



# Report to the Secretary of State for Energy Security and Net Zero

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Date: 23 July 2025

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**ELECTRICITY ACT 1989**

**AND**

**ACQUISITION OF LAND ACT 1981**

**APPLICATION BY VPI IMMINGHAM LLP**

**FOR CONFIRMATION OF**

**THE VPI IMMINGHAM LLP (LAND AT ROSPER ROAD) COMPULSORY PURCHASE  
ORDER 2024**

Inquiry held on 13, 14, 15 & 20 May 2025

Inspections were carried out on 12 May 2025

File Ref: APP/DESNZ/ROSPERROADCPO

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## **File Reference: APP/DESNZ/RORSPERROAD CPO**

### **Land to West of Rosper Road, Immingham**

- The Compulsory Purchase Order (“the CPO”) was made under section 10 and Schedule 3 of the Electricity Act 1989 and the Acquisition of Land Act 1981 by VPI Immingham LLP on 16 September 2024.
- The purposes of the CPO are to purchase compulsorily a parcel of land and new rights over another parcel of land to the West of Rosper Road for the purposes relating to the capturing of carbon dioxide emissions from the combined heat and power plant and ancillary or associated works and activities.
- The main grounds of objection are: a) that the making of the CPO was ultra vires; b) that the necessary funding is uncertain; c) that the matter can be resolved through negotiation and without the need to use CPO power; d) that the CPO will have significant detrimental impacts on the existing operations of the Humber Refinery and prevent future projects which will deliver significant benefits in the public interest; e) that there has been no consideration of alternative sites for either part of the permanent structure or the construction laydown area; and f) that a development consent order (DCO) is required for the project and has not been sought.
- When the Inquiry opened there was one remaining objection.

### **Summary of Recommendation; that the Order be confirmed without modification.**

#### **Introduction**

1. The Acquiring Authority (“the AA”) is an electricity undertaker who operates the VPI Immingham Combined Heat and Power Plant (“the CHP Plant”). The Objector owns the Order Land and operates the Humber Refinery (“the Refinery”) which is adjacent to the site.
2. The Order seeks to acquire land necessary to carry out the development of a post-combustion carbon capture plant, including carbon dioxide compressor and metering, cooling equipment, stacks, substations, internal roads, partial ditch realignment, new and modified services, connections, accesses, maintenance and laydown area (“the Proposed Development”).
3. The core documents are available at <https://vpi.energy/compliance/>.

#### **Procedural Matters and Statutory Formalities**

4. The AA confirmed its compliance with the Statutory Formalities.
5. An executed undertaking was submitted by the AA dated 23 May 2025 which was after the date of the closing submissions. Whilst it is in a similar form to the draft version which had been provided prior to the close of the inquiry there are differences. The Objector was given the opportunity to provide any comments on the final undertaking in writing. I have therefore considered the undertaking and the parties’ representations as part of my recommendations.
6. The Government Spending Review announced on 11 June 2025 also post-dated the close of the inquiry, and both parties were given the opportunity to provide additional written representations which are reflected in this report.

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## *Validity*

7. The following submissions were made regarding the validity of the CPO.

### *Objector*

8. The Objector argues that the AA did not have the necessary power to make the CPO for the Proposed Development and it was therefore ultra vires. They say that the Proposed Development comprises activities which fall outside of the enabling powers authorised under the Electricity Act 1989. The operation of carbon capture is not an activity authorised by the licence but a mitigation of the release of carbon dioxide into the atmosphere which arises from generating electricity.
9. The justification for the use of compulsory purchase powers (in the Statement of Reasons) only provides for the capture of carbon emission from the CHP Plant and makes no functional connection between the Proposed Development, which is a Carbon Capture Plant (“CCP”) and the generation of electricity. The CPO provides for pipeline connections between the flue stacks of the plant and the Proposed Development to capture its byproduct emissions but there is otherwise no connection. There is no effect on the generation or supply of electricity by the CHP Plant. The compulsory purchase of land to mitigate or offset the environmental effects of the CHP Plant is not permitted under the enabling powers relied on and the Order is therefore Ultra Vires.

### *AA*

10. The AA is an electricity undertaker empowered by section 10 and paragraph 1 of Schedule 3 of the Electricity Act 1989 to “purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.” The activity which the AA is authorised by the electricity generation licence granted on 7 June 2002 is to generate electricity in Great Britain for the purpose of giving a supply to any premises or enabling a supply to be so give. Standard condition 14 of the licence, which was applied to the licence following the OFGEM Modification Order dated 1 May 2007, permits the compulsory acquisition of land to enable the licensee to carry on the activities authorised by the licence and including those which relate to the construction or extension of a generating station or the operation of a generating station.
11. The AA’s licence therefore authorises the use of compulsory purchase powers because the Proposed Development relates to the operation of the CHP Plant by capturing its emissions.

### *Conclusion*

12. Whether or not the Proposed Development comprises activities which fall within the enabling powers authorised under the Electricity Act 1989 is a matter of law, but in my view it is authorised.
13. The carbon dioxide emissions which would be captured under the proposed Scheme are a by-product of the operation of the CHP Plant which is permitted by the licence. If the electricity was not generated the carbon dioxide would not be emitted. As such, and in light of the changing landscape of power generation, and national policy commitment to green energy including the use of carbon capture and storage (“CCS”) projects as part of the transition to cleaner industry and

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energy production, the Proposed Development relates to the operation of the CHP Plant.

14. The Proposed Development would not increase the amount of electricity generated by the CHP Plant but it is required to ensure that the CHP Plant can continue to operate and produce electricity in line with the Government's ongoing environmental and emissions aims, and commitment to clean energy.

### **The Order Land and Surroundings, and the Proposal**

15. The Order Land lies to the west of Rosper Road and South of the CHP Plant. It is irregular in shape and bounded by the Brocklesby and Immingham Branch Line ("the Rail Line") to the south and vehicular roads to the south and east.
16. The Order seeks to acquire the freehold of part of the site for the infrastructure of the Proposed Development and to facilitate its construction. The southernmost part of the Objector's land is only required temporarily for construction laydown for the Proposed Development. It is the AA's stated intention to offer this part back to the Objector following completion of the Proposed Development to the extent that it is not required by Harbour Energy in connection with land requirements of the transportation pipeline<sup>1</sup>.
17. For ease of reference in this recommendation, the part of the Order Land required for the permanent structure is referred to as "the Permanent Land" and the part required for the construction laydown as "the Temporary Land".
18. The AA also proposes to acquire new rights over the land it already occupies which will allow it to connect the Proposed Development to the operational CHP Plant. This would also facilitate any access and other ancillary requirements necessary for the construction, operation and maintenance for the Proposed Development. This includes pipeline and cable connections and the use of some available areas of the CHP Plant site for construction laydown. Some of the existing CHP Plant facilities and rights may also be shared with the Proposed Development.
19. The Refinery, which is owned and operated by the Objector, is situated to the west of the CHP Plant on the opposite side of the Rail Line. A pipebridge crosses the Rail Line and enters the north west corner of the Order Land which then enters a pipeline corridor along the western boundary which carries many pipes including gases and feedstocks.
20. Waste effluent water from the Refinery enters into the Killingholme Drain which passes through a culvert under the Rail Line and is then an open ditch which crosses diagonally across the Order Land to meet Rosper Road on the east, and which it also crosses by way of a culvert before heading towards the Humber Estuary.
21. The Refinery, CHP Plant and Order Land were originally all owned by the same company but operations were split when a lease of the CHP Plant was granted to the AA. The CHP Plant was originally built to supply the Refinery with heat and steam, and indeed still supplies the CHP Plant notwithstanding that they are now operated by different companies. This ongoing commercial arrangement is in part

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<sup>1</sup> The Viking CCS Pipeline granted DCO on 9 April 2025.

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regulated by the Energy Supply Agreement (“the ESA”) between the AA and the Objector.

