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Our Ref: APP/W9500/A/11/2155352 &  
APP/P2745/A/11/2155358

28 June 2012

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEALS BY MOORLAND ENERGY LIMITED  
AT LAND AT EBBERTSON AND HURRELL LANE, THORNTON-LE-DALE  
APPLICATION REFERENCES NYM/2010/0262 AND C3/10/00529/CPO  
(NY/2010/0159/ENV)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Edward A Simpson JP BA(Hons) MRTPI, who held a public local inquiry for nine days between 25 October and 8 November 2011 into your client's appeals for non-determination of an application by North York Moors National Park Authority (the National Park Authority) and for non-determination of an application by North Yorkshire County Council (the Council) as Minerals Planning Authority outside the National Park area for: 'Natural gas production from existing Ebberstone Well site; the construction of two underground gas pipelines from the existing Ebberstone Well site to the proposed Gas Processing Facility; a new access road south of the A170 to the proposed Gas Processing Facility; a Gas Processing Facility at Hurrell Lane, Thornton-Le-Dale; and an Above Ground Installation (AGI) connection to the existing National Transmission System (NTS) pipeline to the south of New Ings Lane' in accordance with application reference NYM/2010/0262, dated 1 April 2010, and application reference C3/10/00529/CPO (NY/2010/0159/ENV) also dated 1 April 2010.
2. On 27 June 2011, the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that they involve proposals for development of major importance having more than local significance.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeals be allowed and planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Jean Nowak, Decision Officer  
Planning Casework Division,  
Department for Communities and Local Government  
1/J1, Eland House  
Bressenden Place  
London, SW1E 5DU

## **Procedural Matters**

4. In reaching his decision the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the Inspector's comments at IR14.2. The Secretary of State is content that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

### **Matters arising after the close of the inquiry**

5. Following the close of the Inquiry, the Secretary of State received the representations listed at Annex A i). These include an email from your firm on behalf of your client dated 11 November 2011 requesting amendments to two of the planning conditions considered at the inquiry, and subsequent correspondence on this matter from the Council (16 November 2011), the National Park Authority (17 November 2011) and AGHAST! (17 November 2011). The Secretary of State has set out his conclusions on this matter at paragraphs 27-30 below. He has also carefully considered the letter from Mr E Davison dated 19 November 2011; however, he does not consider that that constitutes new evidence or raises new issues which need to be referred back to parties before they proceed to a decision. The Secretary of State is also in receipt of the correspondence dated 6 December 2011 from the Council as listed in Annex A i) that sets out concerns about the adequacy of the covenants within the Unilateral Undertaking (UU) dated 24 November 2011 which you submitted to the Planning Inspectorate following the close of the inquiry on behalf of your client. Furthermore, the Government published the National Planning Policy Framework (March 2012) (NPPF) after the close of the inquiry. This document replaces the national planning policy documents set out in its Annex 3.
6. The Secretary of State wrote to interested parties on 20 April 2012 inviting comments on both the finalised version of the UU and the comments on it in the Council's letter of 6 December 2011; as well as seeking their views on the implications, if any, of the NPPF to the case presented at the inquiry. On 9 May, the Secretary of State circulated the responses, inviting further comments, and stating that he would then proceed to a decision. Responses to the Secretary of State's letters on these matters are listed at Annex A ii) and iii) below.
7. The Secretary of State has carefully considered all of these representations in his determination of these appeals. His conclusions regarding the adequacy of the UU are set out at paragraphs 31-32 below. He considers that, for the most part, the issues raised in relation to the NPPF cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State wishes to make clear that he has not revisited issues which are carried forward in the NPPF or development plan documents, and which have therefore already been addressed in the IR, unless the approach in the NPPF leads him to give different weight.
8. Copies of all representations listed in Annex A may be obtained by written request to the address at the foot of the first page of this letter.

## **Policy considerations**

9. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. The development plan comprises the Yorkshire and Humber Regional Plan 2008 (the RS), the North York Moors Core Strategy and Development Policies 2008 (NYMCS), saved policies of the North Yorkshire Minerals Local Plan 1997 (the Minerals LP), and saved policies of the Ryedale Local Plan 2002 (Ryedale LP – prepared by Ryedale District Council). The Secretary of State considers that the development plan policies most relevant to the appeals are those identified by the Inspector at IR3.2 - 3.5.
11. Other material considerations which the Secretary of State has taken into account include the NPPF (see paragraph 5 above), Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010 and 2011*. The Secretary of State has also taken into account the Written Ministerial Statement (WMS) of the Rt Hon Greg Clark MP *Planning for Growth* (March 2011), the Presumption in Favour of Sustainable Development and accompanying press release (June 2011), the English National Parks and the Broads Vision and Circular 2010, and the Government policy statements and regional policy documents identified by the Inspector at IR3.10.
12. The Secretary of State considers that the revocation of RSs has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the RS is formally revoked by Order, he has attributed limited weight to the proposed revocation in determining these appeals.

## **Main issues**

13. The Secretary of State considers that the main issues in these appeals are those set out by the Inspector at IR14.3.

## **The relationship of the proposal to the development plan**

14. For the reasons given at IR14.4.1-14.4.3, the Secretary of State agrees with the Inspector that it was not unreasonable for the National Park Authority to consider the impacts of the proposal as a whole against its adopted strategies and policies (IR14.4.3). Furthermore, for the reasons given at IR14.4.4-14.4.10, the Secretary of State agrees with the Inspector's conclusion at IR14.4.11 that the Minerals LP policies should not be set aside in the context of his decision.
15. The Secretary of State also agrees with the Inspector's reasoning and conclusions regarding the development plan at IR14.4.12-14.4.42. Like the Inspector, he considers that the siting and operation of the production well as proposed does not conflict with the NYMCS (IR14.4.17); that the construction of the pipelines would not conflict with the policies of the Minerals LP or the NYMCS (IR14.4.22); and that, subject to the consideration of the visual impact of the proposed access from the A170 (see paragraph 18 below), this element of the proposals would not be contrary

to the development plan policies for the management of the extraction and processing of natural gas (IR14.4.26).

16. Regarding the Gas Processing Facility (GPF) element of the proposals, the Secretary of State agrees with the Inspector's assessment that the proposals cannot reasonably be said to conflict with Minerals LP Policies 7/6 (IR14.4.30) or 7/7 (IR14.4.36). In respect of Minerals LP Policy 7/8, while he agrees with the Inspector's conclusion that the location of the GPF in open countryside would conflict with its aim, he also agrees that, in the absence of a suitable alternative site, this would not amount to an over-riding in-principle policy objection to these appeal proposals (IR14.4.41). Like the Inspector, the Secretary of State considers that the AGI element of the proposals accords with Minerals LP Policy 7/7 (IR14.4.42); and he has considered the extent to which the proposal complies with other development plan policies below.

#### Visual impact including views from and into the North York Moors National Park

17. On the question of unacceptable visual impact, the Secretary of State agrees with the Inspector that, for the reasons given at IR14.5.1-14.5.5, the RLP policies in this respect should not be set aside. He also agrees with the Inspector's assessment in respect of the wellsite (IR14.5.6-14.5.7), including agreeing that its structures would not have so significant a detrimental impact on the landscape of this part of the National Park as to result in an unacceptable impact. The Secretary of State also agrees with the Inspector that, for the reasons given at IR14.5.8-14.5.9, the construction of the pipelines would not result in an unacceptable visual impact on the landscape through which they would pass (IR14.5.10).
18. The Secretary of State agrees with the Inspector (IR14.5.11-14.5.12) that, although the proposed new access on to the A170 would conflict with local policies which seek to protect the Area of High Landscape Value (AHLV) and the appearance of the countryside in general, there are no other suitable alternative means of access to the GPF site. He also agrees (IR14.5.12) that, given the limited number of public viewpoints from which the access would be seen, if the appeal proposal is otherwise acceptable, the harm by way of the visual impact of the access would not be so great as to warrant a refusal for that reason alone.
19. For the reasons given at IR14.5.13-14.5.35, the Secretary of State agrees with the Inspector's assessment of the impact of the proposed GPF and shares his conclusions that it would introduce an obviously industrial plant into an area of generally open countryside, that parts of that plant would remain visible and incongruous features for most of its intended life, and that it would appear out of keeping with the surrounding rural countryside of the Vale of Pickering to the south and the AHLV to the north (IR14.5.29). He agrees that there is conflict with NYMLP Policy 4/1 and RLP ENV1 (IR14.5.29) but, for the reasons given at 14.5.30-14.5.35, the Secretary of State agrees with the Inspector that, other than with regard to the limited visibility from certain parts of Thornton-le-Dale, the plant on the GPF site would not be visible from within the National Park, and would not have a seriously detrimental impact on the setting of the NYMNP. He therefore also agrees that the Major Development Test, as now set out at NPPF paragraph 116, would not be failed (IR14.5.33).

20. For the reasons given at IR14.5.36, the Secretary of State agrees with the Inspector's assessment that the AGI would have no significant impact on the landscape.

#### Impact on amenities of local residents and visitors to the area

21. The Secretary of State notes that the Council and AGHAST! are satisfied that, with the imposition of appropriate conditions, uncertainties with respect to the potential noise nuisance have been adequately addressed (IR14.6.1). He has also considered the risk of odours but, for the reasons given at IR14.6.2-14.6.5 and having regard to national policy that the control of processes or emissions should be dealt with under pollution control regimes, the Secretary of State agrees with the Inspector (IR14.5.6) that an odour boundary condition is not necessary as part of any planning permission in this case.

#### Perception of risk from the operation of the proposed gas processing facility

22. For the reasons set out at IR14.7.1 to IR14.7.6, the Secretary of State agrees with the Inspector that residents' fears associated with the potential use of this site for a GPF should carry limited weight and, in general terms, do not amount to a strong argument for dismissing the appeals.

#### Site restoration following cessation of gas extraction

23. The Secretary of State has given careful consideration to the Inspector's comments at IR14.8.1-14.8.5, to the representations received from the Council, the National Park Authority and on behalf of the Appellant regarding the UU, and to the Technical Guidance to the NPPF. His conclusions regarding the UU are set out at paragraphs 31-32 below and, in light of these, the Secretary of State agrees with the Inspector that the measures proposed would be sufficient to ensure the satisfactory restoration of the site following cessation of gas extraction (IR14.8.5).

#### Alternative sites for the location of the GPF

24. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding alternative sites for the GPF at IR14.9.1-14.9.14. In particular, he agrees that there are no sites other than the East Knapton site within reasonable proximity to the wellsite that could accommodate the GPF (IR14.9.2) and that the potential developments set out in the screening request do not represent a reasonable alternative to the appeal proposals (IR14.9.11). He also agrees that the East Knapton site clearly could not contain the plant proposed by the Appellant for the Hurrell Lane site (IR14.9.12) and, like the Inspector, he places little weight on the scope for the Appellant to occupy land adjacent to the East Knapton site (IR14.9.13).

#### Whether the benefits are sufficient to outweigh any harm

25. The Secretary of State attaches great weight to the benefits of the mineral extraction, including to the national economy, and he agrees with the Inspector's reasoning and balancing of considerations at IR14.10.1-14.10.18. In particular, he has taken into account the annual value of gas to be produced from the wellsite, which would be £37.5m and at a rate of supply equivalent to the annual energy needs of over 75,000 dwellings (IR14.10.5); and he also agrees with the Inspector that there is a value to be placed on a scheme that would enable other locked-in reserves to be exploited

(IR14.10.6). He further agrees that the supply of gas to the NTS permits a more flexible end use than immediate electricity production (IR14.10.9); and has also had regard to the potential jobs to be created by the scheme (IR14.10.11).

26. For the reasons given at IR14.10.12-14.10.17, the Secretary of State agrees with the Inspector (IR14.10.18) that the national and more limited local benefits of the scheme are sufficient to outweigh the more limited harms by way of visual impact on the landscape and, in the absence of an alternative scheme demonstrably capable of providing equivalent capacity within the same timescale, he concludes that the appeals should be allowed.

#### Conditions

27. The Secretary of State has had regard to the proposed conditions and national policy as set out in Circular 11/95 and the NPPF, and to the Inspector's comments at IR13.3-13.49 and IR15.2.1-15.2.17. He has also given careful consideration to the correspondence on behalf of the Appellant of 11 November 2011 which requested amendments to the Construction Working Hours and Odour Management Plan conditions, and also to the correspondence from the Council (16 November 2011), the National Park Authority (17 November) and AGHAST! (17 November 2011) regarding this matter, none of which was considered by the Inspector.
28. In terms of the Construction Working Hours condition, the Secretary of State agrees with the Inspector that the principle aim must be to minimise the length of the construction period while at the same time avoiding unacceptable impacts resulting in loss of amenity to local residents or tourists through noise and disturbance (IR15.2.10) and, for the reasons given at IR15.2.9-15.2.15, agrees with the Inspector that such a balance is achieved by Condition 28 as proposed by the Inspector and set out in Annex B to this letter. He is not persuaded on the evidence before him that it has been sufficiently demonstrated that additionally allowing construction on Sundays and Banks Holidays, as the Appellant suggests, would not lead to an unacceptable loss of amenity.
29. In respect to the changes proposed by the Appellant to the condition relating to the Odour Management Plan, the Secretary of State considers that Condition 50 as proposed by the Inspector and set out in Annex B to this letter is necessary and reasonable. In reaching this view, the Secretary of State has taken account of all the evidence before him and the circumstances of the case including the fact that the inclusion of a condition in this respect was agreed at the Inquiry and the Appellant has submitted no new evidence from the Environment Agency on the matter of the possible scope of any Environmental Permit that was not before the inquiry.
30. In all other respects the Secretary of State is satisfied that the conditions proposed by the Inspector and set out at Annex B to this letter are necessary, reasonable and meet the tests set out in Circular 11/95 and the NPPF.

#### Obligation

31. The Secretary of State has considered the UU dated 24 November 2011, national policy in the NPPF and its Technical Guidance, the CIL regulations, the comments from parties relating to the UU and the Inspector's comments at IR13.1-13.2 and 15.1.1-15.1.7. Overall, the Secretary of State is satisfied that, in principle, the obligations which relate to an apprenticeship scheme, a financial guarantee

regarding the restoration of the site, and commencement of the development other than by the developers, are necessary, compliant with the CIL regulations, and capable of being material considerations to his decision. In reaching this view, he has had regard to the Inspector's comments that previous operations to develop the gas resources within North Yorkshire have not always been successful, with some proving initially satisfactory before then suffering early closure for technical or economic reasons (IR15.1.2). Therefore, taking account of the guidance in paragraphs 49-51 of the NPPF Technical Guidance, the Secretary of State is satisfied that this constitutes an exceptional case where it will be reasonable to seek a financial guarantee to cover restoration costs.

32. The Secretary of State has carefully considered the concerns raised by the Council and the National Park Authority in relation to Paragraph 4 of Schedule 2 of the UU. He shares the view of the National Park Authority that there is a degree of uncertainty about the correct interpretation of this paragraph. While the Secretary of State is satisfied that the UU would bind a developer who has no proprietary interest in the site, he considers that as drafted there is a risk that the First Owners or Second Owners or their successors in title would be able to develop the land free of the obligations. Furthermore, he considers that the UU would benefit from a clause to require the Council to be notified of any change of ownership of the interests in the site. Taking all these matters into account, the Secretary of State concludes that the weight that can be attached to the obligations is diminished. However, while he accepts that the issues referred to in this paragraph represent a degree of risk to the enforceability of the UU, he is satisfied that such risk is not sufficient to prevent him from proceeding to his decision to allow the appeals and grant planning permission. Nevertheless, he recommends that the parties at their earliest convenience seek to remedy these defects.

