whether that subsequent application is in respect of the same part of the authorised project or a different part of it); and
- (c) a fee of £145 for any application for the agreement of the relevant planning authority pursuant to any “unless otherwise agreed” provision of any requirement in Schedule 2 (requirements).

(3) Any fee paid under this Schedule must be refunded by the relevant planning authority to the undertaker who paid it within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the relevant period in paragraph 265(1) of this Schedule unless within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for and authorises the construction, operation and maintenance of a new liquid bulk import terminal and associated development within the Port of Immingham and to carry out all associated works.

The Order also makes provision in connection with the maintenance, operation and decommissioning of the authorised project.

The Order allows Associated British Ports to acquire compulsorily or by agreement, land and rights in land and for it and Air Products to use land for this purpose.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 64 of this Order may be inspected free of charge during working hours at the registered office of Associated British Ports, being 25 Bedford Street, London WC2E 9ES.