22. The parties entered into a Collaboration Agreement in 2021 to develop a carbon capture scheme in order to bid for the Government’s Track-2 Cluster from the CCS Infrastructure Fund. The proposal is part of the Humber Zero project which itself is part of the Viking CCS Pipeline project. Also part of Humber Zero is the proposed smaller Carbon Capture Plant (“CCP”) which would be located on the Refinery site to capture its own emissions. The parties accept, in line with Government policy, that carbon capture is a key part of the transition to more sustainable forms of energy.
23. The parties identified part of the Order Land as the location for the proposed CCP. The proposal developed over time through the work undertaken as part of Pre-Front End Engineering and Design Feasibility Study (“Pre-FEED”) and Front-End Engineering and Design Feasibility Study (“FEED”). The original proposal included three carbon capture tracks, with part of the plant located on the Order Land, and part located on the site owned by the Objector on the eastern side of Rosper Road. The proposals changed over time so that only two carbon capture tracks were envisaged with all of the permanent structure to be located on the part of the Order Land which is immediately adjacent to the CHP Plant. The Objector decided that they wished to develop an additional smaller CCP on the Refinery Site in order to deal with their own emissions in that way. They also had plans at that time to use the land to the east of Rosper Road (“the Gigastack Land”) for different development.
24. The intention is that the Viking Pipeline will come to the Order Land and link with the two carbon capture projects through that interface. Harbour Energy who are promoting the Viking Pipeline have an option with the Objector to allow the required access and use of the Order Land as required, and have secured agreement with the AA to allow for the necessary arrangements should the CPO be confirmed and implemented. As a result, Harbour Energy withdrew their objection to the CPO and played no part in the inquiry.
25. The Collaboration Agreement provided that the ESA would be varied to take account of the additional power required by the Objector to deliver the Refinery CCP. It was intended that this would be negotiated alongside the grant of a 25 year lease for the land required for the permanent structure of the Proposed Development, and a 5 year lease for the land required to provide for the construction period and building laydown area. The 5 year lease provided savings to allow the Objector to have ongoing access to the site for the purposes of access to and maintenance of the pipebridge, pipeline corridor and drainage ditch known as the Killingholme Ditch/Drain. Agreement was not reached relating to the lease security provisions or the re-negotiated terms of the ESA, and these leases were not completed before the inquiry.
26. The AA have submitted a planning application for the Proposed Development to the Local Planning Authority (“LPA”), who are minded to grant permission once a planning obligation for a financial contribution relating to biodiversity net gain is secured by way of an agreement under section 106 of the Town and Country Planning Act 1990. The environmental impact assessment submitted with the application assumed that the proposal would be sited on part of the Order Land.

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27. The LPA require the Objector as the land owner as well as the AA as applicant to be a party to this planning agreement to ensure that the land is properly bound. The Objector who have not executed the section 106 agreement to date and the planning permission has not been granted. If the CPO were to be confirmed the only land owner would be the AA.
  28. The AA informed the Objector that they would be making the CPO in July 2024, and it was subsequently made on 16 September 2024.

### **The Case for the AA**

29. The AA seeks to develop the CCP to connect to the CHP Plant's two gas turbines and two auxillary boilers. The Proposed Development, in association with the Objector's own proposed CCP located on the Refinery site comprise the Humber Zero Project, which if delivered will be a key carbon capture project in the Humber Industrial cluster.
30. The AA has negotiated to acquire the necessary land interests in the Land with the Objector since 2021 but it has become clear that terms are unlikely to be agreed. The Objector is being unreasonable requiring that the terms of the ESA be re-negotiated concurrently with the lease of the land, and also in their requirements for the security provisions within it. The AA has offered insurance cover to the Objector regarding any accident during the construction or operation period, but the Objector is instead requesting a bond or letter of credit which would use up to £200 million of the AA's borrowing capacity. This is not reasonable, and in any event it is clear that the parties have sought but failed to reach agreement on the land required for the Proposed Development.
31. The AA considers that in the absence of agreement for an option over the Order Land there is a compelling case in the public interest for the use of compulsory purchase powers to acquire the Objector's land and new rights over the CHP Land, to facilitate the construction and operation of the Proposed Development.
32. Three distinct elements justify the compelling case for compulsory acquisition of the Order land:
  - i. policy support for CCS technology in order to meet committed net zero targets;
  - ii. public benefits arising from the Proposed Development; and
  - iii. the lack of any viable alternative sites

### *Policy*

33. The UK Government is legally committed to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline. UK energy and climate change policy demonstrates that CCS must play a key role in delivering a clean energy system by 2030 and net zero by 2050. Gas-fired generation capacity with CCS will be required to provide vital backup for less flexible renewable generation to ensure the security of UK energy supplies and that the system can meet peak electricity demand.
34. The Proposed Development supports the capture of 95% of CO<sub>2</sub> emissions (3.3 million tonnes of CO<sub>2</sub> per annum) from the CHP Plant's two gas turbines and two auxillary boilers. In addition to decarbonising the national grid, the Proposed

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Development would result in the decarbonisation of heat and power that is supplied to the Humber Refinery and Lindsey Oil Refinery.

### *Public benefits*

35. The Humber Industrial Cluster is a major source of employment in the region. The Development will create over 800 construction jobs and between 50 – 100 permanent jobs during the operational phase. It will also safeguard around 20,000 direct and indirect jobs within the Humber Region, ensuring carbon emitting energy intensive industries can continue to operate consistent with Net Zero targets.
36. The Proposed Development can demonstrate the operation of these critical technologies at scale and support the wider deployment of the emerging CCS sector the UK. This is critical to delivering net zero, economic growth, the safeguarding of jobs in key industries and the creation of a new skills market to export to other countries.
37. The UK's Net Zero Strategy and Industrial Decarbonisation Strategy reaffirm the importance of CCS in decarbonising energy intensive sectors such as chemicals, oil refining, and cement.
38. The deployment of CCS technologies at commercial scale is a priority for UK energy and climate change policy and critical to efforts to tackle climate change over the coming decades, The Proposed Development represents one of the first major steps towards deploying commercial scale CCS in the UK and directly achieves the Government's aspiration to decarbonise power sources which are not renewable and to balance the grid during renewable "down times". It is also the only CCS project that can viably connect to the Viking pipeline prior to the early 2030s.

### *Alternative sites*

39. The consideration of alternative proposals has been undertaken with the aim of meeting the identified national need for industrial carbonisation, whilst avoiding and/or reducing adverse environmental effects as well as maintaining operational efficiency and cost-effectiveness and considering other relevant matters such as availability of land and planning policy. Alternative sites within the AA's control were considered, however the nature of the Proposed Development involves retrofitting existing infrastructure, and therefore proximity to that existing infrastructure (and also the Viking CCS pipeline) is a critical consideration to site viability.
40. The location for the Proposed Development was selected for its availability and proximity to the CHP Plant. Land to the north of the CHP Plant is not available as it is the location of the AA's Open Cycle Gas Turbine Power Station which is currently being constructed. Land to the west has the Humber and Lindsey Refineries. Land to the east of Rosper Road is separated by a public highway which creates significant engineering difficulties with regard to tying in to the existing infrastructure and proposed Viking Pipeline. There are no alternative sites capable of sustaining the Proposed Development.

### *Compelling case*

41. There are no impediments to the Proposed Development. There is no conflict with planning policy, and no reason that planning permission will not be granted once

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the planning obligation is competed, or that any other necessary consents or licences as required will be withheld.

42. For the Proposed Development to take proceed it requires a funding commitment from Government, currently anticipated to be in the form of a dispatchable power agreement (“DPA”) which would guarantee an income once operational. Although Government timelines have slipped, the clear policy commitment to CCS means that there are strong prospects of the Government making a funding commitment within the lifetime of the Order. It is currently expected that a final investment decision (“FID”) will be made by the AA by the end of 2026. There is a realistic prospect that funding will be available within a reasonable period of time after confirmation of the Order, and in any event within the three year limit on the Order powers.
43. There is a compelling case in the public interest for the exercise of the compulsory purchase powers. It would therefore be appropriate and proportionate, and in accordance with national and European law for the Secretary of State to confirm the Order.