### **Overall Conclusions**

33. The Secretary of State has identified conflict with Minerals LP Policy 4/1 and RLP policy ENV1 in respect of the impact of the proposed GPF, and conflict with local policies which seek to protect the AHLV and the appearance of the countryside in general in respect of the proposed access on to the A170. While he has also found that the location of the GPF in open countryside would conflict with the aim of Minerals LP Policy 7/8, in the absence of a suitable alternative site he is satisfied that this would not amount to an over-riding in-principle policy objection to the appeals. In favour of the scheme, the Secretary of State attaches great weight to the benefits provided by the proposals, including to the national economy. He has taken into account that the wellsite could provide gas at a rate equivalent to the annual energy needs of 75,000 dwellings; that the proposals could also enable other locked-in reserves to be exploited; that the supply of gas to the NTS permits a more flexible end use of that gas compared with immediate electricity production; along with other, more limited, local benefits. Overall, therefore, the Secretary of State concludes that the factors which weigh in favour of the proposed development outweigh its shortcomings and overcome the conflicts with the development plan. Therefore he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission.

### **Formal Decision**

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeals and grants planning permission for 'Natural gas production from existing Ebberstone Wellsite; the construction of two underground gas pipelines from the existing Ebberstone Wellsite to the proposed Gas Processing Facility; a new access road south of the A170 to the proposed Gas Processing Facility; a Gas Processing Facility at Hurrell Lane, Thornton-Le-Dale; and an Above Ground Installation (AGI) connection to the existing National Transmission System (NTS) pipeline to the south of New Ings Lane' in accordance with application reference NYM/2010/0262, dated 1 April 2010, and application reference C3/10/00529/CPO (NY/2010/0159/ENV) also dated 1 April 2010, subject to the conditions at Annex B.
35. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
36. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
37. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

### **Right to challenge the decision**

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
39. A copy of this letter has been sent to North Yorkshire County Council, the North York Moors National Park Authority and AGHASTI. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Jean Nowak**

Authorised by Secretary of State to sign in that behalf



**Annex A: post inquiry correspondence**

**i) Correspondence received following the inquiry and not taken into consideration by the Inspector**

<b>Name / Organisation</b>	<b>Date</b>
DLA Piper	11 November 2011
North Yorkshire County Council	16 November 2011
North York Moors National Park Authority	17 November 2011
AGHAST!	17 November 2011
Mr E Davison	19 November 2011
North Yorkshire County Council	6 December 2011

**ii) Correspondence received following the Secretary of State's letter of 20 April 2012**

<b>Name / Organisation</b>	<b>Date</b>
Sir Peter Newsam	27 April 2012
Professor Gordon Bell	29 April 2012
AGHAST!	30 April 2012
North Yorkshire County Council	2 May 2012
DLA Piper	4 May 2012
North York Moors National Park Authority	4 May 2012
Thornton Le Dale Parish Council	7 May 2012

**iii) Correspondence received following the Secretary of State's letter of 9 May 2012**

<b>Name / Organisation</b>	<b>Date</b>
North Yorkshire County Council	17 May 2012
DLA Piper	17 May 2012
North York Moors National Park Authority	17 May 2012

## **Annex B: Planning Conditions**

In discharging, monitoring and enforcing these conditions, the Mineral Planning Authority and the National Park Authority will be responsible only for those parts of the development which fall within their respective areas of administration.

### **Duration of Permission**

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

### **Approved Details**

2. Except as may be modified on application to the Mineral Planning Authority or National Park Authority or as may be required by the operation of other conditions to this permission (which shall take precedence) the development hereby permitted shall be carried out strictly in accordance with the approved planning application forms, Planning, Sustainability and Need Statement, Design and Access Statement, Environmental Statement and Drawings set out in Schedule I

### **Duration and Commencement**

3. The development hereby granted is for a period of 20 years following the commissioning of the development (being for the purposes of this permission the date upon which gas is first exported to the NTS) and for a period of not more than 25 years following the commencement of the development whichever is the sooner.

### **Ground Levels**

4. No development shall begin until a plan showing existing and proposed ground levels and any plant and building heights relating to ordnance datum has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The development shall not be undertaken except in accordance with the approved details.

### **Approved Details**

5. No development of any of the five elements of the development as defined in paragraph 4.2 of the Environmental Statement shall begin until full details of all external materials of that element of the development have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The development shall not be undertaken except in accordance with the approved details.

### **Construction Environmental Management Plan**

6. No development shall begin until a Construction Environmental Management Plan has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The Construction Environmental

Management Plan shall set out best practicable means to minimise the impact of construction activities and shall include the following: Working methods and programme, Construction site layout including temporary buildings, temporary structures, temporary lighting, temporary means of enclosure, Construction traffic routes, details of the precautions to be taken to prevent the deposit of grit, mud and dirt on the public highway arising from the development, Equipment selection, Equipment siting, Expected noise levels and mitigation measures, Expected vibration levels and mitigation measures, Expected dust emissions and mitigation measures, and Employ best practice in accordance with BS5228 (1997) – Noise and Vibration Control on Construction and Open Sites. The development shall not be carried out except in accordance with the approved Construction Environmental Management Plan.

- 7 The Construction Environmental Management Plan shall include a programme for the monitoring of noise during the construction of the development to be submitted to and agreed in writing by the Mineral Planning Authority and National Park Authority. The programme shall specify the locations from which noise will be monitored, the method of noise measurement (which shall be in accordance with BS4142: 1997) and the maximum permissible levels of noise at each such monitoring location in order to ensure noise levels do not exceed a value of LAeq (1 hour) of 55dB when measured 1.2 metres above ground within 4 metres from the façade of any existing residence.

#### **Soil Handling and Storage**

- 8 No development shall begin until, details of site preparation work, including the handling and storage of soils, have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The development shall not be carried out except in accordance with the approved details.

#### **Temporary Construction and Decommissioning Access to the GPF and AGI**

- 9 No development of the gas processing facility or the above ground installation shall begin until details of any temporary construction and decommissioning access have been submitted to and approved in writing by the Mineral Planning Authority and thereafter constructed in accordance with the approved details. No construction vehicles shall enter the application site (south of the A170) except by this access.

#### **Boundary Treatment**

- 10 No development shall begin until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the Mineral Planning Authority or the National Park Authority (as appropriate). The boundary treatment shall be completed prior to the commissioning of the development. Development shall be carried out in accordance with the approved details and maintained as approved.

## **Storage of Oils, Fuels and Chemicals**

- 11 Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 20%. If there is more than one tank, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 20%. All filling points, associated pipework, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.

## **Notification of Commencement of Development**

- 12 Not less than seven working days' notice in writing shall be given to the Mineral Planning Authority and National Park Authority prior to the commencement of development.

## **Notification of Commissioning**

- 13 Not less than seven working days' notice in writing shall be given to the Mineral Planning Authority and the National Park Authority following the commissioning of the development.

## **Cessation of Operations and Restoration of the GPF**

- 14 No later than 24 months following the period of 20 years from the commissioning of the gas processing facility or the period of 25 years from the commencement of the development (whichever shall first occur), all above ground structures, including roads and hardstandings, shall be removed from the site and the site restored and reclaimed in accordance with drawing number 17809/L118.

## **Cessation of Commercial Operations and Restoration of the wellsite**

- 15 No later than 24 months following the period of 20 years from the commissioning of the wellsite, or the period of 25 years following the commencement of the development (whichever shall first occur), all above ground structures, including roads and hardstandings, shall be removed from the site and the site restored and reclaimed in accordance with the scheme approved under condition 7A.

## **Disposal of Surface Water Run-off**

- 16 The development hereby approved shall not be carried out except in accordance with the approved Flood Risk Assessment (FRA) set out in Appendix 12.1 of the Environmental Statement and the following mitigation measure detailed within the FRA:

- Limiting the surface water run-off generated by the development to the greenfield run-off rate of 1.4l/s/ha so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site. The scheme should be able to contain the 1 in 30yr storm and not flood any buildings during the 1 in 100yr storm. An allowance for climate change must be included in the drainage design.

### **Surface Water Drainage Works**

- 17 No development shall begin until a scheme for the provision of surface water drainage works at the application site (south of the A170) has been submitted to and approved in writing by the Mineral Planning Authority. The details shall incorporate oil and petrol interceptors or trapped gullies, and demonstrate how fire water will be managed. Thereafter the development will not be carried out except in accordance with the approved scheme.

### **Foul Water Drainage Works**

- 18 No development shall begin until a scheme to dispose of foul water at the application site (south of the A170) has been submitted to and approved in writing by the Mineral Planning Authority. Thereafter, the proposed development shall be undertaken in accordance with the approved scheme.

### **Dewatering Scheme**

- 19 No development shall begin until a scheme to deal with dewatering during construction works at the application site (south of the A170) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be implemented as approved.

### **Treatment and Removal of Suspended Solids**

- 20 No development shall begin until a scheme to treat and remove suspended solids from surface water run-off during construction works at the application site (south of the A170) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall then be implemented as approved.

### **External Lighting**

- 21 No development shall begin until full details of all external lighting to be used in the operation of the development, including an assessment of light spill, have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. No permanent fixed external lighting shall be installed at the wellsite. Thereafter the development shall not be carried out except in accordance with the approved scheme.

## **Public Rights of Way**

- 22 No pipeline construction shall begin until a scheme detailing the arrangements for the safety of users of the public rights of way crossed by the route of the pipeline has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority and thereafter it shall be implemented as approved.
- 23 No pipeline construction shall begin until details of how the pipeline will cross any Public Rights of Way, roads, watercourses and drains have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority, save by auger boring. Thereafter the development shall not be carried out except in accordance with the approved scheme.

## **Archaeology**

- 24 No development shall begin until a scheme has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority which details the implementation of a programme of archaeological work in accordance with the written scheme of investigation (Peter Cardwell Report 23/3 dated February 2011). The results of the archaeological work will be submitted to the Mineral Planning Authority and National Park Authority within twelve months of the completion of the archaeological work.

## **Tree and Hedgerow Protection**

- 25 No development shall begin until details of tree and hedgerow protection measures to be employed during the construction of the development have been submitted to and agreed in writing by the Mineral Planning Authority and National Park Authority. Thereafter the development shall not be carried out except in accordance with the approved details.

## **Road Survey**

- 26 Prior to the commencement of each of the five elements of the development as defined in paragraph 4.2 of the Environmental Statement, a survey of existing roads as affected by that element (other than 'A' roads) to be used during construction shall be undertaken and submitted to and agreed in writing by the Mineral Planning Authority and National Park Authority. The roads to be surveyed are to be agreed in writing by the Mineral Planning Authority and National Park Authority before the survey is undertaken.
- 27 Within 3 months of the commissioning of the development, a further survey of the roads agreed as part of Condition 26, including any necessary remedial works, shall be submitted to and agreed in writing by the Mineral Planning Authority and National Park Authority. Should any remedial works be required, they shall be undertaken within 6 months of the remedial works being agreed by the Mineral Planning Authority and National Park Authority.

## Construction Working Hours

28 No work associated with the construction of the development, except work undertaken in an emergency, shall take place at any time on a Sunday or Public Holiday nor at any other time except between the following hours:

- Monday to Friday 07.00 – 19.00; and
- Saturday 07.00 – 19.00

29 During construction works there shall be no Goods Vehicles permitted to arrive, depart, be loaded or unloaded, except in an emergency, outside the following hours:

- Monday to Friday 08:30 – 17:30; and
- Saturday 08:30 – 12:30

## Operational Hours

30 During operation, no service deliveries, except in an emergency, shall be undertaken outside of the following hours:

- Monday to Friday 07.00 – 18.00; and
- Saturday 07.00 – 13.00

## Land Contamination

31 If, during construction, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Mineral Planning Authority and National Park Authority) shall be carried out until the applicant, or their agents or successors in title, has submitted, and obtained written approval from the Mineral Planning Authority and/or National Park Authority, for a remediation strategy detailing how the contamination will be remediated. The remediation strategy shall be carried out in accordance with the approved details.

## Noise

32.1 The levels of noise emitted from the operational site shall not exceed the values in the table below, measured at the locations indicated on the attached plan [Ref, CD/M2]. These four locations to be known as the "specified noise monitoring locations".

Ref	Description	Easting	Northing	07:00-19:00 Mon-Fri	At All Other Times
(A)	NW corner of site	484677	481966	50dB L <sub>Aeq,1h</sub>	50dB L <sub>Aeq,5min</sub>
(B)	SW corner of site	484702	481799	49dB L <sub>Aeq,1h</sub>	49dB L <sub>Aeq,5min</sub>
(C)	NE corner of site	485011	481995	52dB	52dB

				L <sub>Aeq,1h</sub>	L <sub>Aeq,5min</sub>
(D)	SE corner of site	485029	481864	52dB	52dB
				L <sub>Aeq,1h</sub>	L <sub>Aeq,5min</sub>

- 32.2 Before the gas processing facility is commissioned a noise attenuation scheme shall be submitted to and approved in writing by the Mineral Planning Authority detailing the methods by which noise from the plant is to be controlled in order to meet the operational noise limits. The operation of the gas processing facility shall not be undertaken except in accordance with the approved scheme.
- 32.3 Before the gas processing facility or the wellhead site are commissioned a programme of noise monitoring shall be submitted to and agreed in writing with the Mineral Planning Authority and the National Park Authority. The programme shall specify the locations at which noise is to be measured, the method of assessment (which will be in accordance with the relevant sections of BS.4142:1997) and the maximum permissible noise level at each such noise monitoring location. It shall include a requirement that the spectral equivalent continuous noise levels in third-octave bands are measured. A noise survey shall be conducted during site commissioning and before the commencement of full commercial operations and the results submitted to the Mineral Planning Authority and the National Park Authority for approval in writing. The programme shall include the provision that once the facility is brought into operation, noise measurements shall be conducted on behalf of the operating company as soon as possible on receipt of a written request from the Mineral Planning Authority and the National Park Authority. The results of such measurements are to be submitted to the Mineral Planning Authority and the National Park Authority within three (3) working days of completion of the survey. In the event that the predicted noise levels at the specified noise monitoring locations are exceeded, additional attenuation measures shall be taken and further noise survey or surveys conducted until the predicted noise levels are achieved to the written satisfaction of the Mineral Planning Authority and the National Park Authority.
- 32.4 Tonal noise from the gas processing facility shall not be audible outside any residential property in existence at the date of this planning permission. Tonal noise shall be considered to be audible where the level in any third-octave band is 5dB or more in excess of the levels in the two adjacent bands and tonal components are clearly audible.

### **Public Sewers**

- 33 No building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of any public sewer.

### **Gas Extraction and Processing Reporting**

- 34 Following commissioning of the development, a report shall be submitted to the Mineral Planning Authority and National Park Authority every twelve months which details the volume of gas extracted or processed over the previous twelve months.



- 35 Based on the reports submitted pursuant to Condition 34, should two consecutive reports state that no gas has been extracted and processed over a continuous 24 month period then the restoration and reclamation schemes approved under Conditions 38 and 39 below shall be implemented and completed within 12 months of a written request to do so by the Mineral Planning Authority and the National Park Authority.

### **Landscaping**

- 36 Notwithstanding the submitted drawings, no development shall take place until details of all landscape planting associated with the development have been submitted to, and approved in writing by, the Mineral Planning Authority and the National Park Authority. The submitted details shall include a timetable for implementation and a 1/200 scale plan indicating all trees or hedgerows to be removed, planting to be protected during the development and the proposed new planting including a planting schedule providing details of species, numbers of each species and planting sizes.
- 37 The approved scheme of landscaping shall be fully implemented as approved. In the event of any plant material dying or becoming seriously diseased or damaged within a 5 year period of planting, it shall be replaced with similar species to a specification that shall be first agreed in writing with the Mineral Planning Authority and the National Park Authority unless the Mineral Planning Authority or the National Park Authority as the case may be give written consent to any variation.