### **The Case for the Objector**

44. The Objector does not dispute that the Proposed Development would deliver significant benefits in the public interest, but say that this does not mean that a compelling case in the public interest is established. There is a need for, and benefits arising from the Scheme as well as policy support for CCS projects more generally.
45. However, the AA has not exhausted alternative options or used the CPO powers as a measure of last resort. There are a number of impediments to the delivery of the Scheme; there is still time to allow a negotiated settlement to be agreed and, in the event that the CPO is not confirmed there are mutual benefits to both parties in acting reasonably to reach agreement in the common interest of both parties.

### *Negotiations*

46. A CPO should only be confirmed if reasonable efforts have been made by the AA to negotiate the purchase of the Land. It is necessary to consider the reasonableness of the AA’s negotiation efforts. The two issues which have prevented the voluntary lease of the Permanent Land relate to the ESA and the security language to be included in the lease.
47. The ESA is a commercial agreement, which currently runs to 2037, by which the AA supplies power and steam to the Objector for use in the Humber Refinery. The prices paid by the Objector under the ESA are not fixed but subject to a pricing mechanism which links the amount paid to natural gas prices and to the UK Emissions Trading Scheme, and which is subject to indexation. Given the exclusivity clauses in the existing ESA and the absence of connecting infrastructure to other potential suppliers, the Objector’s options for obtaining additional utilities are extremely limited. The cost of delivering the required infrastructure to secure an alternative permanent power supply from the District Network Operator would be in the order of £50m, and would require a lengthy process to secure consent.
48. In order for the two proposed carbon capture schemes (and therefore the Viking Cluster and wider Humber Industrial Cluster) to succeed the parties have

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recognised that they both require something from the other: the AA needs land from the Objector, and the Objector needs additional utilities from the AA. There is a commercial imperative for both parties to engage reasonably for the benefit of both projects, and the parties were initially engaging in a collaborative way. This can be seen by the Collaboration Agreement in April 2021, the jointly commissioned Scoping Report in January 2022 and the agreed Heads of Terms in February 2022. It was agreed by the parties during that period that any land options would be conditional on amendments to the ESA.

49. The Objector's precise steam and power requirements only became clear at the end of the FEED work which was completed in June 2023. The Objector's own carbon capture project will require an additional 23MW. Whilst the AA now allege that it became apparent that the ESA amendment on this basis was unlikely to be feasible there is no evidence that they raised any concerns about the volumes requested, pricing or terms of the ESA at any time before March 2024. And this was despite the fact that there were five meetings of the Joint Project Management Team during that time period.
50. The first time that the AA suggested that the parties should initially agree the land agreements with a more comprehensive review of the ESA to follow was in March 2024, when it also suggested it was seeking higher prices for additional utilities for the Objector's CCP. At this stage the AA was not requesting higher prices for the existing utilities being supplied under the ESA, this happened in August 2024. Subsequent analysis of the pricing model suggested by the AA showed that they were seeking to increase the price for the existing utilities supplied by 20% (c.£20 million per annum). During the course of the inquiry, the AA has not disputed that it is seeking to increase prices for existing utilities by 20%. This is not reasonable behaviour, and confirms the Objector's view that the AA is using the CPO for the ulterior motive of obtaining commercial advantage in the ESA negotiation.
51. It cannot be right that the AA should be free to make unreasonable requests of the Objector and then rely on the Objector's refusal to accept such terms as justifying confirmation of the CPO. The work to resolve this matter is ongoing and the issue is not incapable of resolution.
52. The security language to be used in the lease to address the risk of a catastrophic event during construction or operation of the Scheme project is also not resolved. The Objector has offered a number of options for the AA: i) to obtain an appropriate credit rating; ii) to provide a parent company guarantee; or iii) to provide a Letter of Credit or Bond (and which would only be required in the short term as the project would be able to obtain a BB-Level credit rating once operating with revenue guaranteed from the Government Business Models).
53. Harbour Energy has provided the Objector with a Letter of Credit up to £200m to cover the risk of catastrophic incident during the construction or operation of the Viking CCS pipeline. However, the AA have only very recently offered to provide a Letter of Credit up £6 million in combination with insurance which is being considered and negotiations are ongoing.

### *Impacts*

54. The Objector considers that the CPO will have significant detrimental effects on the existing operations at the Refinery and will prejudice and potentially prevent the delivery of its carbon capture project. This will have consequent impacts on the

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wider Humber Industrial Cluster, as well as future projects which are in the pipeline and would themselves deliver significant public interest benefits.

55. The Refinery discharges treated effluent waste into the Killingholme Ditch which crosses the Order Land. The Refinery would have to cease all operations after 24 hours if it could not discharge into the Ditch, and its Environmental Permit obliges it to monitor its operations and establishes certain limits within which it must operate, including the effluent temperature. If the temperature is exceeded, the Objector is required to monitor the Ditch for any adverse environmental impacts. The draft lease includes provision for the Ditch to be relocated to land that would remain in the freehold ownership of the Objector with rights reserved to allow the inspection and maintenance of it. The CPO does not contain any such safeguards.
56. Various other pipelines run along the southwest edge of the Order Land adjacent to the Network Rail line, and which connect the Refinery to various other installations in order to transport various feedstocks and products to and from the Refinery. Without rights of access to these pipelines the Objector will face very considerable logistical challenges and safety risks in carrying out necessary repair and maintenance which could jeopardise the ongoing operation of the Refinery. There is no mechanism in the CPO to protect these rights of access.
57. In addition, the Objector's own carbon capture project requires pipelines across the Order Land to connect the Refinery site to the Viking CCS transportation and storage facility. No rights or reservations are provided in the CPO to enable the Objector to construct, lay and operate such a pipeline. The Objector's carbon capture project is in jeopardy without a secure legal mechanism to enable this connection and this in turn threatens the funding and deliverability of the three projects comprised in the Humber Industrial Cluster (because a "cluster" must comprise a transportation and storage system with a least two anchor projects to be eligible for funding support).
58. This new pipeline will also require an extension to the existing pipebridge over the Network Rail line, but space constraints at the Refinery mean that the extension works, which will require a large crane, can only realistically take place on the Order Land. Rights to extend the pipebridge were reserved under the draft lease but are not reserved under the CPO.
59. The Objector also has a number of other planned projects at varying levels of development, all of which rely on the ability to lay pipelines in a pipeline corridor in the Order Land. This includes the Uniper Humber H2ub (Green) Project a proposal to supply green hydrogen to the Humber Refinery to reduce its green-house emissions. Its preferred route is to enter the Order Land from Rosper Road and then cross the site to connect to the Refinery site to the west. Other potential projects with considerable public benefits including the processing of sustainable aviation fuel and conversion of waste plastics into liquid feedstock to be used in the Refinery's Fluid Catalytic Cracking process unit require pipelines in the pipeline corridor across the Order Land, and would be jeopardised by the acquisition of the Order Land on confirmation.
60. The Refinery should retain the Order Land to provide it with opportunities to respond to emerging developments over the coming years, should the Scheme project not happen.

### *Alternatives*

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61. The AA has singularly failed to consider alternative sites before taking the decision to make the CPO, or at any time since then. The fact that the Objector was willing to countenance a voluntary lease in respect of some of the Order Land does not excuse the AA from the obligation to explore alternative solutions before relying on the draconian power to compel the sale of the land. It cannot be right that the AA can rely on the argument that the consideration of alternatives would delay the delivery of the Project, and that it has caused this delay by failing to consider those alternatives, as justification for the CPO.
  62. The AA has confirmed that it began to consider a potential CPO in May 2023 and it has therefore had two years to consider potential alternative sites for some of its permanent infrastructure and/or construction laydown area. However, there has been no consideration at all of any such alternative sites. The pre-FEED, FEED and FEED verification exercise (undertaken by the Wood Group, Worley and Bechtel respectively) did not carry out a full assessment of alternative sites.
  63. The exploration of alternatives to CPO is a necessary element in establishing a compelling case in the public interest.
  64. The Objector was content for the infrastructure to be located on the Order Land provided it was subject to appropriate protections to enable it to use, inspect, maintain and repair its existing infrastructure (including the Ditch and existing pipelines); to extend the pipebridge and install new pipelines and services; and to ensure it would be able to construct and operate new pipelines and access arrangements in timescales it deemed appropriate and on the proviso that the option would only be exercised once the AA had taken FID and so there was some certainty that the Proposed Development would be delivered.
  65. The Objector considers that there are a number of alternatives which would reduce and mitigate the impacts of the CPO but have not been explored or discounted for various reasons including:
    - a. To relocate some of the permanent infrastructure from the Permanent Land to a location off the Order Land; and/or
    - b. To relocate some or all of the construction laydown area off the Temporary Land; and/or
    - c. To acquire rights over the Temporary Land rather than freehold acquisition.
  66. There is the potential to locate some of the permanent infrastructure off the Order Land meaning that approximately 50% of the Permanent Land would be released. This would require the construction of a pipeline crossing over Rosper Road but this is entirely feasible, and indeed the Objector already has various tunnels crossing the busy A160 dual carriageway, and numerous pipelines taking feedstock and products off, on and around various parts of the Refinery site.
  67. There are at least three potential alternative sites on which the remainder of the infrastructure could be located:
    - a. The land to east of Rosper Road and north of Marsh Lane (720,000sqm) which is owned by Able UK Limited and has planning permission for enabling works proposed to make it ready for development. However, the AA has not approached the owner regarding the potential for part of its use for the provision of part of the infrastructure for the Proposed Development.

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- b. The Gigastack site (c.130,000sqm) owned by the Objector which is located on the east of Rosper Road opposite the Order Land. Whilst this was not available previously as it was intended to house the Objector's Gigastack green hydrogen project, this was "permanently paused" in mid-2023. Again, the AA has not enquired about its availability.
- c. The land to the north of the CHP Plant (175,000sqm), and whilst the AA discounts the land on the basis that it is allocated to a gas engine project that has recently been completed, and an open cycle gas turbine project that is under construction these only take up a quarter of the area available. However, the AA has not carried out any assessment or feasibility study for use of that land for some of the permanent infrastructure.
68. The Temporary Land which the AA proposes as a construction laydown area is particularly important to the Objector as it will need to run a CO2 pipeline through it in order to link its own CCP to the Viking CCS project, and a hydrogen pipeline to the Uniper hydrogen production facility.
69. However, the AA has not carried out any assessment or feasibility study of the potential to relocate some or all of the construction laydown area off-site (including on the Able or Gigastack land). In addition, another alternative would be to locate some of the construction laydown area on part of the Permanent Land if part of the permanent infrastructure is located off-site.
70. The AA has confirmed that the Temporary Land is only required for the construction period. In these circumstances there is no justification for its freehold acquisition. The issue around exclusive possession is no more than a need for the contractors to exercise control over the construction site to ensure safety during construction activities, and such control can be achieved through acquisition of rights rather than the freehold of the Order Land.
71. The AA has already entered into an agreement with Harbour Energy in respect of the construction and operation of the Viking project and there is no reason why compulsory powers should be required to modify Harbour Energy's rights over the Temporary Land. The AA has now offered to allow the Objector to enter the Order Land to inspect, maintain and repair existing services which is inconsistent with the earlier suggestion that the Objector would not be able to access the Green Land during construction.

### *Impediments*

72. The two key impediments to the delivery of the Project are the uncertainty as to funding and the need for the AA to secure a DCO, rather than planning permission.

### *Funding*

73. The fact that the Scheme has not been selected as a Track 2 project by the Department for Energy Security and Net Zero ("DESNZ") and capital funding for the project were not announced in the Spending Review 2025 means that the AA will not be able to make a FID in 2025 or 2026. The CCS will therefore not be operational in 2030, and there is ample opportunity for the parties to continue to negotiate.

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74. It also remains uncertain if capital funding will be allocated to the project in the 2027 Spending Review, and even if it were the earliest date for FID would be mid-2028. The funding is therefore not secured and this is an impediment to the confirmation of the CPO.
  75. The Objectors primary position is that the CPO should not be confirmed. In the alternative, the CPO should be modified so as to exclude the Temporary Land. In the further alternative, if the CPO is confirmed this should happen in stages pursuant to section 13C of the Acquisition of Land Act 1981.
  76. The delivery of the Scheme is dependent on its selection as a Track 2 project by DESNZ and funding from the Treasury. The parties to the Viking Cluster have raised concerns about the delays in Government funding. The Government has made no commitment to fund Track 2 carbon capture projects nor issued any guidance as to when funding might be made available. In light of the repeated delays both Harbour Energy and the Objector have taken the step of reducing the resources they allocated to the other Viking Cluster projects. These delays and the continued uncertainty in Track 2 selection and funding mean that the urgency relied on by the AA is not established, and there is ample opportunity for the parties to continue to negotiate.
  77. The Government Spending Review of 11 June 2025 does not change the Objector's position in any way. The additional support for the Viking Cluster announced in the Spending Review is limited to "development funding", i.e. engineering costs and similar expenses. There is no Government commitment to the capital costs of the Viking cluster at this stage and DESNZ have confirmed to the Objector that any money allocated to the engineering design costs will be focussed on Harbour Energy's transportation and storage system rather than emitter projects such as the Proposed Development.
  78. Whilst funding for the Proposed Development may be announced in the Spending Review in June 2027, if this did indeed happen, the Proposed Development would be operational by 2032/33 at the earliest. This means that there is ample opportunity for the parties to continue to negotiate. Given the mutual interdependencies between the parties, there is no reason why agreement cannot be reached and every reason to believe that if the CPO is not confirmed, both parties will be compelled to behave reasonably and renew their collaboration to reach an acceptable agreement to their mutual benefit.

### *Consent*

79. A DCO is required for developments that are or forms part of a nationally significant infrastructure project ("NSIP"). The construction or extension of a generating station constitutes an NSIP provided that it meets the conditions in section 15 of the Planning Act 2008.
80. The CHP Plant is a generating station, and its extension is defined as including the use of any land for a purpose directly related to the generation of electricity.<sup>2</sup> The CO<sub>2</sub> emitted by the CHP Plant is a direct byproduct of the generation of electricity, its capture is therefore directly related to the generation of electricity. The Proposed Development, the CCP, does not generate electricity. However, the statutory provisions do not require a development to increase electricity generating in order to constitute an extension to a generating station – they only require the

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<sup>2</sup> Section 235(1) Planning Act 2008 and s.38(9) Electricity Act 1989

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development to be directly connected to the generation of electricity. On the AA's own evidence<sup>3</sup> the CCP is directly connected to the generation of electricity.

81. The absence of a DCO, or even any application for a DCO presents a serious impediment to the delivery of the Project.

### *Undertaking*

82. As set out above, the sealed undertaking was submitted after the close of the inquiry but the Objector was given the opportunity to provide written comments on it.
83. The Objector does not believe that the unilateral undertaking overcomes the issues raised through its evidence to the inquiry.
84. The undertaking should not be personal but should bind the land, and should therefore be in the form of a deed which would also enable enforcement through a range of options in a more proportionate manner and at less cost. In addition, a number of the provisions rely on the discretion of the AA but with no dispute resolution mechanism included to ensure that the AA acts reasonably. A number of protections which had previously been agreed in the draft lease have been unjustifiably watered down or subject to additional restrictions.
85. Despite the AA's case being that all of the permanent infrastructure will be accommodated in the Permanent Land, the undertaking does not secure the return of the entirety of the Temporary Land to the Objector, but only to such land that is not reasonably required by the AA for its continued operation of the Proposed Development.
86. And finally, the AA's evidence is that the CPO powers would not be exercised until the DPA is issued by the Government but this is not secured in the undertaking.

### *Summary*

87. The power to deprive a landowner of his land against his will is a draconian power indeed, and one that must be subject to rigorous scrutiny. The AA has failed to make good its case in support of the CPO by presenting fully detailed evidence which can be challenged, interrogated and scrutinised. In particular, it has failed to provide any, still less adequate assessment of alternative sites. This gives rise, at the very least, to reasonable doubt about whether public interest in favour of the CPO decisively outweighs the impacts to the Objector.
88. In the circumstances, the balance should therefore be resolved in favour of the Objector as landowner by refusing to confirm the Order.