### **Decommissioning of the Wellsite**

- 38 No development shall be undertaken at the wellsite until a detailed scheme for the restoration and aftercare of the wellsite has been submitted to and approved in writing by the National Park Authority. Thereafter the restoration and aftercare of the site shall be carried out in strict accordance with the approved scheme.

### **Restoration**

- 39.1 No development shall be undertaken until a detailed scheme for the restoration and aftercare of the application site south of the A170 and north of New Ings Lane has been submitted to, and approved in writing by, the Mineral Planning Authority. Such a scheme shall include:
- Details of the proposed restoration specification for planting, seeding and surface finishes (including proposed species, numbers of each species and planting sizes for trees and shrubs to be used and seed mix for grassland areas;
  - Removal of plant, buildings and machinery;
  - Details of the removal of stone, hard surfacing and any other imported materials from the site and access;
  - Details of the proposed maintenance of the planting and land including associated drainage work;

- Details of the proposed aftercare for a duration of no less than five years; and
  - Timescales for the commencement, completion and phasing of each element of the restoration and aftercare scheme.
- 39.2 Thereafter the restoration and aftercare of the site (as defined above) shall be carried out in strict accordance with the approved scheme.
- 39.3 The details required by Condition 39.1 above shall include for the application site to be restored to a condition capable of agricultural production to the Agricultural Land Classifications shown on Figures 16.1 – 16.6 of the Environmental Statement.
- 39.4 The details required by Condition 39.1 above shall include for the proper storage of topsoil and the re-use of topsoil and subsoil from the access track and the application site and shall specify their handling only when they are in a dry and friable condition. The details shall also show replacement of soils to their original contours and in the correct sequence and shall include a suitable scheme for the aftercare of the site to ensure the proper rehabilitation of disturbed soils.

## **Ecology**

- 40 No development shall commence until a scheme to implement the measures set out at paragraphs 7.151 to 7.169 of the Environmental Statement and Appendix 7.2 and the recommendations set out in Species Surveys and Monitoring 2010, dated August 2010, and Report Reference DBRP0002 dated March 2010, has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The scheme shall thereafter be implemented as approved and in accordance with the details and timescales set out therein.

## **Highway Access and Works**

- 41 There shall be no access and egress between the highway and the application site south of the A170 by any vehicles other than via the newly formed access with the public highway on A170 County Road. The access shall be maintained in a safe manner which shall include the repair of any damage to the existing adopted highway occurring during construction.
- 42 There shall be no access or egress by any vehicles between the highway and the application site south of the A170 until further details of any measures required to prevent surface water from non-highway areas discharging on to the existing highway together with a programme for their implementation have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The works shall be implemented in accordance with the approved details and programme.
- 43 There shall be no access or egress by any vehicles between the highway and the application site (south of the A170) (except for the purposes of constructing the initial site access) until splays are provided giving clear

visibility of 215m measured 4.5 m down the centre line of the access road. The eye height will be 1.05m and the object height shall be 0.6m. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

- 44 There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works until:
- (i) The details of the required highway improvement works, (iv below), have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority;
  - (ii) An independent Stage 2 Safety Audit has been carried out in accordance with HD19/03 – Road Safety Audit or any superseding regulations;
  - (iii) A programme for completion of the proposed works has been submitted; and,
  - (iv) The required highway improvements include the provision of an improved access as shown on Drawing Number e471/010. The improvement is to include a right turning facility for vehicles entering the site.
- 45 There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site until the all highway works have been constructed in accordance with the details approved in writing by the Mineral Planning Authority and National Park Authority under Condition 44 above.
- 46 There shall be no excavation or other groundworks (except for investigative works), or the depositing of material on the site in connection with the construction of the access road or building(s) or other works hereby permitted, until full details of the following have been submitted to and approved in writing by the Mineral Planning Authority:
- i) Vehicular turning arrangements;
  - ii) Manoeuvring arrangements; and
  - iii) Loading and unloading arrangements.
- 47 There shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until details of the routes to be used by HGV construction traffic have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. Thereafter the approved routes shall be used by all vehicles connected with construction on the site.
- 48 Details of the precautions to be taken to prevent the deposit of mud on public highways by vehicles travelling from the site shall be submitted to and approved in writing by the Minerals Planning Authority and National Park Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Minerals Planning Authority or National Park Authority. These precautions shall be made available before the

development commences on site and be kept available and in full working order until such time as the Minerals Planning Authority and National Park Authority agrees to their withdrawal.

### **Workover and Tubing Replacement**

- 49.1 No major workover or tubing replacement operation shall take place on the well without the prior written approval of the National Park Authority of a scheme of works detailing the operations involved. Such a scheme shall identify the dates and times of such operations and shall make provision for notifying the National Park Authority and neighbouring residents 7 days in advance of the operations. It shall specify a programme of noise monitoring as soon as drilling or the workover or tubing replacement commences, including details of noise measurement locations, the method of noise measurement and the maximum permissible levels of noise at each measurement location. The maximum permissible noise levels under neutral weather conditions shall be designed to ensure that a level of 45 dBA Leq 1 hour (freefield) between 0700 and 1900 hours and 42 dBA Laeq 5 minutes (freefield) between 1900 and 0700 hours is not exceeded at any noise-sensitive dwellings.
- 49.2 In the event that the noise levels specified in this condition are exceeded, those operations at the site causing excessive noise shall cease immediately and steps be taken to attenuate the noise levels so as to be in compliance with the requirements of this condition before the recommencement of works.

### **Odour Management Plan**

- 50 All operations on the wellsite shall be undertaken in accordance with the Odour Management Plan (Report Ref:LERP0002) dated August 2011.

### **Permitted Development Rights**

- 51 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other Order revoking or re-enacting that Order), no plant or buildings shall be erected on the site, except for the development hereby permitted, without the prior grant of planning permission.

## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



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# **Report to the Secretary of State for Communities and Local Government**

**by Edward A Simpson JP BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 24 February 2012

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**Town and Country Planning Act 1990**

**Appeals by Moorland Energy Limited**

**North York Moors National Park Authority**

**And**

**North Yorkshire County Council**

Inquiry held on 25–28 October, 1-4 November & 8 November 2011  
Site visits undertaken 9 & 10 November 2011

File Refs: APP/W9500/A/11/2155352 and APP/P2745/A/11/2155358

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## Abbreviations

AGHAST!	Rule 6 party representing Thornton-le-Dale Residents
AGI	Above Ground Installation
AHLV	Area of High Landscape Value
ALARP	As Low As Reasonably Possible
AOD	Above Ordnance Datum
BAT	Best Available Technique
bcf	Billion cubic feet
CA	Conservation Area
CCGT	Combined Cycle Gas Turbine
cd	candela
COMAH	Control over Major Accident Hazard
DCO	Development Consent Order
EA	Environment Agency
ES	Environmental Statement
ES-1	Ebberston Moor South well no.1
FRA	Flood Risk Assessment
GFS	Ground Flare Stack
GOYH	Government Office for Yorkshire and the Humber
GPF	Gas Processing Facility
HCA	Hazardous Consent Authority
HGV	Heavy Goods Vehicles
HSC	Hazardous Substances Consent
HSE	Health and Safety Executive
MDT	Major Development Test
MEL	Moorland Energy Limited (The Appellant Company)
MLP	Minerals Local Plan
MMSCFD	Million Standard Cubic Feet per Day
MPA	Mineral Planning Authority
MPS	Minerals Policy Statement
MW	Mega-watt
NP	National Park
NPPF	Draft National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NTS	National Transmission System (National Gas Grid)
NYCC	North Yorkshire County Council
NYMCS	North York Moors Core Strategy and Development Policies 2008
NYMLP	North Yorkshire Minerals Local Plan 1997 (saved policies)
NYMNP	North York Moors National Park
NYMNPA	North York Moors National Park Authority
OMP	Odour Management Plan
PEDL	Petroleum Exploration and Development Licence
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
PROW	Public Right of Way
RDC	Ryedale District Council
RDLCA	Ryedale District Landscape Character Assessment
RLP	Ryedale Local Plan 2002 (saved policies)
SoCG	Statement of Common Ground (Doc.CD/M1)
SoS	Secretary of State



TAGS	Technicians Against Gas Site
UKES	UK Energy Systems Limited
VoP	Vale of Pickering
YHRP	Yorkshire and Humber Regional Plan 2008
ZVI	Zone of Visual Influence
2004 Act	Planning & Compulsory Purchase Act 2004
1990 Act	Town & Country Planning Act 1990

**File Ref: APP/W9500/A/11/2155352**

**Land at Ebberston, and Hurrell Lane, Thornton-le-Dale**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Moorland Energy Limited against North York Moors National Park Authority.
- The application Ref.NYM/2010/0262 is dated 1/04/2010.
- The development proposed is Natural gas production from existing Ebberstone Well site; the construction of two underground gas pipelines from the existing Ebberstone Well site to the proposed Gas Processing Facility; a new access road south of the A170 to the proposed Gas Processing Facility; a Gas Processing Facility at Hurrell Lane, Thornton-Le-Dale; and an Above ground Installation (AGI) connection to the existing National Transmission System (NTS) pipeline to the south of New Ings Lane.

**Summary of Recommendation:** The appeal be allowed, and planning permissions granted.

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**File Ref: APP/P2745/A/11/2155358**

**Land at Ebberston, and Hurrell Lane, Thornton-le-Dale**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Moorland Energy Limited against North Yorkshire County Council.
- The application Ref C3/10/00529/CPO ( NY/2010/0159/ENV) is dated 1/04/2010.
- The development proposed is Natural gas production from existing Ebberstone Well site; the construction of two underground gas pipelines from the existing Ebberstone Well site to the proposed Gas Processing Facility; a new access road south of the A170 to the proposed Gas Processing Facility; a Gas Processing Facility at Hurrell Lane, Thornton-Le-Dale; and an Above ground Installation (AGI) connection to the existing National Transmission System (NTS) pipeline to the south of New Ings Lane.

**Summary of Recommendation:** The appeal be allowed, and planning permissions granted.

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**1. Procedural Matters**

- 1.1 The appeal proposals comprise a single scheme of development extending over land within the area of two planning authorities. It is therefore the subject of two linked appeals. That part of the appeal site falling within the area of NYCC also falls within the area of Ryedale District Council which is also a local authority for that area but not a mineral planning authority.
- 1.2 By letter dated 27 June 2011 the Secretary of State indicated that these are appeals that he considered he should determine himself on the grounds that they involve proposals for development of major importance having more than local significance.
- 1.3 In its committee report of 30 August 2011<sup>1</sup> NYCC set out the following putative reasons for refusal:

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<sup>1</sup> Doc.CD/K10

- 1.3.1 The proposed development would not accord with 'saved' Policy 7/6 of the North Yorkshire Minerals Local Plan (adopted December 1997) in that the Applicant has not demonstrated the existence of an adequate overall development scheme for the development of all proven deposits which have been identified by the applicant as potentially to be served by the gas processing facility on the Hurrell Lane site to justify not only the proposed facility, per se, but also the scale of the facility proposed.
- 1.3.2 The proposed development would not accord with 'saved' Policies 7/7 and 7/8 of the North Yorkshire Minerals Local Plan (adopted December 1997) in that the Applicant has not demonstrated adequate justification for the selection of an open countryside location at the Hurrell Lane site or that the potential for the utilisation of existing surface infrastructure has been adequately considered.
- 1.3.3 The proposed development would present an unacceptable, incongruous feature, industrial in its nature, in the local landscape characterised for its high quality, tranquil, rural unspoilt aspect which significantly adversely affects the open countryside in which this proposal is situated and that, in the absence of any demonstrable overriding argument that this site is the only practicable option, it does not thereby accord with 'saved' Policy ENV3 of the Ryedale District Local Plan (adopted 2002).
- 1.3.4 It is not considered that the development of the Hurrell Lane site can be accommodated without significant detriment to the local landscape in terms of its industrial scale and appearance, the creation of a new vehicular access and top soil storage mounds and the introduction of artificial lighting set against the 'back drop' of the National Park and the Fringe of the Moors Area of High Landscape Value;
- 1.3.5 The proposed landscaping which the Applicant acknowledges as being necessary in order to be able to provide a landscape screen and thereby mitigate as far as practicable the adverse visual impact of the development cannot be secured by the Applicant as it lies outside the Applicant's ownership and/or control and no S106 Legal Agreement to secure such works has been submitted to the County Council for consideration.
- 1.3.6 The adverse impact upon the setting of the North York Moors National Park by dint of its location only 10 metres from the National Park Authority boundary and therefore it is contrary to national planning policy.
- 1.3.7 The mitigation measures proposed by the applicant to limit the impact of the proposed development on the local environment, local landscape and residential amenity are considered insufficient and inadequate and incapable of being delivered on land within the control of the Applicant.
- 1.3.8 The Applicant has not provided sufficient information that would enable an assessment to be undertaken to verify whether or not a noise control scheme with conditions could be imposed that would be adequate to protect the existing amenity of nearby residents and is therefore unacceptable and in conflict with Planning Policy Guidance Note 24 and 'saved' Policy 4/1(e) of the North Yorkshire Minerals Local Plan (adopted December 1997).
- 1.3.9 The impacts on the local community could not be adequately controlled by the imposition of planning conditions to limit the impact of the development

on the local environment, local landscape and residential amenity to such an extent as to allay the perception of fear over the safety of the proposed development in a worst-case scenario emergency event.

- 1.3.10 In the opinion of the County Planning Authority, the applicant has not provided sufficient information with regard to the restoration of the land, either post-operational life or in the event of abandonment, to satisfy the Authority that a suitable restoration of the site can be achieved or secured and thereby the development would be contrary to 'saved' Policies 7/10 and 7/11 of the North Yorkshire Minerals Local Plan (1997).
- 1.3.11 The County Planning Authority considers that insufficient information has been provided by the Applicant to adequately demonstrate that a proven reserve exists to such a scale that is acceptable to outweigh the harm which could potentially occur through the construction and operation of the proposed development.
- 1.4 In its committee report of 15 September 2011<sup>2</sup> NYMNPA set out the following putative reasons for refusal:
- 1.4.1 The applicants have failed to robustly demonstrate that there is significant national need for the gas resources which would outweigh the harm that will be caused to this part of the National Park by the development and is therefore contrary to the Major Development Test set out in Annex 4 of Minerals Policy Statement 1, Core Policy E and the draft National Planning Policy Framework.
- 1.4.2 The applicants have failed to demonstrate that there is a sufficient level of gas resources in the area to justify the construction of a Gas Processing Plant within close proximity to the National Park, which will set a precedent and create perhaps irresistible pressure for a number of further well sites within the National Park in as yet unknown locations, which might have a harmful impact on its character and special qualities and conflicts with Core Policy A.
- 1.4.3 The applicants have not provided robust evidence to satisfy the National Park Authority that there will be no safety risks, noise or light emissions from the development, which may adversely impact the residential amenity of nearby residents living in the North York Moors and is therefore contrary to Development Policy 1.
- 1.4.4 The proposed Gas Processing Plant will cause significant visual harm to the setting and special qualities including dark skies at night and tranquillity of the North York Moors National Park within the wider landscape when looking from the south and thereby conflicts with Core Policy A, the English National Parks and the Broads Circular 2010 and policies 7/6 and 7/7 of the North Yorkshire Minerals Local Plan.
- 1.4.5 It has not been sufficiently demonstrated by the applicant that an alternative site for the proposal could not be both technically and environmentally acceptable as required by Annex 4 of Minerals Policy Statement 1 and Policy 7/7 of the North Yorkshire Minerals Local Plan.

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<sup>2</sup> Doc.CD/K11

- 1.4.6 The applicant has not provided sufficient information with regard to restoration of the land, either post operational life or in the event of abandonment, to satisfy the Authority that a suitable restoration of the site can be achieved or secured, which conflicts with Core Policy A.

## **2. The Site and Surroundings**

- 2.1 The application site has five principal locational elements:
- The existing Ebberston wellsite (approximately 4 kilometres to the north of Ebberston village).
  - The proposed 8.6 kilometre route for two parallel underground pipelines (one being 100mm in diameter and one 300mm in diameter) and the laying of a fibre-optic cable between the Ebberston wellsite and the proposed Gas Processing Facility (with a working width of between 15 and 42 metres).
  - The proposed construction of a new access road off the existing A170.
  - The proposed Gas Processing Facility (GPF) lying to the south-east of the village of Thornton-le-Dale and on land to the south of the public highway, (A170) between Thornton-le-Dale and the village of Wilton;
  - The proposed above-ground installation to provide for a connection to the National Transmission System (NTS) for gas supply.
- 2.2 The Ebberston wellsite is an existing, but capped-off, wellsite located wholly within the boundary of the North York Moors National Park lying on a ridge plateau north of Ebberston village and east of Givendale Head Farm at an Ordnance Survey contour height of over 200 metres
- 2.3 The proposed 8.6 kilometre routes of the two underground pipelines (one being 100mm in diameter and one 300mm in diameter) lie parallel with one another together with a fibre-optic cable and take a north-east south-west route, considered the most direct but practicable by the Applicant, between the existing wellsite and the site of the proposed gas processing facility.
- 2.4 The proposed new access road comprises a slip off the A170 and follows a north-south alignment alongside an existing field boundary from the A170 to the site of the proposed GPF. There presently exists a field gate access at this point joining the A170. This access is typical of that found within this rural area to gain access to the fields beyond.
- 2.5 The proposed GPF, is located on land which is currently in agricultural use at the junction of Hurrell Lane and New Ings Lane to the south-east of the village of Thornton-le-Dale. The application details state that the land covers some 6.5 hectares (including the proposed contractors' compound). The area proposed for the location of the GPF, together with all the other elements, comprises a land take of 56.8 hectares in total. This element of the proposal lies in close proximity to the boundary edge of the National Park at about 20 metres AOD.
- 2.6 The final locational element is the above ground installation (AGI) to connect the GPF to the National Transmission System (NTS) for gas supply. This element lies on land to the immediate south of the main site proposed for the GPF, to the east of Hurrell Lane and south of Ings Lane.
- 2.7 The site lies within a rural area comprising agricultural fields, a number of scattered residential properties, farm holdings and commercial uses. The

villages of Ebberston, Thornton-le-Dale, Wilton and Allerston, and the town of Pickering are located within the vicinity of the proposal.

- 2.8 The northern part of the Appeals site is characterised by upland plateau landscape and areas of undulating land. The arable landscape is on elevated sweeping plateaus and hills, with extensive areas of coniferous plantation, with remnant areas of predominantly ancient semi-natural woodland. The southern part of the application site is characterised by low-lying, flat or gently undulating Vale with land rising gently to the foothills of the North York Moors. Arable farmland is in medium to large size rectangular fields enclosed by low hedges, drainage ditches and dykes. Settlements are concentrated along the main transport routes on higher ground. Views are expansive and typical of those of the Vale of Pickering (VoP).<sup>3</sup>

### **3. Planning Policy**

- 3.1 The statutory development plan comprises the Yorkshire and Humber Regional Plan 2008 (YHRP)<sup>4</sup>, the North York Moors Core Strategy and Development Policies 2008 (NYMCS)<sup>5</sup>, the saved policies of the North Yorkshire Minerals Local Plan 1997 (NYMLP)<sup>6</sup>, and the saved policies of the Ryedale Local Plan 2002 (RLP)<sup>7</sup>.
- 3.2 YHRP policies considered relevant by MEL, NYCC and NYMNPA are RR1 - Remoter Rural Sub Area; E1 – Successful and Competitive Regional Economy; E6 – Sustainable Tourism; E7 – Rural Economy; ENV3 – Water Quality; ENV7 – Agricultural Land; ENV8 – Biodiversity; ENV9 – Historic Environment; and ENV10 – Landscape.
- 3.3 NYMCS core policies considered relevant are A – Delivering National Park Purposes; C – Natural Environment, Biodiversity and Geodiversity; D – Climate Change; E – Minerals and G – Landscape, Design and Historic Assets; and Development Policies DP1 – Environmental Protection; DP2 – Flood Risk; DP3 – Design; DP5 – Listed Buildings; DP7 – Archaeological Assets; and DP23 – New Development and Transport.
- 3.4 NYMLP policies considered relevant are 4/1 – Determining Planning Applications; 4/6a – Nature Conservation and Habitat Protection – Local; 4/10 – Water Protection; 4/14 – Local Environment and Amenity; 4/15 – Public Rights of Way; 4/18 – Restoration of Agricultural Land; 4/20 – Aftercare; 7/5 – Production Wells; 7/6 – Development Scheme; 7/7 – Development of New Reserves; 7/8 – Gathering Stations; 7/10 – Restoration and 7/11 – Retention of Features.
- 3.5 RLP policies considered relevant are EMP3 – Industrial/Business Allocation east of Thornton Road Pickering; EMP11 – Industrial/Business Development in the Countryside; EMP13 – Industrial Buildings; EMP15 – North Yorkshire Power Project, East Knapton; T3 – Access to the Local Highway Network; T4 – Access

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<sup>3</sup> Doc.CD/M1 – Section 2 (SoCG)

<sup>4</sup> Doc.CD/B1

<sup>5</sup> Doc.CD/D1

<sup>6</sup> Doc.CD/C1

<sup>7</sup> Doc.CD/E1

onto 'A' Roads; T11 – Disused Railway Lines; ENV3 – Development in Areas of High Landscape Value; ENV7 – Landscaping; and ENV12 – Sites of Importance for Nature Conservation.

- 3.6 MEL considers the proposals to be in accordance with the saved policies of the NYMLP and the RLP.
- 3.7 National policy considered relevant included the draft NPPF<sup>8</sup>; Presumption in Favour of Sustainable Development<sup>9</sup>; Planning for Growth<sup>10</sup>; English National Parks and the Broads Vision and Circular 2010<sup>11</sup>; PPS1 – Delivering Sustainable Development<sup>12</sup>; PPS1 Supplement – Planning and Climate Change<sup>13</sup>; PPS4 – Planning and Sustainable Economic Growth<sup>14</sup>; PPS5 – Planning for the Historic Environment<sup>15</sup>; PPS7 – Sustainable Development in Rural Areas<sup>16</sup>; PPS9 – Biodiversity and Geological Conservation<sup>17</sup>; PPG13 - Transport<sup>18</sup>; PPS22 – Renewable Energy<sup>19</sup>; PPS23 – Planning and Pollution Control<sup>20</sup>; PPG24 – Planning and Noise<sup>21</sup>; PPS25 – Development and Flood Risk<sup>22</sup>.
- 3.8 National minerals policy statements considered relevant include MPS1 – Planning and Minerals<sup>23</sup> and Practice Guide; MPS2 – Controlling and mitigating environmental effect of mineral extraction<sup>24</sup>; and Annexes 1 & 2 to MPS2<sup>25</sup>.
- 3.9 MEL consider the proposals to be in accord with the national planning policy statements and guidance listed in paras 3.7 and 3.8 above.
- 3.10 Other Government policy statements on energy include the Energy White Paper 2003<sup>26</sup>; Energy Review report 2006 'The Energy Challenge'<sup>27</sup>; Energy White Paper 2007 'Meeting the Challenge'<sup>28</sup>; Energy Statement of Need for

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<sup>8</sup> Doc.CD/A1

<sup>9</sup> Doc.CD/A63

<sup>10</sup> Doc.CD/A64

<sup>11</sup> Doc.CD/A26

<sup>12</sup> Doc.CD/A7

<sup>13</sup> Doc.CD/A8

<sup>14</sup> Doc.CD/A9

<sup>15</sup> Doc.CD/A10

<sup>16</sup> Doc.CD/A11

<sup>17</sup> Doc.CD/A12

<sup>18</sup> Doc.CD/A13

<sup>19</sup> Doc.CD/A44

<sup>20</sup> Doc.CD/A14

<sup>21</sup> Doc.CD/A15

<sup>22</sup> Doc.CD/A16

<sup>23</sup> Doc.CD/A5

<sup>24</sup> Doc.CD/A6

<sup>25</sup> Docs.CD/A68 & A69

<sup>26</sup> Doc.CD/A19

<sup>27</sup> Doc.CD/A66

<sup>28</sup> Doc.CD/A20

Additional Gas Supply Infrastructure 2006<sup>29</sup>; Government response to Wick's Review of Energy Security 2010<sup>30</sup>; DECC Policy Statement – Gas Security of Supply 2010<sup>31</sup>; EN-1 – Overarching NPS for Energy<sup>32</sup>; and EN-4 – NPS for Gas Supply Infrastructure and Pipelines<sup>33</sup>. Other regional policy documents include the Yorkshire & Humber Regional Energy Infrastructure Strategy<sup>34</sup> and the Yorkshire & Humber Regional Economic Strategy 2006-15<sup>35</sup>.

#### **4. Planning History**

##### **4.1 Ebberston Well Site**

4.1.1 Temporary planning permission was granted in December 2007 for the siting and drilling of a borehole with access, exploration, testing and evaluation of hydrocarbons<sup>36</sup>. The site was constructed in 2008 and the well drilled. Planning permission to vary condition 1 to enable the site to be retained for a further 2 years was granted by NYMNPA in 2010<sup>37</sup>. There is no relevant planning history for the remainder of the appeals site.

##### **4.2 Mineral Development in the vicinity of the appeals site**

4.2.1 Ebberston Moor North, Ebberston Common Lane, Snainton. Planning permission was granted in March 2006 for the drilling of an exploratory borehole on behalf of Viking UK Ltd. Following the testing period Viking UK Gas applied for planning permission to enable the remodelling of that existing well site and its retention for a period of 3 years. Planning permission was granted in November 2008.

4.2.2 Locton Compound, Ebberston Common Lane, Snainton. Planning permission was granted in 1969 for gas production on the site of the existing British Gas (Transco) AGI, known as the Locton Compound, immediately to the north of the Ebberstone Moor North well site referred to above. The compound functioned as a pipe-line header and pigging facility gathering gas from the former production wells for onward exportation via pipeline to the former GPF at Outgang Lane, Pickering. The well is no longer operational.

4.2.3 East Knapton Generating Station. Deemed planning permission was granted in 1993 for an electricity generating station at Knapton<sup>38</sup> subject to a S.106 agreement dated April 1992<sup>39</sup>. This requires Kelt UK Ltd. or future owners of the Knapton site to use their best endeavours to ensure gas discovered by other companies in the VoP or adjacent areas is used for electricity generation except where the plant is limited by capacity or commercial terms cannot be

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<sup>29</sup> Doc.CD/A18

<sup>30</sup> Doc.CD/A67

<sup>31</sup> Doc.CD/A41

<sup>32</sup> Doc.CD/A3

<sup>33</sup> Doc.CD/A4

<sup>34</sup> Doc.CD/B4

<sup>35</sup> Doc.CD/B5

<sup>36</sup> Doc.CD/F2

<sup>37</sup> Doc.CD/F3

<sup>38</sup> Doc.CD/F6

<sup>39</sup> Doc.CD/N1



agreed. Planning permission for an extension of time for the continued use of this plant to 2018 was granted in 2006.

## **5. The Proposals**

- 5.1 Although the subject of 2 appeals the proposals comprise a single scheme extending over land within the area of two local planning authorities. MEL is proposing to develop two pipe-lines from the existing Ebberston Wellsite to the proposed GPF at Hurrell Lane, Thornton-le-Dale. Once processed the gas would be fed into the NTS via an AGI and connection into the existing 'Burton Agnes – Pickering No.6 Feeder Pipeline.
- 5.2 As noted in section 2 above there are 5 principal elements to the proposals. The associated works are summarised below. A fuller description is set out in Chapter 4 to the ES<sup>40</sup>.
- 5.2.1 Gas production facilities at the well site will include a separator to separate any produced liquids from the natural gas; facilities for the storing and injecting of methanol at the well site to prevent hydrate formation; and facilities for storing and injecting corrosion inhibitor at the well site to prevent corrosion of the pipelines which could be caused by the wet and sour condition of the gas.
- 5.2.2 The construction of two pipelines from the well site to the GPF at Thornton-le-Dale. This would comprise 1 x 300mm and 1 x 100mm pipeline and a fibre optic cable laid within a 15m – 42m construction working width.
- 5.2.3 A new access road from the A170 to the GPF.
- 5.2.4 The GPF at Hurrell Lane would include the following main processes. Inlet separation equipment to ensure any liquids not separated at the well site are removed; a sweetening plant to remove Hydrogen Sulphide from the gas stream; compressors to increase exported gas pressure to that of the NTS; a hydrocarbon and water dew-point control plant to remove residual water, organic sulphur compounds and heavy hydrocarbons in the gas stream; Gas analysis and metering facilities to monitor gas quality and volume prior to export to the NTS; a liquids stabilisation and storage area for produced liquid (condensate and water) consisting of a 3 phase separator, holding vessels, tanks, pumps and heaters; safety facilities such as a high integrity pressure protection system (HIPPS) for primary over-pressure protection, pressure sensing devices and an enclosed ground flare system; and Fire water storage tanks and pumps.
- 5.2.5 An administration building containing control room, offices, workshop and welfare facilities; a switchgear room; parking facilities for staff; security fences and CCTV facilities around the perimeter of the Hurrell Lane site; associated infrastructure; and 1 x 300mm export pipeline to the NTS above ground installation (AGI).
- 5.2.6 An AGI providing connection to the existing NTS pipeline on land off New Ings Lane.

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<sup>40</sup> Doc.CD/H1

5.2.7 The proposals also set out a framework of features to be retained/enhanced including existing woodland, tree belts and hedgerows, and proposed woodland, standard and hedgerow trees, hedgerows, seeding, reinforced grass roadway and marshland habitat.

## **6. Statement of Common Ground (SoCG) / Other Agreed Facts**

- 6.1 The proposed development will require a Hazardous Substances Consent, an Environmental Permit, and will also be subject to the requirements of the COMAH Regulations<sup>41</sup>. No applications for any other permits or consents have been submitted to the relevant authorities<sup>42</sup>.
- 6.2 The ecological matters addressed in the ES included assessment methodology, baseline data and evaluation, nature and magnitude of potential construction and decommissioning effects on receptors, nature and magnitude of potential operational effects on receptors, mitigation effects, and residual effects. Further field surveys were undertaken post-submission and additional mitigation measures proposed. The matter at dispute is that NYCC and NYMNPA consider that the ecological mitigation measures proposed by the appellant are incapable of being delivered on land within the control of MEL.<sup>43</sup>
- 6.3 The predicted effects of the proposals upon cultural heritage with the application boundary have been assessed in the ES. There would be no direct physical impacts on listed buildings within the application site and surrounding study area. Potential direct effect on archaeological remains would be restricted to the initial phase of construction. Scheduled Monument Consent for the construction of the pipeline across Oxmoor and Givendale Dikes west of Ebberston Lane has been granted by English Heritage. MEL, NYCC and NYMNPA agree that there are no cultural heritage or archaeological reasons for refusing the application<sup>44</sup>.
- 6.4 MEL, NYCC and NYMNPA agree that subject to securing the arboricultural mitigation measures set out in the ES, there are no concerns which raise an objection on arboricultural grounds.<sup>45</sup>
- 6.5 Subject to securing satisfactory soil storage and restoration measures there will be no significant or material impact on agriculture and soils and NYCC and NYMNPA do not raise concerns justifying an objection on these grounds.<sup>46</sup>
- 6.6 Both water quality in the area, and ground water, are considered to be of high importance. The proposed pipeline route and the Hurrel Lane site lie in the zone of lowest flood risk (Zone 1). The EA has indicated conditions to be imposed to make the development acceptable to the agency. The ES sets out various mitigation measures at both construction and operation stages.