## **Response by the AA**

### *Negotiations*

89. The Objector wished to make the agreement for the land conditional on agreement of terms for the long-term supply of heat and power to which the AA cannot agree. The Objector does not dispute the evidence submitted during the inquiry that they are seeking to get the existing power and steam supply, plus an incremental amount of power that they need beyond their requirements for the Humber Zero project, all for an additional 18 years beyond the current termination date of the

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<sup>3</sup> Owen Francis' evidence in XE

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ESA, on terms that are significantly more favourable to them than what the market would offer. By March 2024 at the least, the AA's position was clear that the land negotiations needed to proceed separately so that it would have the certainty of knowing that the Proposed Development could come forward.

90. The Objector can also obtain additional power from elsewhere if the AA refuses to provide it. A new ESA is therefore desirable but not necessary to progress the Humber Zero project, or the Objectors own decarbonisation scheme which is far more limited in scale than the Project in any event.
91. The parties have not come to an agreement on the ESA or the security arrangements for the lease. The AA started the compulsory purchase process in parallel with these negotiations, in a reasonable and timely manner in order to be able to deliver the Proposed Development according to the Viking CCS Cluster timetable. Indeed the Objector's evidence to the inquiry that de-carbonisation was not a corporate priority for the Objector worldwide and that they view the prospects of the Project coming forward as less than 50% shows why resolution of these issues is unlikely to occur without CPO powers.<sup>4</sup>

### *Impacts*

92. The AA must demonstrate that a fair balance has been struck between the interests of delivering the Proposed Development and the Objector's interests.
93. The Objector intends to alter the existing pipebridge over the railway. As part of the negotiations regarding the lease of the Order Land, the parties knew and understood that any works to the pipebridge from the Order Land must come before, or early in, the construction period for the Proposed Development. Should the Objector not complete the pipebridge works before possession of the Order Land is taken the AA has undertaken to permit the Objector to enter onto the Order Land for the purposes of these works in the first six months after possession is taken.
94. The Objector anticipates the need to construct new pipelines on the Order Land. Whilst the timing of the construction and route of these pipelines will depend on the future projects coming forward, the AA has made it clear that it will grant the necessary rights to the Objector to construct new pipes in the pipeline corridor, and to return the freehold of it if the Objector wishes to have it.
95. Similarly, in relation to the Killingholme Drain, insofar as the Objector needs to inspect the Drain for the purpose of existing or future regulatory requirements, the AA has given an undertaking to permit access for these purposes.

### *Alternatives*

96. There are no reasonable alternatives to the Project or to the use of the Order Land for it. There has not been a failure to consider alternatives, rather, there are no reasonable alternative locations for the development.
97. The 2020 Wood Study assessed land available for various decarbonisation projects and identified the Order Land as the appropriate location for the Project.
98. Any alternative which required the transportation of flue gas to a remote location is not technically feasible. The Objector accepted in evidence that piping flue gas to

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<sup>4</sup> Evidence of Simon Holt and Mike Wailes

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a remote location for decarbonisation was not realistic<sup>5</sup>. Any project would therefore plainly require at least part of the Order Land. The Objector accepted this but says that it would be technically feasible to split the facility across Rosper Road. The AA has gone to significant lengths to reduce the footprint of the Proposed Development and minimise the amount of permanent land take. The Objector also accepted in evidence that the amount of land shown for the permanent footprint is necessary for the Proposed Development. (Notwithstanding that it was always the plan to move the drain off the part of the site needed for the permanent infrastructure, and that no rights of inspection were reserved in the draft lease for the construction area).

99. A split site is not realistic because it would introduce significant and unnecessary engineering complexity including some 22 pipe or cable crossings of Rosper Road. It would involve the CO<sub>2</sub> being captured on the west of Rosper Road compressed on the east of Rosper Road and then being piped back to the Viking CCS connection point on the Order Land. A split site would require the use of the Objector's Gigastack Land which had been declared unavailable in 2021, and which was only suggested as being available for the Proposed Development in the rebuttal evidence filed 5 days before the start of the inquiry.
100. A split site would require a complete redesign of the project, a new environmental assessment and a new planning application. Whether an acceptable proposal could be delivered (in light of the adjacent residential dwelling and sensitive environmental receptor) is unknown. At the very least the delay to the project would be two years (caused by a planning process of at least 18 months with design work also required).
101. The Able Land, also on the eastern side of Rosper Road, has all of the same difficulties of the Gigastack Land and is subject to a DCO for a different development. Use of it would not avoid the use of at least part of the Order Land for the same reasons. Land to the north of the CHP Plant is in use for the construction of a new power station. If this were to be used to accommodate some of the plant, it would also face the same issues as the Gigastack Land, amplified by further distance.
102. It is therefore evident that any CCS scheme for the CHP Plant would require the use of the Order Land for permanent infrastructure. Reducing the permanent footprint by splitting the site is not a realistic alternative and would still involve the need for compulsory purchase of the Objector's land.
103. In respect of land for construction, the Order Land is constrained and some off-site supporting compounds will be required in any event. The suggestion that part of construction compound could be relocated to the Gigastack Land is flawed. The use of the remainder of the Order land during construction has been the basis of negotiations since 2022, and the Objector was, subject to the conclusion of the ESA, willing to lease all of that land to the AA. Using the Gigastack Land for temporary construction would not avoid the need for a CPO (required in any event for at least part of the permanent infrastructure). There is no suggestion that the land would be available in any event without also concluding the agreement on the ESA. It would also introduce a road crossing for people, plant and materials which would cause delay and introduce risk, and would also extend the construction period, possibly by around 2 years. In any event, at least some of the Order Land

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<sup>5</sup> Evidence of Adam Young

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would be required for construction purposes in order to work around the permanent infrastructure.

104. The former car park on the CHP Plant site is currently being used in connection with the construction of the new power station, and when this work is finished will revert to being used as a car park for the CHP Plant. The current temporary car park is in fact located on the Order Land and therefore required as part of the Proposed Development.
105. It would not be possible for the AA to acquire only rights to use the land during construction for various reasons. The construction site will need to be fenced for necessary safety requirements for the 42 month construction period. There will need to be exclusive possession during that time which can only be acquired through ownership of the freehold or lease. In addition the existing ditch needs to be relocated. The Objector can have rights of access to the land as required, and as secured by the undertaking, and the remainder of the Order Land will be offered back to the Objector after the construction period has been completed.
106. The Objector has not signed the section 106 agreement to date, and it is only by acquiring the land that the AA can ensure this happens which will allow the planning permission to be granted. Ownership also provides consistency in relation to Harbour Energy's rights under its option to lease part of the land for temporary and permanent uses in connection with the Viking Pipeline, and Harbour Energy are agreeable to this which led to the withdrawal of their objection to the CPO
107. Permanent acquisition of the whole of the Order Land is therefore required.

### *Impediments*

#### *Funding*

108. The Spending Review and related announcements have added significant weight to the AA's position that there are strong prospects of the Government making a funding commitment to the Proposed Development within the lifetime of the CPO. The Spending Review confirmed that a final investment decision will be taken later this Parliament, subject to project readiness and affordability which can be resolved by confirmation of the CPO.

#### *Consent*

109. The Objector contends that the Proposed Development in fact requires development consent under the Planning Act 2008 (rather than planning permission under the Town and Country Planning Act 1990). This is an odd position to take given that the Objector has been engaged in a joint planning process with the AA, and it has not objected to the planning application on its own land.
110. Indeed, the LPA is content to grant planning permission and no-one has suggested that it would be unlawful to do so. The proposal is not for "the construction or extension of a generating station" within section 15(A) of the Planning Act 2008. The post-combustion plant does not extend the generating station, but rather takes the emissions from the generating station and processes it to remove CO<sub>2</sub>. Accordingly, it is not simply that the Proposed Development does not generate electricity, but that it does not extend the generating station. That

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conclusion is consistent with the approach taken by the Secretary of State to date, where retrofit post-combustion carbon capture schemes have come forward through the Planning Act 2008 process only where they have been the subject a section 35 direction.

111. The section 106 agreement has not been signed but this will either happen before the confirmation of the Order, or as explained above, can be executed by the AA as landowner once the land has been secured under the CPO.

112. There is sufficient land in the vicinity of the site to support the additional construction need, and work has begun to identify the required land.

### *Undertaking*

113. The AA undertakes to grant rights to the Objector for access to a pipeline corridor for operating, inspecting repairing and maintaining its existing pipework on land adjoining the Order Land, and constructing, laying, and thereafter operating, inspecting, repairing and maintaining one or more new pipelines or connections within the pipeline corridor to connect the Objector's proposed CCP at Humber Refinery to the Viking CCS Pipeline, and to connect the Humber Refinery to Uniper Project and/or other projects.

114. Further the land will be transferred back to the Objector, should it wish, at the end of construction. The undertaking also provided for a right to inspect and monitor the Killingholme Ditch. In respect of the pipebridge, the undertaking would ensure that during the first six months after taking possession, rights would be granted to construct the pipebridge extension in the event that it has not been constructed by then.

115. In short, the undertaking gives to the Objector all that it sought to reserve for itself by the lease negotiations.

### **Inspector's Conclusions**

116. The numbers in square brackets refer to earlier paragraphs in this report.

117. The Guidance on the Compulsory Purchase Process 2025 ("the Guidance") tells us that "A compulsory purchase order should only be made where there is a compelling case in the public interest and reasonable efforts have been made by the acquiring authority to negotiate the purchase of land by agreement."<sup>6</sup> The AA must establish that the public interest benefits of the project underlying the CPO decisively outweigh any countervailing impacts.

118. The proposals are set out in paragraph [2] and the main considerations are:

- Benefits of the Proposed Development;
- The impacts/effect of the CPO and whether it is justified;
- Whether there are alternatives;
- Whether the land can be acquired without use of CPO powers;
- Any impediments, to the scheme going ahead (financial, physical or legal);

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<sup>6</sup> Paragraph 12.3

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- Effect of the undertaking; and
  - Whether there should be partial or staged confirmation of the CPO

### *Benefits*

119. It is accepted by the parties that there are significant public benefits to the Scheme.
120. CCS is a key part of the UK's plan to achieve net zero targets and will help to achieve this during the transition to cleaner energy in line with national and local policy. As well as helping in the production of low carbon power, the emerging carbon capture technology can support the decarbonisation of chemical and other industrial emissions, and the expertise in the sector can also be exported globally providing wider usage and benefit. The Proposed Development will support employment in the Humber region during the construction and the operation of the plant, and is designed to link with the consented Viking pipeline and underpin the Humber Zero cluster.
121. These factors are set out in more detail above [31 – 43] , and clearly indicate that the Proposed Development is in the public interest.

### *Effects*

122. Confirmation and implementation of the CPO will deprive the Objector of the Order Land. It is therefore necessary to consider the “countervailing” impacts of the loss of this land on the Objector.
123. The Objector has a general concern regarding the loss of the Order Land, as they have limited landholdings in the vicinity, and confirmation of the CPO will prevent its use for other future projects. However, there are no specific plans regarding any such future projects that would be located on the entirety of Order Land, and no information was put before me to indicate that any proposals had progressed in a meaningful way at this time. The most definite proposed use described was for additional CO<sub>2</sub> and hydrogen pipelines through the site but the route has not been confirmed, and it can be accommodated alongside the Proposed Development. In addition, I was referred to examples of other land in the vicinity, albeit some in different ownerships, which is likely to be available for other industrial projects and construction (including the Objector's own Gigastack site as well as the Able Land). [67]
124. The more specific concerns relate to the existing pipebridge, the pipeline corridor and other additional pipelines which may be required, and the Killingholme Ditch.
125. It is accepted that the pipebridge which crosses the railway on the edge of the Order Land in the north west corner will need to be extended and upgraded to support the Objector's proposed CCS plant on the Refinery site, and allow it to link into the Viking Pipeline. It is also accepted that at least some of these works, entailing the use of a crane, will need to be undertaken from the Order Land immediately adjacent to the pipebridge. The permanent elements of the Proposed Development would be located in the northern part of the site so that they are next to the CHP Plant, and when completed will cover the land next to the pipebridge where the crane and other associated construction elements would need to be located. It is therefore evident that these works will need to take place before the

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permanent parts of the Proposed Development are constructed on the same area of land.

126. The extension to pipebridge is required for the development of the Objector's CCP, which is one of the three elements of the proposed Humber Cluster, (along with the Proposed Development and the Viking Pipeline). It must therefore have always been envisaged that the required works to the pipebridge would take place early on in any overall construction timetable i.e. it must always have been clear that the works to the pipebridge needed to take place prior to any permanent works on the same land which form part of the Proposed Development. Indeed, the lease which was being negotiated by the parties reserved such rights, and the Objector does not dispute that the works would need to take place early on in the timetable. I accept the AA's position that there would be sufficient time for these works to come forward either prior to implementation of the CPO or within an additional 6 months provided by the AA's undertaking. Whilst the Objector did not provide evidence regarding how long these works would take, they did not dispute the AA's evidence that they had upgraded a separate pipebridge within a 12 month period<sup>7</sup>. I consider the provision of the formal undertaking by the AA later in this report.
127. It is also clear from the evidence that additional pipelines will need to cross the Order Land in the future to support new development, some of which is already proposed such as the Uniper green hydrogen pipeline/scheme (although the definitive route has not yet been determined and there are several options regarding the pipeline route). However, this can be accommodated through the provision and protection of a pipeline corridor [93 and 113]. Again, the details regarding this element of the undertaking are considered later in this report.
128. The Killingholme Drain currently bisects the Order Land from the North West Corner to Rosper Road, but it was always envisaged as part of the Humber Cluster project that the drain would need to be diverted to allow the Proposed Project to be located on the northern part of the site next to the CHP Plant. The Objector requires access to the Drain for inspection and monitoring purposes, and may also require access in other emergency situations. I am satisfied that these required accesses can be achieved by an appropriate undertaking, also taking into account that the Environment Agency and other statutory authorities have the rights of access under statutory regimes.
129. A properly worded undertaking can overcome all of these access concerns, and the deed submitted by the AA dated 23 May 2023 is considered below.

### *Alternatives*

130. There is other land which is suitable for industrial development in policy terms available in the vicinity, and within a range of ownerships. However, the parties accept that for the CCP to proceed, at least part of it would need to be located on the northern part of the Order Land immediately adjacent to the CHP Plant. The emissions need to be piped to the CCP, and it would therefore be technically very difficult and expensive to have to transport it very far before the carbon capture process began.
131. It was accepted by both parties that the permanent structure of the CCS Plant could be split so that the direct contact cooler, ducting, dampers and blowers, the

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<sup>7</sup> Johnathan Briggs' Evidence in Chief.

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double cooling banks, steam power, air and water tie-ins and substation would need to be on the Order Land, but that in technical terms it would be possible to have the rest of the infrastructure relocated off-site.

132. However, the Proposed Development is already very complicated and costly. Whilst it may be possible to locate part of the project on a separate site this would inevitably increase the technical complexity, and associated time and expense in the development and construction. Even if it is technically possible to split the permanent structure, the northern part of the Order Land is required to locate the necessary permanent infrastructure [98]. This would still necessitate the re-routing of the Killingholme Ditch, and suitable arrangements to be made to secure the pipeline corridor and access to the pipebridge. In addition, it is intended that the Viking Pipeline will meet both the Proposed Development and the Objector's CCS project on the southern part of the Order Land, and the three elements of Viking/Humber Cluster have been designed to coalesce at that point.
133. There are other parcels of land in the vicinity which would be suitable to be used for industrial projects in terms of location, and relevant spatial strategy and planning policy. However, none are adjacent to the CHP Plant or proposed Viking Interface so that their use would inevitably increase the cost and required infrastructure by way of additional pipelines and arrangements to road crossing and therefore potentially introduce additional difficulties. The proposal was initially developed under the Collaboration Agreement. The land considered for the cluster proposals was therefore the land which was in the ownership of these parties, and as the purpose is to capture carbon from the existing CHP Plant and Humber Refinery, it made perfect sense to consider the parcels of land closest to them.
134. Whilst the Objector states that the Gigastack Land on the east of Rosper Road opposite the Order Land is now available [67] this was not the case in 2021 when their intention was to develop a hydrogen project on that land [99]. The Pre-FEED plans show part of the permanent infrastructure for the earlier proposals on that site but this changed with the Objector's plans for the Gigastack hydrogen project [23] The AA's case is that they were not aware of its availability until recently, and certainly not at the time they were making the CPO [99].
135. The Able Land may also be available now but has had a DCO for a different development, and so has not always been a potential for its use for this development.[101]. The site to the north of the CHP Plant which was the car park for the CHP Plant is currently being used in the construction of other ongoing development. The carparking has been temporarily located onto part of the Order Land, but the AA's evidence is that the carpark will move back to the CHP Plant land once the current works are completed [104].
136. It is evident that there are other potentially available sites in the vicinity, but none are as well located in relation to the CHP Plant, and therefore the emissions that it will process. In addition, the design is already at FEED Stage, and a large proportion of this work has been funded by the grant from the Secretary of State. Any scheme which sought to relocate the CCP, either partly or in its entirety, onto another site would require additional design work and a new planning permission which would take further time and additional funds, meaning that at least part of the significant amount of public money already spent would have been wasted.
137. It therefore made perfect sense for the AA to make the CPO in relation to the Order Land rather than to start afresh and consider a variety of sites in the wider