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<sup>41</sup> Doc.CD/A35

<sup>42</sup> Doc.CD/M1 – para.5.11

<sup>43</sup> Doc.CD/M1 – Section 6

<sup>44</sup> Doc.CD/M1 – Section 7

<sup>45</sup> Doc.CD/M1 – Section 9

<sup>46</sup> Doc.CD/M1 – Section 10

Subject to securing those measures NYCC and NYMNPA do not raise water resource or flood risk reasons for refusing the appeals.<sup>47</sup>

- 6.7 Baseline conditions dealing with geology and associated matters were addressed in the ES and mitigation measures proposed. MEL, NYCC and NYMNPA agree that, subject to securing the measures set out, there are no issues of concern regarding geology which give rise to an objection.<sup>48</sup>
- 6.8 Although a matter of concern to many local residents, NYCC and NYMNPA do not raise concerns sufficient to justify an objection to the proposal on socio-economic grounds. They consider that the potentially harmful effect of the proposed development on tourism to be likely to be off-set by the benefits resulting from the employment opportunities.<sup>49</sup>
- 6.9 The greatest impact on the transport network will occur during the construction phase. There is likely to be a 1% increase in overall traffic flows at the peak of construction, and a 7% increase in HGV traffic. Maximum daily traffic movements during the operational phase are expected to be a total of 12 two-way movements per day. Following discussion with the Highway Authority an amended proposed right-turn with refuge on the A170 has been agreed<sup>50</sup>. A S.278 agreement will be required to secure implementation. Subject to securing that agreement NYCC and NYMPPA have agreed that there are no concerns to justify objecting to the application on highway or traffic grounds.<sup>51</sup> However, this agreement does not extend to the use of Hurrell Lane for access for plant to the southern end of the GPF site at the start of the construction phase and that matter is addressed elsewhere in this report.
- 6.10 Prior to the inquiry it was agreed that noise disturbance as a result of the construction phase of the various elements of the proposals could be made acceptable through the imposition of and compliance with appropriate conditions.<sup>52</sup> However, at the opening of the inquiry NYCC and NYMNPA remained concerned that operational noise from the GPF had the potential to give rise to nuisance, particularly at night. Further discussions took place outside inquiry time leading to an agreement<sup>53</sup> between Mr Bennett of ACIA Engineering Acoustics for MEL and Mr Richmond of RDC EHO for NYCC and NYMNPA. The agreement states that *'In the light of the additional information and the agreement on (conditions to be imposed) Mr Richmond formally withdraws his objection on the understanding that should the (Secretary of State) be minded to grant planning permission for the development the above conditions will be (imposed)*. The agreed conditions are included as conditions 32.1 – 32.4 in the draft list of conditions addressed at Section 13 of this report.

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<sup>47</sup> Doc.CD/M1 – Section 11

<sup>48</sup> Doc.CD/M1 – Section 12

<sup>49</sup> Doc.CD/M1 – Section 13

<sup>50</sup> Doc.CD/H21 – Plan E471/010 Rev.B

<sup>51</sup> Doc.CD/M1 – Section 14

<sup>52</sup> Doc.CD/M1 – Section 15

<sup>53</sup> Doc.CD/M2

- 6.11 A site specific assessment of potential emissions to air from the GPF has been undertaken and 16 sensitive receptors identified. A package of mitigation measures are proposed and a draft Odour Management Plan was submitted in May 2011. Issues of odour and impact on the amenities of both local residents and tourists are of great concern to interested parties. However, NYCC and NYMNPA do not raise concerns sufficient to justify a reason for refusal on these grounds.<sup>54</sup>
- 6.12 Consideration has been given to the potential effects of artificial lighting on ecological receptors and on the night-time scene. A package of mitigation measures are proposed which are stated to have the residual effect of reducing the effect of construction lighting to a negligible to minor negative effect, and operational lighting to a negligible effect. MEL consider that the mitigation measures proposed do not give rise to a concern that merits an objection to the proposal. At the opening of the inquiry NYCC and NYMNPA remained concerned that the mitigation measures proposed for the construction and operation of the gas processing facility would result in lighting effects adversely impacting on the landscape of the area.<sup>55</sup>
- 6.13 General matters of fact not in dispute include the need for an increase in gas supply infrastructure in the UK; the fact that, like other minerals, gas can only be extracted where it exists in the geological strata; and if the proposal is permitted, the route of the gas pipeline between the Ebberston Well Site and the GPF at Hurrell Lane and the connection to the NTS south of New Ings Lane.<sup>56</sup>
- 6.14 Following detailed discussions between representatives of MEL and NYCC, which included a view of consequence analysis by Gexcon and information provided by the appellant, NYCC reached the view that MEL is undertaking appropriate assessments of the safety risks from the Ebberston and Hurrell Lane sites. No opinion is given on behalf of MEL on risk to life as it is considered that this will be given by the duty holder (MEL) as part of due process involving other regulatory requirements and regimes. NYCC's objection on the grounds of MEL's failure to provide adequate information on safety risks was withdrawn<sup>57</sup>

## **7. The Case for Moorland Energy Limited (MEL)**

### Introduction

- 7.1 This is an application for an important piece of energy infrastructure development; indeed, by letter dated 27 June 2011 the Secretary of State directed that he determine the appeal as it involved proposals for development of major importance having more than local significance.
- 7.2 Infrastructure projects often involve a balance between national or regional benefits and, what are sometimes, very local impacts. Most people enjoy the

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<sup>54</sup> Doc.CD/M1 – Section 16

<sup>55</sup> Doc.CD/M1 – Section 17 - para.17.13

<sup>56</sup> Doc.CD/M1 – Section 19

<sup>57</sup> Doc.CD/R2

very real benefits of infrastructure including roads, sewage treatment works, railway lines and power stations, despite such infrastructure imposing some impacts on those that live near it. It is, of course, the function of the planning system to balance wider benefits to society against those local impacts.

- 7.3 This project is a gas production scheme, which is brought forward at a time of very real stress within the UK's energy market. Government support for energy projects, and in particular those that recover indigenous supplies, is clear. Gas production, like the recovery of other mineral resources, is highly constrained locationally. It just so happens that beneath the NYMNP there are substantial natural gas reserves. Government has granted MEL a Petroleum Exploration and Development License (PEDL) to recover the reserves within its license area and that is what it is seeking to do in this development project.
- 7.4 This application also comes forward at a time of national economic stress, when the Government has made absolutely clear its intention to foster economic growth. It is all too easy for local authorities and others to pay lip service to such factors, but then focus almost entirely on the potential environmental impacts in their own areas. On a fair reading of the officers' reports in this matter, the Secretary of State may feel that that is exactly what has happened here. It will be important, however, for the decision-maker in this case to take a more strategic view of the planning balance to be drawn.
- 7.5 The benefits of the proposed project are, of course, not confined to gas users, as much of the UK's electricity is now produced in CCGT plant. The Secretary of State will also be aware that CCGT helps the UK's move to a low carbon economy by supporting the greater use of intermittent wind power.

The outstanding issues

- 7.6 This is an application where the Appellant has worked hard to resolve or mitigate potential issues before making its application and continued to do so after it had made its application. There was an extensive programme of pre- and post-application engagement with the Authorities and local community. The first meeting with the Authorities was held over 12 months before MEL made its application and, after it had made its application, MEL continued to try to meet the Authorities every request for further information.
- 7.7 Working relations with the officers was good and MEL was very hopeful of receiving a positive officer recommendation on the applications. On a number of occasions MEL extended the time for the Authorities' consideration of the application and, indeed, only appealed for non-determination some 14/15 months after making the application.
- 7.8 Part of the extensive pre- and post-application negotiations with officers included identifying and assessing additional 'alternative' sites for the GPF, as can be seen from the Addendum to Chapter 5 of the ES.<sup>58</sup> Indeed, the company started out with a proposal to locate the GPF close to its Ebberston South wellsite, but moved it out of the National Park at the request of the

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<sup>58</sup> Doc.CD/H10

NPA<sup>59</sup>. The company's 'alternative' site search was itself part of its approach to avoiding or mitigating potential environmental impacts.

- 7.9 It is something of a testament to those efforts that most issues had been resolved by the time that the Authorities came to identify their 'putative' reasons for refusal. There were no reasons for refusal in relation to Odour; Nature conservation; Archaeology; Heritage; Agricultural land; Flood risk; Safety; Impact on tourism; and Highways and transport.
- 7.10 The two authorities' putative reasons for refusal were confined to the following issues: Policy; Sufficiency of need and benefits; Landscape and visual impact (including lighting); Noise; Perception of risk; Residential amenity; Restoration; and Alternative sites. Even within this list, however, many of the issues were tightly confined and others were subsequently resolved before evidence was called.
- 7.11 The issue of 'alternatives' was confined to the site of the GPF only. It was not suggested, by either of the Authorities, that there might be any better site for the wellsite or the pipeline between the wellsite and the GPF.
- 7.12 Noise was resolved during the inquiry by the imposition of a condition proposed by MEL's consultant Mr Bennett<sup>60</sup>. Safety was never a reason for refusal, but 'perception of risk' was resolved during the inquiry following a meeting between NYCC's witness Mr Hughes and MEL's consultant Mr King<sup>61</sup>. Residential amenity as an issue, by a process of elimination, became confined to an aspect of 'visual impact' and is dealt with as such hereafter.
- 7.13 It is important to note that none of the NYMNPA reasons for refusal relate to the development within that authority's area, that is, the Ebberston South wellsite or the pipeline. The NYMNPA's putative reasons for refusal all relate to the Hurrell Lane GPF, which is outside its area. The NYMNPA's officers' report makes clear that the development within its boundaries would not significantly harm the character of the National Park<sup>62</sup> and does not fail the PPS7 paragraph 22 'major development test'<sup>63</sup>.
- 7.14 Thus the 'live' issues before the inquiry became Policy; Sufficiency of need and benefits; Landscape and visual impact (including lighting) at the GPF; Restoration at the GPF; and Alternatives sites for the GPF.
- 7.15 Even within this list, MEL is surprised that the Authorities raised the issue of site restoration, as this is always dealt with by way of condition on minerals sites in both the NYMNPA and NYCC areas. Similarly, the Appellant was surprised at NYCC's attempts to challenge its evidence that there would not be significant tourism impacts, in the light of the ringing endorsement of its tourism report by the relevant officer<sup>64</sup> and the absence of any reason for refusal mentioning tourism.

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<sup>59</sup> Doc.CD/H3 – Appendix 5.1

<sup>60</sup> Doc.CD/M2

<sup>61</sup> Doc.CD/R2

<sup>62</sup> Doc.CD/K11 paras.8.2.1 + 9.1.2 H10

<sup>63</sup> Doc.CD/K11 para.13.4

<sup>64</sup> Doc.CD/1 – HLSC23

- 7.16 It is worth noting in the context of MEL's very extensive efforts to try to resolve issues with officers that none of the officers at NYCC or NYMNPA who actually dealt with the application were put forward to give evidence. Mr Walker and Mr Goodchild are consultants at Fairhurst and only became involved in August 2011, and Ms Skelly, although a NYMNPA officer, only became involved in this matter in July 2011; in all cases after the appeal had been made for non-determination. Mr Richmond is an RDC officer, and was involved in discussions with MEL, but was not called as a witness as noise issues were agreed between the parties. What is clear is that the Authorities did not call the officers who were involved throughout the consideration of the application to defend the members' decision on the limited range of issues that remained outstanding. By contrast all of the witnesses called by MEL were involved in the earlier stages of the application.
- 7.17 It is recognised that AGHAST raised some additional issues not pursued by the Authorities at the inquiry, including odour and perception of risk. MEL is satisfied, however, that the points raised by the residents' group do not undermine the technical resolution of the issues that it reached with the Authorities.

#### Policy context

- 7.18 It is important to say something first about the change in the whole approach to development control, or development management as it is more appropriately now called, that the current Government is seeking to bring about. It is necessary to do this because there appears to be a very real sense in which the two Authorities just don't seem to 'get it'.
- 7.19 In March 2011, the Minister of State for Decentralisation issued a Written Ministerial Statement<sup>65</sup> to inform decisions that LPAs are taking in supporting sustainable development, both through plan production as well as development management. The Statement is a material planning consideration.
- 7.20 The Statement refers explicitly to the importance that the Government attaches to the planning system in supporting and enabling economic growth. It states, in terms, that *"The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy."*
- 7.21 The Authorities whole handling of this application was a very long way from the Government's expectation in the Minister's statement. Little weight appears to have been given to the need for the development and the economic benefits that it will bring and all too much weight was given to emphasizing the rather modest environmental impacts.
- 7.22 The Ministerial Statement goes on to stress that, when deciding whether to grant planning permission, local planning authorities are expected to support enterprise and facilitate economic and other forms of sustainable development.

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<sup>65</sup> Doc.CD/A48

In particular, in the context of the current appeal, local planning authorities are supposed to:

- i) consider fully the importance of national planning policies aimed at fostering economic growth and employment;
- ii) consider the range of likely economic, environmental and social benefits of proposals, including long term or indirect benefits such as increased choice, more viable communities and more robust local economies (which may include job creation);
- iii) be sensitive to the fact that local economies are subject to change and take a positive approach to development where new economic data suggest prior assessments of needs are no longer up-to-date; and,
- iv) ensure they do not impose unnecessary burdens on development.

- 7.23 The approach of the Authorities in this case has been very far from this ideal. The officers' reports<sup>66</sup> pay little more than 'lip service' to the need and economic benefits of the development before returning to a 'business as usual' analysis of all the reasons why planning permission should not be granted. NYCC regarded the economic benefits of the development as '*neutral*'.<sup>67</sup>
- 7.24 UK energy policy has evolved rapidly over the last decade to reflect the decline in UK Continental Shelf (UKCS) and Morecombe Bay gas supplies and the UK's move from being a net exporter of gas to its current and future position as a net importer.
- 7.25 Government policy is reflected in a number of statements, but the broad themes can be summarised as follows:
- a. Energy White Paper 2003<sup>68</sup> - the Government is keen to encourage investment in existing and new fields;
  - b. The Energy Challenge 2006<sup>69</sup> - making efficient use of the UK's energy reserves brings benefits and - individual energy projects are part of large national systems that provide benefits enjoyed by all communities;
  - c. Energy White Paper 2007<sup>70</sup> - highlights the risks to the UK from energy imports;
  - d. Government response to Malcolm Wicks MP's Review 2009<sup>71</sup> (CD A67) - it is very important for the UK's security of supply that we maximise economic production from our own reserves and - the Government is committed to maximising the economic production of the UK's oil and gas reserves; and,
  - e. Gas Security of Supply 2010<sup>72</sup> - A key element of the Government's overall energy framework is that economic production from indigenous resources is maximized.