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vicinity. The AA has also undertaken to return any of the Order Land that is not required to the Objector which means that it would be available to them for future projects, and this is considered in further detail below.

#### *Use of CPO Powers/Measure of Last Resort*

138. The Guidance advises that compulsory purchase is intended as a last resort, however it also recognises that delaying the start of the compulsory purchase process can result in valuable time in progressing a project being lost.<sup>8</sup> In this case, the purpose of the project is to help in the transition to alternative energy supplies, and achieve Net Zero by 2030 [33]. Leaving aside issues regarding the likelihood of securing the necessary public funding, there are clear time constraints on this proposal if the targets are to be met.
139. The parties have worked together over many years, and indeed the CHP Plant and Refinery were originally part of the same organisation. Their combined interests and interdependencies are wider than simply in relation to the Proposed Development, and the CHP Plant and Humber Refinery need each other to operate. It seems that this is always likely to be the case. However, this means that the Proposed Development has been developed within this wider relationship which has led to additional complexities when attempting to negotiate the land deal, and not all of which are directly arising from or related to the Proposed Development.
140. Without considering whether one party or the other has been unreasonable in their demands, the fact remains that a commercial deal has not been reached despite negotiations taking place over several years. There are ongoing negotiations regarding various aspects, including the related execution of the section 106 agreement, but as things stood at the end of the inquiry there were still various outstanding issues which would prevent the Proposed Development taking place. The planning obligation regarding the biodiversity net gain had not been completed which was therefore preventing the issue of the planning permission, and there was not agreement regarding the proposed leases of the Order Land, or on the wording of the proposed undertaking to be given by the AA to mitigate the effect of the Order if confirmed.
141. The AA has taken reasonable steps to attempt the acquisition of the land and rights in the CPO by agreement. Given the potential time constraints associated with the project, and the history between the parties and development of the Project since the Collaboration Agreement in April 2021, and lack of agreement and apparent distance between the parties on issues including the ESA and security arrangements under the lease, the compulsory purchase process has been used as a matter of last resort in order to deliver the Proposed Development within proposed timescales. If confirmed, the CPO will also ensure that the section 106 agreement can be completed to allow the planning permission to be granted in a timely manner.

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<sup>8</sup> Paragraph 2.8

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## Impediments

### Funding

142. The Scheme is dependent on public funding which has not yet been awarded. However, £10 million of public money has been spent to date on the initial design and, and the Government's Spending Review of 11 June 2025 announced:

*“Carbon capture, usage and storage (CCUS) clusters play an important role in helping the UK achieve energy security and clean power and secure thousands of good, skilled jobs in our industrial heartlands. The government is providing increased backing to UK CCUS by allocating £9.4 billion in capital budgets over the SR period. This will maximise deployment to fill the storage capacity of the East Coast Cluster and HyNet Cluster. The government is announcing its support for Acorn and Viking clusters and providing the development funding to advance their delivery. A final investment decision will be taken later this Parliament, subject to project readiness and affordability.”<sup>9</sup>*

143. Even accepting that this figure does not include capital funding for the Scheme, and that the Project has not been selected as a Track 2 project by DESNZ thus far, it does indicate an ongoing Government commitment to carbon capture technology. It therefore seems likely that the required public funding will come forward within the lifetime of the CPO. The 42 month build period required means that construction must start in 2027 to be operational in 2030 in line with national policy, but even some delay in the funding and therefore FID still allows time for the CPO to be implemented if confirmed, and the public benefits provided by the Scheme to be realised albeit at a later date.

144. There was nothing before me to indicate that the Scheme is not financially viable, or that the AA will not have the necessary financial arrangements in place including to meet the required levels of compensation for the acquired land and interests when and if the public funding is received. As such, the funding is not an impediment to the confirmation of the CPO, although this would clearly change if the situation regarding the public funding element were to change so that it was no longer a Government commitment, or there was to be a significant delay in the proposed timescales.

### Consent

145. The LPA are minded to grant planning application reference PA/2023/421 once the planning obligation relating to biodiversity net gain is completed. The landowner needs to be a party to the planning obligation, and it is therefore clear that the planning obligation can be completed by the AA if the CPO is confirmed and implemented allowing the permission under Section 78 of the Town and Country Planning Act 1990 to be granted at that point at the latest. However, the Objector has argued that this is not the appropriate consent for this type of development, and that rather a DCO pursuant to the Planning Act 2008 is required.

146. Section 15(1) and section 31 of the Planning Act 2008 provides that where proposed development relates to the construction or extension of a generating station that exceeds 50MW then it falls within the definition of a nationally significant infrastructure project, and the relevant consent for such a development is a development consent order and not a planning permission.

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<sup>9</sup> Paragraph 5.94

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147. Where the proposed development relates to the operation of a generating station, then the requirements of sections 15(1) and 31 are not engaged and the proposed development may be consented under a planning permission.
148. Section 235 (1) Planning Act 2008 and Section 36(9) Electricity Act 1989 provides: *“extension” in relation to a generating station, includes the use by the person operating the station of any land or area of waters (wherever situated) for a purpose directly related to the generation of electricity by that station and “extend” shall be construed accordingly.*
149. However, the Secretary of State has given directions under section 35 of the Planning Act 2008 relating to retrofit post-combustion CCS schemes where he has stated that he is satisfied that the proposals do not fall within the existing definitions of NSIP. Indeed the Secretary of State could not make such s.35 Directions if the development did fall within these definitions.
150. The AA has shown in this case that they have the minded to grant decision, and that planning permission will be granted if the planning obligation under section 106 is completed. They have also referred to other examples of similar development where the Secretary of State has been clear that they do not fall within the definition of an NSIP as set out above<sup>10</sup>. This course of action is at the AA's own risk, but for the purposes of determining whether there is an impediment to the granting of the CPO, I am satisfied that the planning permission for the proposed development will be granted on completion of the section 106, and the current lack of such consent does not therefore present an insurmountable obstacle or unreasonable delay.
151. Whilst whether the proposed development requires a DCO is a relevant consideration as to whether they may be any impediments to the CPO proceeding in good time, for the reasons set out above, there is little before me to suggest this is the case and that the development could not proceed under the planning permission when granted. Clearly this situation would change if there was a successful challenge brought under s288 of the Town and Country Planning Act 1990.
152. Whether or not the development requires a DCO is a matter of law, but in my view taking into account the way in which other similar developments have been dealt with by the Secretary of State, the lack of a DCO is not an impediment to the CPO. However, this position would alter, if the Secretary of State found that a DCO was required, and the significant additional time needed to pursue a DCO could present a serious impediment to the confirmation of the Order.

### *Undertaking*

153. An executed deed of undertaking dated 23 May 2025 was submitted by the AA after the close of the inquiry. This was not the same as the draft undertaking that had been provided by the AA when the closings were made, and the Objector was therefore given the opportunity to make any comments about it in writing, and which they did as part of their Post-Inquiry Submissions dated 19 June 2025.
154. The Objector accepts that some of the concerns that they had raised regarding the earlier suggested draft undertaking have been addressed. The undertaking now

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<sup>10</sup>The Cory Decarbonisation Project and the Ferrybridge Carbon Capture and Storage Project

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binds the AA's successors in title, and refers to the pre-existing Common Terms Agreement as a dispute resolution mechanism.

155. The Objector's main concern, which it says has not been resolved in the final completed undertaking is that they are not a party to it and could therefore not directly enforce it as they could if it were a bilateral agreement. They say that because the unilateral undertaking has been given to the Secretary of State and they are not a party, any enforcement should the undertaking be breached would have to be by way of seeking an injunction from the High Court with the usual expectation that the Objector would have to pay damages in the event that the interim injunction was not upheld at final determination. This imposes a punitive barrier in seeking to enforce the undertaking, and is in contrast to a contract executed and delivered as a deed where a range of options can be pursued. It is also not clear how the Common Terms Agreement would operate under the Unilateral Undertaking with the Objector being a party to it.
156. The Objector is also concerned that the unilateral undertaking offers insufficient protection and offers terms which are inconsistent with the draft lease which was being negotiated by the parties. Rights of access offered are limited where it would delay or adversely affect the costs of the project, and limits access for the purpose of installing the new pipebridge to a period of 6 months from the AA taking entry to the land.
157. However, it is not necessary for the terms of the undertaking to match or reflect the terms which were being negotiated under the lease. Whilst the parties were free to agree whatever terms they deemed commercially appropriate, and if they wished to take into account additional matters outside of the Proposed Development and specific land to be acquired, that lease has not been completed. The purpose of the undertaking is to mitigate against the impact of the exercise of the compulsory purchase powers to ensure that the land included in the Order is justified in the public interest, and that the interests of those affected have been considered. As such, it does not necessarily need to match the terms which were being considered during the previous lease negotiations.
158. The matters to be taken into account in deciding whether the undertaking provided supports confirmation of the CPO are much narrower in scope. Consideration must be given to whether the CPO is in the public interest when balancing the needs to the party which is losing the land. Whilst the negotiations regarding the ESA are ongoing and are part of the complicated wider relationship between the parties no doubt influenced by many factors, the public benefits associated with the Proposed Development are such that they outweigh the countervailing impact that confirmation of the Order will have on the bargaining position of the Objector.
159. It is evident that the parties are not currently able to agree on very much, and certainly not anything which they feel may prejudice their wider bargaining position. It is therefore not surprising that they have not agreed on a bilateral deed of undertaking and that it has been provided in a unilateral form.
160. The final undertaking does bind the land, it does provide for access onto the land for the purposes of inspection of the drain, pipeline corridor (including the addition of new pipelines) and the pipebridge installation, and it does offer the return of any land not required for the permanent infrastructure (and subject to the rights granted to Harbour Energy relating to the Viking Pipeline) to the Objector. It provides for the Common Terms Agreement to be used for dispute resolution. In

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any event, an injunction could be sought in the High Court, and whilst this may be an expensive option it is an effective one.

161. The undertaking offers mitigating benefits which protect the Objector's interests, and in my view it can be taken into account when considering the impact that the confirmation of the CPO would have on the Objector.
162. As such, the Objectors concerns regarding the access to the land in relation to the drain, pipeline corridor and pipebridge have been addressed. The undertaking provides this access and the potential negative impacts outlined by the Objector can be avoided.
163. In addition, the remaining unused land will be offered back to the Objector meaning that it will be available for future projects, and notwithstanding that there are no firm plans at present, it will no doubt be possible for the parties to identify the size and location of this parcel of land to assist in future planning whilst the construction works are ongoing for the Scheme.
164. Whilst there is not currently a clear date as to when a decision will be taken regarding whether the Track 2 funding for the Proposed Development will be awarded, this will also become clearer in due course, and more than likely within this Parliament. No long stop date is provided within the undertaking but the parties know that there is a limited lifetime to the CPO if not implemented. This does provide some certainty, and indeed the date may in fact be much sooner if there is a decision regarding public funding at an earlier time. Indeed, the AA's position is that they would not exercise its powers under the CPO unless and until it entered into a DPA with the Government [86].

#### *Partial or Staged Confirmation*

165. The Objector argues, that if the CPO is to be confirmed, it should either be confirmed only in relation to the area required for the permanent infrastructure and not the area required for the construction laydown; **or** the confirmation should be considered in stages so that only the Permanent Land is confirmed at this time.
166. The parties accept, that for the scheme to be built on the Permanent Land, a great deal of construction laydown area will be required overall and that some will need to be located at another location or locations in the vicinity. However, they do not agree on is how much of this should be on the Order Land and how much should be elsewhere.
167. It is clear that the Scheme cannot be built without at least some of the Temporary Land. The AA has undertaken to give the Objector the access for the pipeline corridor, drain and pipebridge construction, and to return that part if it that is not required at the end of the construction. This will safeguard the Objectors position relating to future uses of the pipeline corridor and wider parts of the Temporary Land.
168. Confirming the Order in stages will not therefore achieve any significant benefits, but could lead to delay and uncertainty particularly at the time that future capital funding is being considered. There is little benefit in either confirming the CPO only in relation to the Permanent Land, or in undertaking staged confirmation, either in terms of achieving the Objector's stated objectives or securing the public benefits of the Scheme. Neither option of either a partial or staged confirmation are therefore appropriate in this case.

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## Human Rights

169. Article 1 of the First Protocol, as set out in the Human Rights Act 1998, states that every person is entitled to peaceful enjoyment of their possessions. The CPO needs to be fully justified to show that there is a compelling case in the public interest sufficiently justifying interfering with the Objector's human rights. For the reasons set out above, the Proposed Development is in the public interest, and the effects on the Objector have been mitigated as much as possible to take into account some of their concerns through the provision of the undertaking allowing access onto the land for specific purposes, and the offer of the return of any unneeded land following the works.
170. The use of the compulsory purchase powers is therefore proportionate and legitimate, and in accordance with national and European law to secure these benefits taking into account the effect that this will have on the Objector through the acquisition of their property rights. The Order Land and rights have not been secured through negotiation despite the AA demonstrating that it has taken reasonable steps to acquire the land and rights by agreement, and there is a compelling case for compulsory powers to be used in this instance.
171. Article 6 provides that everyone is entitled to a fair and public hearing, and this has been met by the procedures for objections and confirmation of the Order including this public inquiry.

## Conclusion

172. There would be clear and substantial public benefits provided by the Proposed Development. The necessary resources are likely to be available within a reasonable timescale, and there are no serious impediments to prevent implementation. Confirmation of the Order would interfere with the Objector's rights as landowner, including in the wider negotiations regarding the ESA, but the use of the compulsory purchase powers has been a last resort, and the interference is justified. There is a compelling case in the public interest for the confirmation of the Order.

## Recommendation

173. I recommend that the Order be confirmed without modification.

*Zoë Frank*

INSPECTOR

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## APPEARANCES

### FOR THE ACQUIRING AUTHORITY

Richard Turney KC, instructed by Pinsent Masons

He called

James Beresford-Lambert

Owen Francis

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### FOR THE OBJECTOR

Isabelle Tafur, of counsel, instructed by Burgess Salmon LLP

She called

Simon Holt

Adam Young

Mike Wailes

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## ACRONYMS AND ABBREVIATIONS USED IN THE REPORT

AA	Acquiring Authority
CCP	Carbon Capture Plant
CCS	Carbon Capture Storage
CHP Plant	Combined Heat and Power Plant
CPO	Compulsory Purchase Order
DCO	Development Consent Order
DESNZ	Department for Energy Security and Net Zero
DPA	Dispatchable Power Agreement
ESA	Energy Supply Agreement
FEED	Front End Engineering and Design Feasibility Study
LPA	Local Planning Authority
NSIP	Nationally Significant Infrastructure Project
OCGT	Open Cycle GasTurbine
Pre-FEED	Pre-Front End Engineering and Design Feasibility Study
the Refinery	The Humber Refinery