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<sup>66</sup> Docs.CD/K10 + K11

<sup>67</sup> Doc.NYCC/4/2 para 7.71

<sup>68</sup> Doc.CD/A19 – para.6.37

<sup>69</sup> Doc.CD/A51 – paras.4.14 + 7.6

<sup>70</sup> Doc.CD/A20 – paras.4.43/44

<sup>71</sup> Doc.CD/A67 – paras.66 + 68/9

<sup>72</sup> Doc.CD/A41 – paras.2.10/11



- 7.26 The written Ministerial Statement of 16 May 2006 on the need for additional gas supply infrastructure (together with the note placed in the Libraries of both Houses)<sup>73</sup> is a particularly important piece of policy guidance in the current context. It makes a number of points, including the following:
- a. Securing reliability of energy supplies is integral to UK energy policy;
  - b. Government *“warmly welcomes all solutions, large and small, onshore and offshore, which help maintain and improve reliability of energy supplies”*;
  - c. It is too easy to suggest that need can be met in some other way; and,
  - d. Developers are best placed to make judgements about technical feasibility and economic viability of individual projects.
- 7.27 The energy policy context to this appeal is further reinforced by the overarching energy National Policy Statement (NPS) EN-1<sup>74</sup>. Para.1.2.1 of EN-1 states that the NPS is likely to be a material consideration in determining planning applications under the Town and Country Planning Act 1990 and that is clearly the case in relation to this appeal. EN-1 makes clear the ‘urgency’ of the need for additional energy infrastructure and, in particular, that this is material when considering ‘alternatives’<sup>75</sup>.
- 7.28 National energy policy is clear and completely supportive of this proposed development. Of course there must be a balance against potential environmental impacts, but as the draft NPPF makes clear at para.103, in relation to mineral development: *“When determining planning applications, local planning authorities should: give significant weight to the benefits of the mineral extraction, including to the economy ...”*.
- 7.29 The significant weight that needs to be given to the need for this energy project, in the national interest, is absolutely central to the planning balance that will have to be drawn. One cannot help detect a sense of frustration in Government when, having made clear in the draft NPPF that *“significant weight should be placed on the need to support economic growth through the planning system”* (para 13) it needs to exhort local planning authorities to *“plan positively for new development, and approve all individual proposals wherever possible”* (para 14). The Authorities’ response to the economic policy issue in this case is completely inadequate and has led to a fundamental failure to properly balance need and benefits on the one hand, against environmental impacts on the other.
- 7.30 This wider economic, and in particular energy policy, context is material when coming to consider the ‘development plan’. MEL accepts, of course, that planning decisions have to be taken within the legal framework of section 38(6) of the Planning and Compensation Act 2004, namely that *“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”* In this case,

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<sup>73</sup> Doc.CD/A18

<sup>74</sup> Doc.CD/A5

<sup>75</sup> Doc.CD/A3 – para.4.4.3

however, the other 'material considerations' include not only the wider economic policy context but the antiquity and relevance of the development plan policies themselves.

- 7.31 The NYMLP<sup>76</sup> was adopted in 1997 and was prepared in the mid-1990s. Within the plan, the Authorities seek to rely principally on 'saved' policies 7/6, 7/7 and 7/8, relating to oil and gas development. The policies in the plan are, however, some 14 years old and long pre-date the emergence of current UK energy and economic policy. The GOYH letter of 17 September 2007 'saving' those policies<sup>77</sup> made clear that the fact that they were saved did not mean that the Secretary of State would have endorsed them as new policies in 2007 and, furthermore, where they were adopted some time ago, that new national and regional policies would be accorded considerable weight in decision-making. In the context of their age and completely different national energy and economic policy context, it is clear that the policies of the NYMLP should be accorded little weight in the present case.
- 7.32 The position in relation to the RLP<sup>78</sup> is not materially different. This plan was adopted in 2002, again with the policies having been prepared even earlier. The GOYH letter of 17 September 2007<sup>79</sup> (CD E3) is in the same terms as the NYMLP and the same overall conclusion can be drawn concerning the weight to be attached to the plan's policies.
- 7.33 It is also important to note that the very relevance of some of the NYMLP policies is far from clear. There has been a marked tendency in this case for each of the two authorities to apply its own policies to development in the other authority's area. This has seen the NYMNP applying the National Park's 'major development test'<sup>80</sup> to the development at Hurrell Lane, which is outside the National Park, and the NYCC applying the NYMLP policies 7/6 and 7/7, which relate to "*commercial production*" from a gasfield<sup>81</sup>, and "*development of oil or gas reserves*"<sup>82</sup>, to the production at the Ebberston South wellsite, which is in the National Park and not NYCC's area. Whilst the draft NPPF urges authorities to cooperate, this cannot extend to applying one authority's policies to development in another authority's administrative areas.
- 7.34 With respect to policy 7/6 - Development Scheme, which seeks the production of a '*development scheme*' relating to all 'proven reserves' within a gas field, the gas field in this case is the Ebberston Moor gas field, which is wholly within the National Park. In any event, so far as NYCC's witness was aware, a 'development scheme' had never been produced for any gas field within NYCC's area and it is not even clear who was to produce such a scheme, NYCC or an individual developer. Indeed, because of the Petroleum Exploration and Development License (PEDL) system, any single PEDL owner will not know the reserves within any other PEDL owner's license area and so could never be in a

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<sup>76</sup> Doc.CD/C1

<sup>77</sup> Doc.CD/C2

<sup>78</sup> Doc.CD/E1

<sup>79</sup> Doc.CD/E3

<sup>80</sup> Doc.CD/A11 – PPS7 – para.22

<sup>81</sup> Policy 7/6

<sup>82</sup> Policy 7/7

position to provide a 'development scheme' for an entire gasfield showing all 'proven reserves'. To refuse planning permission on this basis would be, effectively, to frustrate all future gas development in the Ebberston Moor gasfield.

- 7.35 MEL has, however, tried to give an indication of the levels of potential reserves within the wider Ebberston Moor gasfield and has said that it will offer terms to Viking / Third Energy, the other PEDL owner at Ebberston Moor, to allow it to recover its stranded reserves through MEL's proposed new infrastructure<sup>83</sup>. That is in the interests of MEL and the other PEDL owner and, furthermore, the wider national interest in seeking to recover indigenous gas reserves. In any event, even if Policy 7/6 were to apply to the Ebberston Moor gasfield, the proposed development complies with the policy<sup>84</sup>.
- 7.36 Policy 7/7 -Development of New Reserves, relates to "the development of oil or gas reserves as yet undiscovered", and states that planning permission will only be granted where "*development utilises existing available infrastructure or pipelines*". In the present case it is clear that the oil or gas reserves are at Ebberston Moor and so not within the NYCC area. Even if the meaning of the policy were stretched to include the gas processing facility at Hurrell Lane, which more obviously falls within the terms of Policy 7/8 - Gathering Stations, Policy 7/7 only requires a developer to utilise "*available*" existing infrastructure, and only then when it would be technically impractical or environmentally unacceptable to do otherwise.
- 7.37 The Authorities seek to rely on Policy 7/7 to require MEL to come up with an alternative development proposal at Knapton. MEL's point is a simple one – there is no 'available' "*existing*" infrastructure at Knapton that could be used to supply gas to the National Transmission System (NTS). Knapton is an old style 'open-cycle gas turbine' power station supplying electricity to the grid under contract to Scottish Power; it is not a gas processing facility capable of supplying treated gas to the NTS. Policy 7/7 does not require MEL to supply gas to the existing power station at Knapton, which would be a completely different form of development to that proposed by MEL. MEL has sought to comply with the broad spirit of Policy 7/7 by using the existing Ebberston South wellsite, which is not in NYCC's area, and the NTS, which is. Insofar as it applies to the development, MEL has complied with Policy 7/7<sup>85</sup>.
- 7.38 Policy 7/8 (Gathering Stations), relates to what are called 'gathering stations', and makes is clear that planning permission will only be granted where "*the development is located on land allocated for industrial use and/or where it is associated with rail or waterway transport*", unless such development would be technically impracticable or environmentally unacceptable. Although the term 'gathering station' and the reference to rail or waterways transport are rather out-dated, MEL accept that this policy was probably intended to apply to development such as the GPF. However, there is no allocated industrial site

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<sup>83</sup> Doc.MEL/1/2 para.3.3.12.

<sup>84</sup> Doc.MEL/7/2 para.8.50.

<sup>85</sup> Doc.MEL/7/2 para.8.65.

available for the GPF and none has been suggested by NYCC. It is concluded that the proposed development complies with Policy 7/8<sup>86</sup>.

- 7.39 Overall, and having reviewed the above and other development plan policies, it is concluded that the proposed development complies with development plan policy<sup>87</sup>. That is a conclusion consistent with NYCC's principle policy officer for economic and rural services who stated in an internal memo that *"On balance therefore I have no strategic policy objections to the proposed development"*<sup>88</sup>; a conclusion not drawn to members attention in the NYCC Officers' report.
- 7.40 MEL also has considerable concerns about the way that NYMNPA has applied the 'major development test' in relation to the proposed development. It is clear that the 'major development test' in PPS7 applies to development 'within' a National Park. That approach is consistent across all policy documents that refer to the 'major development test'<sup>89</sup>. In the present case the NYMNPA has accepted that those parts of the development within the National Park comply with the 'major developments test', but would have refused planning permission on the 'major development test' for that part of the development 'outside' the National Park<sup>90</sup>.
- 7.41 The 'major development test' requires a developer proposing development 'within' a National Park to consider *"the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way"*. When asked to move the proposed 'downstream' gas infrastructure to a site outside the National Park that is exactly what the Appellant did. Putative reason for refusal 5, however, then applies the 'major development test' to the relocated GPF site at Hurrell Lane, which is outside the National Park. Thus the NYMNPA would have refused planning permission for development outside the National Park on the grounds that it was not *"outside the designated area"*. This approach is incoherent.
- 7.42 The Authorities' approach to the landscape and visual impact policy test applying to development outside a National Park is also confusing. The RSS for Yorkshire and Humberside states that *"Development in areas adjacent to the National Parks and Area of Outstanding Natural Beauty must not prejudice the qualities of the designated area."*<sup>91</sup> This is consistent with the approach in NPS EN-1 which makes clear that *"The duty to have regard to the purposes of a nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The aim should be to avoid compromising the purposes of designation and such projects should be designated sensitively given the various siting, operational, and other relevant constraints."* (emphasis added).<sup>92</sup> Para 5.9.13 states that *"The fact that a proposed project will be visible from within a*

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<sup>86</sup> Doc.MEL/7/2 para.8.68

<sup>87</sup> Doc.MEL/7/2 para.10.9

<sup>88</sup> Doc.CD/I – HLSC11

<sup>89</sup> Docs.CD/A5 – para.14 + CD/A26 – para.31

<sup>90</sup> Doc.CD/K11 – paras.13.4 + 13.5 and NYMNPA putative reasons for refusal 1 and 5.

<sup>91</sup> Docs.CD/B1 – para.10.58

<sup>92</sup> Docs.CD/A3 – para.5.9.12

*designated area should not in itself be a reason for refusing consent.*" These policy statements very much reflect the approach that MEL has taken to the consideration of landscape and visual impacts for the GPF, which is outside the National Park but close to its boundary.

- 7.43 MEL has been critical of the Authorities' use of the concept of the 'setting' of a National Park. Whilst this term is familiar in relation to Listed Buildings and Conservation Areas, it has no legal or national policy provenance in relation to National Parks. If the Authorities' use of the term means nothing more than that the decision-maker should consider the indirect landscape and visual effects of a development outside but near to a National Park, then there is no difference between the parties; that is exactly the approach MEL has taken. If it goes beyond that, however, and seeks to apply some form of policy 'buffer zone' outside the National Park, then MEL argues that such an approach is wrong and, indeed, contrary to the guidance in PPS22<sup>93</sup> (which applies specifically to renewable energy projects, but represents a wider principle).
- 7.44 As well as being outside the National Park, the GPF is also outside the Wolds and Fringe of Moors AHLV. The policy test for development 'within' such an area includes consideration of whether development would "*materially detract*" from the special scenic quality of the landscape. For development outside such an area, there is no direct policy test although it is clearly material to consider whether the development has an indirect effect on the AHLV.

Sufficiency of need and benefits

- 7.45 Government energy policy is strongly supportive of additional energy infrastructure projects in general and projects to maximise the recovery of indigenous gas supplies in particular. Within that context, Government has made it clear that it 'welcomes' all solutions "*large and small*"<sup>94</sup>.
- 7.46 MEL's evidence<sup>95</sup> outlines the 'proven and probable' (P2) technical reserves in the Ebberston South well number 1 (ES-1) which is included within the planning application the subject-matter of this appeal. These amount to some 20.17 billion cubic feet (bcf) of gas at standard pressure. Depending on the average daily flow rate assumed it is considered that this reserve alone will amount to some 5-8 years production. For MEL it was made clear, on more than one occasion, that the proposed development project is viable on the basis of this quantity of development and will proceed if planning permission is granted.
- 7.47 Mr Erasmus' Table 2 also highlights the likely technical reserves with a two well development at the Ebberston South wellsite. A second well would push the P2 technical reserves up to 28.2 bcf and further extend the productive life of the development. MEL would have to make a further planning application for a second well at the Ebberston South wellsite, but as was made clear, a second well would involve very little additional above ground infrastructure.

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<sup>93</sup> Docs.CD/A44 – para.14

<sup>94</sup> Doc.CD/A18

<sup>95</sup> Doc.MEL/1/2 para.3.3 + Table 1

- 7.48 In addition to the technical reserves, shown in Table 2, MEL believes that there are, potentially, significant accumulations of gas remaining and currently stranded in the adjacent Ebberston Moor structure on PL077, which is owned by Viking UK Gas Limited (and recently acquired by Third Energy Limited). These resources have remained stranded since production from the Lockton wells stopped in the early 1970s.
- 7.49 The PL077 reserves do not belong to MEL and the development and recovery of such reserves is entirely a matter for Third Energy. However, as made clear, MEL would offer Viking / Third Energy terms to transport the PL077 gas through MEL's pipeline and to process such gas in the Hurrell Lane GPF.
- 7.50 Whilst MEL cannot ask the Secretary of State, in considering the proposed development, to take account of the benefits of development that is not included in its current planning application, it does say that the Secretary of State should take account of the opportunity that the proposed development presents to facilitate the recovery of further reserves as set out in Tables 2 and 3<sup>96</sup>. Such reserves would be likely to give the whole development a production life of approaching 20 years. For that reason, MEL's Environmental Statement has assessed the impacts of the development on a 25 year life, although it has said that it would be content to have a temporary planning permission for a period of 20 years.
- 7.51 The Authorities have been keen to understand the relationship between the average flow from ES-1 and the maximum design rating for the GPF. MEL expects ES-1 to have an average flow rate of 12-15 MMSCFD, although the actual flow rate would be expected to vary between 5 and the high 20s MMSCFD depending on the time of year and demand. This is perfectly consistent with a design rating for the GPF of 40 MMSCFD as, first, one would not want to run the GPF at full capacity and, secondly, it gave the GPF the ability to handle flows from more than just the ES-1 well, should further production be granted planning permission within the Ebberston Moor gasfield. It was also made clear that the additional capacity made little difference to the size of the equipment at the GPF, but that the design of the GPF was such that it would not be possible to vary its capacity later. This is clearly prudent planning and consistent with an objective of minimizing any proliferation of GPF facilities within or adjacent to the National Park.
- 7.52 The Ryedale Gas Project would make a small but "*significant*" contribution to meeting the UK's energy needs. Whilst it is, of course, accepted that this project alone only represents a small proportion of the UK's overall energy demands, it is nevertheless still a significant contribution. Calculations amended to reflect likely average flow of 12-15 MMSCFD give an approximate annual value of the gas produced from ES-1 of some £37.5m. Annual production at an average flow rate of 15 MMSCFD would supply the annual energy needs for more than 75,000 dwellings. The UK's energy needs will need contributions from many sources, as the Government says, "*large and small*".
- 7.53 In addition to helping to meet national need, the proposed project also brings very real regional and local benefits. MEL estimates that the construction phase of the development will involve approximately 150 people of various

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<sup>96</sup> Doc.MEL/1/2 Tables 2+3

skills<sup>97</sup>. While it can be expected that the construction sub-contractors are likely to have their own, skilled workforces who will come to the area from elsewhere, it is also likely that they will recruit in the local labour market for those jobs that do not warrant them maintaining a permanent workforce or are non-skilled or temporary in nature.

- 7.54 The operations phase of the project will create new, long-term employment for at least 23 people initially<sup>98</sup>. Whilst MEL accepts that some of these jobs will also require specialist skills and, therefore, are likely to be recruited from outside the Ryedale District area, it is also the case that other jobs are likely to be filled from the local labour market. Furthermore, MEL is undertaking to offer a number of apprenticeships that will be open to young people, including those living locally, who wish to work in the oil and gas industry.
- 7.55 These new jobs are an important benefit of the proposed development, and never more so than at a time of national economic stress. These benefits should weigh heavily in the overall planning balance.
- 7.56 Mr Green's Table 1 sets out his estimate of the direct spend within the local economy for the forecast employment at the project during its planning, construction and operational stages (for the operation stage Mr Green worked on a range of 20-25 permanent jobs at an average salary range of £23,000 to £25,000 over 10 years). On that basis, Mr Green calculates the total for all three stages at between £6,861,007 - £8,904,645.
- 7.57 It is also appropriate to apply a multiplier to this direct expenditure to allow for money being re-spent in the local economy. Mr Green has used a low multiplier of 1.25 giving a total direct and indirect expenditure of between £8,576,259 and £11,130,806. This represents a substantial economic boost for the local economy.
- 7.58 In addition, Mr Green also supplied figures for approximate anticipated tax revenue that will be derived from the proposed Ryedale Gas Project. During the operational phase of the development, the corporation tax, value added tax and employers NIC and social security payments for the scheme would total in excess of £73m over 10 years<sup>99</sup>.
- 7.59 Mr Green also considered the potential for the project to cause an adverse impact on local tourism businesses. Mr Green makes clear that there is no standard methodology for estimating the impacts of any given development on tourism and he has, therefore, adopted a method that his firm, Bowles Green Limited, has already used in connection with other gas industry projects. In broad terms Mr Green:
- a. Reviewed tourism policies and identified any possible negative impacts;
  - b. Consulted with key organisations involved in the management of tourism in the area;
  - c. Consulted with a sample of tourism businesses in the area;
  - d. Researched the impacts of similar developments elsewhere; and,

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<sup>97</sup> Doc.MEL/1/2 para.13.2.2

<sup>98</sup> Doc.MEL/1/2 para.13.2.3

<sup>99</sup> Docs.CD/O5

e. Considered the evidence and estimated the likely impacts.

- 7.60 MEL submitted a report from Bowles Green as part of its application material, in response to concerns about any impact on tourism. This report was welcomed by the Authorities. The NYMNPA officers' report of 21 July 2011 concluded that it had not been demonstrated that the proposed development would have a significant detrimental effect on the rural economy<sup>100</sup>. The relevant NYCC officer considered that long lasting and serious negative effects of the development on tourism would be "*negligible*"<sup>101</sup>. He also described the Bowles Green report as "*a very good report*".
- 7.61 Mr Green concludes that:
- a. The Ryedale Gas Project (including mitigation and management measures) as described in the planning application is unlikely to have a significant negative impact on tourism in the Thornton-le-Dale area;
  - b. Any negative impacts would be limited to a small number of businesses located in close proximity to the Hurrell Lane Plant and to businesses more widely during limited periods of the construction phase; and,
  - c. These negative impacts are likely to be very small when compared to the estimated economic impact of planning, construction and ten years of operation, which would be between £8.5 and £11 million.
- 7.62 Although NYCC sought in cross-examination to challenge those conclusions on tourism impacts any suggestion that there would be significant adverse impacts was not consistent with the comments of the relevant NYCC officer and was not based on any substantive evidence on its behalf. For NYCC there had been the simple statement that: "*There is also a counter argument that the present local economy along with employment opportunities, a lot of which are based on tourism, will be affected negatively by the proposed development.*" Based on this simple assertion it was concluded that "*NYCC has, therefore, taken the view that the economic argument with regard to the Ryedale Gas Project is neutral.*"<sup>102</sup>. This conclusion is completely lacking in balance and is at odds with the conclusions of the relevant officer that "*The overall proposal has positive economic impacts ...*"; a conclusion, moreover, that was not reported to members in the Officer's report.
- 7.63 MEL submits that the project brings substantial national, regional and local economic benefits. It is clear from national planning policy that significant weight should be attached to such benefits and that they should weigh heavily in the overall planning balance.

Landscape and visual impacts (including lighting)

- 7.64 It is important to note that landscape and visual impact (including lighting) is now the only outstanding 'environmental' issue that the Authorities say should be a basis for refusing planning permission for the proposed development.
- 7.65 Moreover, even in relation to that issue the Authorities do not object to the landscape and visual impact of the Ebberston South wellsite or the pipeline.

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<sup>100</sup> Docs.CD/K6 – para.6.1

<sup>101</sup> Doc.CD/I – HLSC23

<sup>102</sup> Doc.NYCC/4/2 para.7.71



The NYMNPA officers' report makes it clear that *"Officers are satisfied that the proposed well site is on balance a location that does not in itself cause significant harm to the character of the North York Moors National Park given its previous planning history and well screened location."*<sup>103</sup> and that *"The pipeline itself although visible during construction is not considered to harm the character of the National Park following the construction phase as it will be buried underground and the landscape returned to its original form."*<sup>104</sup>.

7.66 Indeed, as Ms Skelly confirmed, none of the NYMNPA's putative reasons for refusal relate to the impacts of any of the development within the National Park. NYMNPA's putative reasons for refusal all relate to the impacts of development outside its administrative area and within NYCC's area.

7.67 It can be seen, therefore, that the only 'environmental' objection to the proposed development actually comes down to the landscape and visual impacts of the Hurrell Lane GPF, the AGI and the access road.

#### Hurrell Lane GPF and AGI

7.68 The project's GPF was originally proposed within the National Park, but was moved to a location outside the National Park at the written request of the NYMNPA<sup>105</sup>. The site at Hurrell Lane is outside the boundary of the National Park and also outside the AHLV. It is an undesignated site at the very bottom of the landscape designation hierarchy in North Yorkshire.

7.69 The Hurrell Lane site also benefits from substantial existing screening, particularly to its northern boundary where there exists a 5m high abandoned railway embankment together with mature trees of about 15m height. On the other boundaries on the site there are mature hedgerows which, whilst currently trimmed, could easily be allowed to grow to well over head height.

7.70 The site also sits within the 'Linear Vale Farmland' landscape character area of the RDLCA<sup>106</sup>. The RDLCA states that "The relatively high hedgerow and tree cover of the area provides a landscape that has a largely enclosed character which could accommodate small scale, well sited and sympathetically designed development". Whilst clearly not contemplating development such as the GPF, the 'enclosed' character of the local landscape does serve to limit any visual impact of the development as can be seen from the photomontages. The RDLCA also points to the historic field patterns within the area as being 'highly sensitive' to change. In that regard it is important to note that the GPF has been carefully sited so as not to materially change the historic field pattern of the Hurrell Lane site. The RDLCA also draws attention to the potential for "screen planting" which could help to accommodate development whilst at the same time "strengthening the existing visual structure and identity of the landscape". MEL's landscape planting proposals seek to follow these guidelines.

7.71 Whilst the land further to the south and the east falls into the adjoining 'Open Vale Farmland' landscape character, which is less enclosed, the public

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<sup>103</sup> Docs.CD/K11 – para.8.1.2

<sup>104</sup> Docs.CD/K11 – para.9.2.1

<sup>105</sup> Docs.CD/H3 – Appendix 5.1

<sup>106</sup> Docs.CD/O4 pgs.97-100 + MEL/4/3 Fig.LT3

viewpoints towards the site from that landscape are at a considerable distance (approximately 1 mile) due to the location of the nearest public rights of way. Furthermore, the relatively flat Vale of Pickering landscape tends to reduce any impact of development at Hurrell Lane due to the extent of intervening vegetation and the backdrop of the Tabular Hills. It is noteworthy that the development would not breach the skyline in any such view.

- 7.72 From the north, the Hurrell Lane site is effectively screened from the surrounding landscape by the substantial railway embankment and adjoining tree belt. It is also important to draw attention to the substantial tree and hedge screen immediately to the west of Hurrell Lane. This is an effective barrier between the edge of the appeal site (the development of the GPF itself would be some 200m away from this edge of the site boundary) and a field that forms a corner of the National Park south of Thornton le Dale. There is no inter-visibility between this part of the National Park and the site of the proposed GPF and, in any event, there is no public access to the field that forms part of the National Park, the boundary of which appears to have been drawn so as to include the village further north. The main part of the National Park comprising, in this area, the Dalby Forest is located several miles to the north.
- 7.73 MEL submits that it has selected a site for the GPF at Hurrell Lane which is outside any landscape designated area, respectful of the existing historic field pattern, already well screened, remote from publicly accessible viewpoints in the wider landscape and in a relatively 'enclosed' landscape character area which will benefit from further screen planting.
- 7.74 It is also noteworthy that a number of very large farm buildings already exist within the wider Vale of Pickering landscape<sup>107</sup>. Some of these are of a similar size to the proposed buildings on the Hurrell Lane site. The important point to note, however, is that the landscape is able to accommodate such structures and still maintain its essentially rural character.
- 7.75 So far as landscape and visual impacts are concerned, it is important to note that all the photograph and photomontage points used in Ms Toyne's evidence were first agreed with the Authorities. Furthermore, the Authorities make no criticisms of the methodology used to produce the photomontages or the photomontages themselves. Indeed, the Authorities produce no visual material themselves on what is their sole 'environmental' ground of objection to the proposed development. Whilst the judgements that the Inspector and the Secretary of State make on the visual materials will be a matter for them, it is helpful to know that there is no dispute between the parties about the quality and accuracy of the material itself. The Appellant is, of course, very well aware that in relation to the issue of landscape and visual impact, the Inspector will form his own judgement informed not only by the visual material provided but also by his site visit. The Appellant submits, however, that the photomontages, in particular, will be a useful tool in making judgements about the appearance of the proposed development in its landscape surroundings.
- 7.76 In considering the landscape and visual impacts of the proposed Hurrell Lane GPF it is worth remembering the policy context. The site is outside the National

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<sup>107</sup> Doc.MEL/4/3 Appendix LT6

Park in an area which the RSS for Yorkshire and Humberside states that *“Development in areas adjacent to the National Parks and Area of Outstanding Natural Beauty must not prejudice the qualities of the designated area.”*<sup>108</sup> and NPS EN-1 states that *“The aim should be to avoid compromising the purposes of designation ...”*<sup>109</sup>. Furthermore, as EN-1 makes clear, *“The fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent.”*<sup>110</sup> It is also necessary to consider whether the development ‘materially detracts’ from the AHLV.

- 7.77 ZVI plans for the development in respect of the highest structure, the ground flare stack at 15m above ground level, and the highest building, the compressor building at 10.26m above ground level, have been produced for cases at both Year 1 and Year 15<sup>111</sup>. These ZVI plans are used as a tool to understand the broad areas from which the development might be seen, but do not take account of distance or context. What they do indicate, however, is that there is only very limited inter-visibility between any part of the National Park and the proposed development, and no inter-visibility between Thornton le Dale village and the proposed development. Whilst such judgements must be verified on site, they are very much the conclusions drawn by Ms Toyne having done just that.
- 7.78 MEL accepts that from a viewpoint directly adjacent to the GPF in Hurrell Lane or New Ings Lane, the development will appear prominent in views, certainly until the surrounding existing hedge has had a chance to grow up to filter views. Those hedges are already very well established, however, and would soon provide a substantial filter for views into the site. It is also worth noting, in this context, that Hurrell Lane is not a through route, serving only the farms further south, and New Ings Lane is, in effect, an agricultural track.
- 7.79 For each of her photomontages Ms Toyne produces 5 images being (i) existing, (ii) with the development in Year 1, (iii) with the development in Year 15, (iv) with the development simply superimposed on the background (this is an artificial image), and (v) with the development in outline superimposed on the background (this is also an artificial image). These latter two images are produced simply to illustrate the position of the development in the landscape without any intervening existing landscape feature, such as the railway embankment etc. Ms Toyne’s photomontage viewpoints are illustrated on her Figure LT4.
- 7.80 These photomontages illustrate two viewpoints from the north of the Hurrell Lane site within the National Park. Photomontage P6 is taken from within the National Park south of Thornton le Dale and at a distance of about 805m from the GPF. Ms Toyne’s assessment was that there was only a *“small visible component”* having a *“very limited effect”* and that it was *“barely perceptible”*.
- 7.81 Photomontage P7 is taken from the edge of the National Park to the North of Thornton le Dale at a distance of about 1.7 km from the GPF. Ms Toyne

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<sup>108</sup> Doc.CD/B1 – para.10.58

<sup>109</sup> Doc.CD/A3 – para.5.9.12

<sup>110</sup> Doc.CD/A3 – para.5.9.13

<sup>111</sup> Doc.MEL/4/3 Figs LT4-LT7

thought that the GPS was *"barely perceptible"*, that the view was *"unchanged"* and that it had a *'very low effect'*.

- 7.82 Ms Toyne produced two other photomontages from the north of the site, both from outside of the National Park. Photomontage P1 is taken from Hurrell lane about 813m north of the GPF. In relation to this image she thought that the proposed development was *"visible but within vegetation"*, that the viewpoint was of *"low sensitivity"* being a road. She thought that the development was a *"small feature"* in the landscape and *"not the focus of the view"*. Ms Toyne rates this an impact of *"moderate adverse significance"*, but pointed out that this was only a fleeting view that would quickly disappear as the viewer moves further along the lane.
- 7.83 Photomontage P4 is taken from the A170 about 1069m north of the site. This image is taken from an elevated position on the far side of the carriageway to allow a view towards the site. Ms Toyne considered this view of the GPF to be *"negligible"*, and considered that even for a walker the development was *"barely perceptible"* and *"not the focus of the view"*. Ms Toyne thought this effect of *"very limited significance"*.
- 7.84 Ms Toyne also produced photomontages from the south of the development looking north towards the Hurrell Lane site and the National Park and AHLV. Photomontage P3 is taken from Hurrell Lane near Charity Farm at a distance of about 660m from the GPF site. Ms Toyne drew attention to the effect of the *"intervening vegetation"* and said that whilst the *"magnitude of change was low"* she considered the *"sensitivity high"* as the viewpoint was close to a dwelling. Ms Toyne considered this to be a *"minor adverse impact"*.
- 7.85 Photomontage P5 is taken from a viewpoint on a PROW south-west of the GPF site at a distance of about 485m. It is worth noting that the National Park in this view can only just be perceived on the far horizon some miles behind the Hurrell Lane site. Ms Toyne thought that the viewer would be able to *"make out the proposals"* but that they would be seen *"in the context of the farm on the left of the view"* and that the GPF would *"not interrupt the skyline"*. Ms Toyne considered this a *"moderate adverse"* impact but noted that the viewpoint was taken from a gate through a high hedgerow and was, therefore, the only location where this view was available.
- 7.86 Ms Toyne also provided a viewpoint from Wilton. Photomontage P2 is from the outskirts of Wilton at a distance from the GPF of 1,223m from the GPF development (1060m from the edge of the site boundary). Ms Toyne pointed out that all that could really be seen was *"the very top of the ground flare stack"* and that the other structures were *"barely perceptible"*. She thought that *"the overall character of the landscape was not affected"* and that the significance of this impact was *"very limited"*.
- 7.87 The Appellant submits that the Authorities have grossly overstated the landscape and visual impacts of the proposed GPF. Not only did Mr Goodchild's proof of evidence not produce any visual material, it did not even refer to that provided in the Appellant's Environmental Statement. His oral evidence comprised little more than a series of assertions of grave landscape and visual impacts and, frankly, lacked the balance that is so important when considering such issues. MEL is happy to leave this issue to the judgement of the Inspector and the Secretary of State.

### Lighting impact on landscape

- 7.88 MEL has made it clear that it does not require any permanent external lighting at the Ebberston South wellsite, which would not be permanently manned, but would require external lighting at the GPF. This would comprise base lighting to be kept on throughout the hours of darkness and zonal task lighting that would only be switched on when needed. The evidence leads to the following broad conclusions:
- a. That the lighting for the development should be judged against the criteria in the Institution of Lighting Professionals document 'Guidance notes for the reduction of obtrusive light' and CIE 150: 2003;
  - b. That the relevant lighting 'environmental zone' within the guidance is 'E1: dark landscapes';
  - c. That the source intensity of the base lighting, fitted with appropriate shielding will result in a score of 0 cd<sup>112</sup> at a range of sensitive receptors;
  - d. That, even with all the lighting turned on, the source intensity of the lighting will still only be between 282 and 369 cd at sensitive receptors (Howard Table 1), which is well below the stated maximum permissible of 2,500 cd in a 'dark landscapes' environment (Howard para 3.1.6). As Mr Howard's section 4.3.2 shows this is comparable to a low wattage porch light;
  - e. That, although the calculated sky glow figure for the GPF (a value of 0.06) is marginally above the 'dark landscapes' guidelines (a value of 0), the sky glow figure can be reduced to 0 with appropriately fitted shielding to the luminaires; and
  - f. That the design drawings shown in Appendix B demonstrate that, through proper design of the luminaires and their mountings, the light spill would be kept to an absolute minimal level outside the site boundary.
- 7.89 It is MEL's case that the lighting can be so designed and fitted that it will be well within the appropriate guideline figures for 'dark landscapes'. Indeed, Mr Howard expressed the view that, whilst someone passing along Hurrell Lane at night would be aware of the GPF, anyone more distant – for example driving on the A170 – would not be able to discern the lighting.
- 7.90 It also needs to be understood that there are some very bright developments in the local landscape including the Snaughton golf driving range and the Highways Agency depot at Pickering. That is not to suggest that just because those developments are brightly lit the Hurrell Lane GPF can be as well, but simply to draw the contrast with the GPF that will not be brightly lit. The night-time lighting at the GPF will not be a significant visual impact in the landscape and is not, therefore, a proper reason for refusal.

### Access road visual impact

- 7.91 The project also includes an access road between the A170 and the GPF. The access road runs through an agricultural field alongside an existing hedgerow on its eastern side. On its western side the Appellant proposes a low screening bund of about 1m and a hedgerow. The access road itself would be narrow,

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<sup>112</sup> candella

with passing places, and would not be lit. In appearance it will be like many of the other existing small roads and access tracks in the locality.

- 7.92 The junction of the access road onto the A170 has been carefully located near an existing agricultural turn-in. It will require a visibility splay onto the A-road, but has been designed to minimise any impact of the existing mature hedgerows alongside the A170<sup>113</sup>, which themselves limit views to the south. It is anticipated that only 22.35m of existing hedgerow would need to be removed.
- 7.93 Views of the access road from the east would be completely obscured by the existing north-south hedgerow and those from the west by the proposed bund and hedgerow. Indeed, as the land falls away to the south from the A170, views of the access road, other than of the junction itself, would be very limited. It is MEL's case that the junction only represents a very minor landscape and visual impact on the AHLV.

#### Conclusions on landscape impacts

- 7.94 Overall it is MEL's case that the landscape and visual impacts of the proposed GPF and AGI are 'modest'. They certainly do not 'compromise' the purposes of the National Park and nor do they represent a 'material detriment' to the AHLV. The site itself has no landscape designation and, furthermore, as what is asked for is a 20-year planning permission, the landscape and visual impact of the development will necessarily be temporary only.

#### Restoration

- 7.95 MEL was slightly surprised to see this issue emerge as a principle concern in the Authorities' officers' reports and putative reasons for refusal, as it had not featured prominently in discussions between the company and the officers themselves.
- 7.96 There appear to be essentially two themes to the authorities' concern, being:
- a. The detail of a future restoration scheme; and
  - b. The mechanism for securing performance of restoration.
- 7.97 The first point to note is that it is normal that mineral planning permissions in both NYMNPA and NYCC deal with restoration by way of condition, that condition requiring a scheme to be submitted and approved. That is exactly what NYMNPA did in relation to MEL's planning permission for the exploration well at Ebberston South<sup>114</sup>.
- 7.98 MEL has set out the principles for its decommissioning and restoration proposals<sup>115</sup>. In broad terms, the company would remove all above ground structures, hardstandings and the access road, but would purge and leave in place the below ground pipelines etc. This is normal practice for gas infrastructure sites. The site would be restored to agricultural use.

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<sup>113</sup> Doc.CD/O3

<sup>114</sup> Docs.CD/F2 + F3

<sup>115</sup> Doc.MEL/1/2 Section.10

- 7.99 The general approach to soil removal and storage was explained, although these are clearly detailed matters that would have to go into a scheme to be submitted and agreed. There is no reason why the Ebberston South and Hurrell Lane sites could not be restored to agricultural use and, unlike a more typical minerals planning permission, there would be no need for extensive land re-contouring. MEL has stated clearly that it is willing to accept reasonable restoration conditions.
- 7.100 MEL is subject to the International Financial Reporting Standards, which require it to make provision in its accounts for future liabilities such as restoration costs. It will also have to satisfy DECC of its financial standing before DECC will grant it a 'field development' approval. Both of these factors should give the Authorities some comfort as to MEL's ability to comply with the restoration condition imposed.
- 7.101 The Authorities do not normally require minerals operators to supply performance bonds, but they have insisted on such a bond in this case. In the light of NYCC's concerns, MEL has decided to offer a conditional restoration performance bond in relation to the Hurrell Lane site. The company would in the first instance give a company guarantee to undertake the restoration of Hurrell Lane and, in the event that restoration was not carried out pursuant to that guarantee, NYCC would be able to call on the conditional bond. This obligation is to be secured through MEL's unilateral undertaking.
- 7.102 The company has estimated that the decommissioning and restoration costs for the Hurrell Lane site would be about £1.7m and MEL is proposing a conditional bond in that sum. Whilst this does impose a burden on the company, it is keen to offer NYCC the reassurance it seeks on restoration. MEL submits that there is no longer any proper 'restoration' reason for refusing planning permission for the proposed development.

#### Alternatives

- 7.103 There are two issues to be considered in relation to alternatives, being:
- a. The legal and policy context within which it is even material to take account of alternatives; and
  - b. The circumstances relating to any particular alternative put forward.
- 7.104 In relation to the first of these the position is clear. There are only limited circumstances where it may be material to consider alternatives to a proposed development, being:
- a. In "*exceptional circumstances*"<sup>116</sup> it may be material to consider alternatives where there is "*really serious harm*"<sup>117</sup> from a development;
  - b. It would be material to consider alternatives where required as a matter of law, such as pursuant to the Habitats Regulation; or
  - c. It may be material to consider alternatives where that is indicated by planning policy.

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<sup>116</sup>See *R (on the application of Scott) v North Warwickshire CC* [2001] EWCA 315 at 30

<sup>117</sup>See *R (on the application of Langley Park School for Girls) v Bromley LBC* [2009] EWCA Civ 734 at 45-52

- 7.105 This is clearly not an “*exceptional circumstance*” case where there is “*really serious harm*” such that it is necessary to consider alternative sites. The only environmental effect that the Authorities point to is landscape and visual impact and in relation to that the impacts are modest and do not even begin to approach the threshold of ‘really serious harm’. No Habitats Regulations issue, or similar legal requirement, arises in this case.
- 7.106 The only planning policy that the Authorities seek to rely on is NYMLP Policy 7/7 relating to the use of existing infrastructure. Policy 7/7 (Development of New Reserves), relates to “*the development of oil or gas reserves as yet undiscovered*”, and states that planning permission will only be granted where “*development utilises existing available infrastructure or pipelines*”. It is not at all clear how this policy could ‘require’ a developer to consider alternative sites generally or entitle a local planning authority to refuse planning permission for development on the basis that the authority would prefer to see it located elsewhere.
- 7.107 Even so, MEL considered alternative locations for the GPF before selecting its proposed site at Hurrell Lane. These alternatives were set out in the project’s Environmental Statement as required by the EIA Regulations.
- 7.108 Where it is necessary to consider alternatives, the approach in relation to energy infrastructure is set out in NPS EN-1<sup>118</sup> as follows:  
*“Where there is a policy or legal requirement to consider alternatives the applicant should describe the alternatives considered in compliance with these requirements. Given the level and urgency of need for new energy infrastructure, the IPC should, subject to any relevant legal requirements (e.g. under the Habitats Directive) which indicate otherwise, be guided by the following principles when deciding what weight should be given to alternatives:*
- *the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner;*
  - *the IPC should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development; ...*
  - *alternative proposals which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the IPC’s decision;...”*
- 7.109 Insofar as it is necessary to consider ‘alternatives’ to the Hurrell Lane site in the present case then that consideration should be undertaken in the light of the above guidance.
- 7.110 The Authorities appear to rely on three broad forms of alternative to the proposed GPF at Hurrell Lane, being:
- a. That MEL should supply gas to the existing Knapton power station;
  - b. That MEL should develop its GPF on the Knapton power station site; and
  - c. That MEL should develop its GPF on vacant land adjacent to the Knapton power station.

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<sup>118</sup> Doc.CD/A3 – para.4.4.3



7.111 In addition, the Authorities draw attention to Third Energy's recent 'screening letter' as supporting the proposition that MEL should enter some form of joint arrangement with that company.

That MEL should supply gas to the existing Knapton power station

7.112 This is the only alternative that could, to any meaningful extent, actually utilise "*existing available infrastructure*"; albeit that the Knapton power station is not "*the development of oil or gas reserves as yet undiscovered*" within the meaning of Policy 7/7 of the MLP.

7.113 MEL has explained, however, that there are a number of reasons why this option is not appropriate. MEL's evidence sets out a number of reasons why the company rejected this option, being:

- a. MEL's project is to supply gas to the NTS, not to supply gas to an old 'open cycle gas turbine' power station. The alternative would, therefore, be a completely different project type;
- b. The existing Knapton power station operates at a very low efficiency factor (some 30%) compared to modern CCGTs that could be supplied through the NTS. This lower efficiency would result in (approximately) an additional 150,000 tonnes of CO<sub>2</sub> emissions over a 10 year period compared with supplying modern CCGTs<sup>119</sup>;
- c. The Knapton power station only has a rated capacity of some 9.8 MMSCFD, whereas MEL expects its GPF to operate at an average flow rate of 12-15 MMSCFD, but with a peak flow in the high 20s MMSCFD;
- d. Third Energy is apparently proposing to 'work over' its existing Vale of Pickering wells to increase flows<sup>120</sup> and there is no indication of any spare capacity at Knapton that could be available to MEL;
- e. The pressure in the Ebberston gasfield is materially higher than in the Vale of Pickering gasfield<sup>121</sup> and so could not connect into the existing power station without additional equipment to regulate the pressure from the Ebberston flow;
- f. Third Energy has inherited an old commercial arrangement with Scottish Power which controls the price paid for electricity exported from the power station and indirectly, therefore, the price paid for the gas;
- g. The Knapton power station has a temporary planning permission which expires in 2018<sup>122</sup>;
- h. The supply of gas from Ebberston South to Knapton would need a much longer pipeline. There would be clear environmental and technical constraints to finding and constructing a route that would have financial, programming, engineering, safety and, potentially, legal consequences (i.e. if over 10 miles long the pipeline would be a NSIP requiring a DCO).

7.114 The plain fact is that MEL has no alternative project to supply gas to the Knapton power station and there can be no confidence that any such project would be technically practical or environmentally acceptable; still less can there be any confidence that an acceptable commercial arrangement could be

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<sup>119</sup> Doc.MEL/2/2 - para.45

<sup>120</sup> Doc.CD/G5

<sup>121</sup> Erasmus 11.4.9.1.3

<sup>122</sup> Doc.CD/M1 – para.3.5

agreed with Third Energy, or that any such project would be financially acceptable to MEL or potential funding institutions. In any event, forcing MEL to sell its gas to supply Knapton, where Scottish Power controls the export price of the electricity produced, would be deeply anti-competitive.

That MEL should develop its GPF on the Knapton power station site

- 7.115 This alternative appears to be based on the premise that MEL should develop its GPF within the footprint of the existing Knapton power station. This alternative appears to assume that a large area of land is, or will become, available within the existing Knapton site and that MEL would be able to agree terms to buy it; there is no basis for such an assumption.
- 7.116 Furthermore, this alternative would not be using 'existing available infrastructure' within the meaning of Policy 7/7 as it presupposes a new gas processing facility for export to the NTS, which does not currently exist at Knapton.
- 7.117 With this option, as well as a number of the problems identified above, there are additional issues:
- a. MEL's GPF requires a site of about 2.4ha for the development itself and then a further area for construction and materials 'lay-down'. There is no available land within the Knapton power station site to accommodate such a facility <sup>123</sup>;
  - b. any suggestion that the existing power station layout could be 'rationalised' would be merely speculative at this stage and MEL is not aware of any firm proposals that could accommodate its requirements; and,
  - c. MEL has no agreement with Third Energy to purchase part of its site and, in the light of that company's own aspirations for Knapton as outlined in its screening letter there is no basis on which to assume that such agreement would be forthcoming.

- 7.118 Again, MEL has no proposal to locate its GPF on the Knapton power station site and there are a number of fundamental problems with any such alternative. Even if this proposal were technically feasible, at who knows what cost, it depends completely on the position of a third party, Third Energy, over which neither MEL nor the Authorities have any control. The Authorities have advanced no evidence to demonstrate that such an alternative would be commercially viable and MEL has no reason to believe that it would be.

That MEL should develop its GPF on vacant land adjacent to the Knapton power station

- 7.119 This is yet a further variant on the Authorities' search for an alternative project at Knapton. In this variant, MEL is supposed to identify a site adjoining the Knapton power station to construct its GPF. Again, it needs to be pointed out that this is not the utilisation of 'available existing infrastructure' as envisaged by Policy 7/7 and there is, therefore, no MLP policy requirement to consider this option at all.

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<sup>123</sup> Erasmus 11.4.9.1.1

7.120 Again, in addition to many of the problems identified with the above two alternatives, this option has yet further difficulties:

- a. This site is agricultural land, as is Hurrell Lane and so there is no land-use advantage over MEL's proposed site;
- b. MEL does not own and has no options over the land next to Knapton. This is in sharp contrast to the proposed site at Hurrell Lane where MEL has negotiated option agreements with the relevant landowners;
- c. The land west of the Knapton power station site, which appears to be the site to which the Authorities direct the company's attention, is actually closer to residential properties than is the land at Hurrell Lane;
- d. No one has consulted the public at Knapton about a proposal for a GPF at that site. The public at Knapton may be just as opposed to a GPF there as are many of the public at Thornton le Dale to one at Hurrell Lane;
- e. The pipeline route for a Knapton GPF alternative would not only involve an additional length of 'untreated gas' pipeline down to Knapton itself but also a 'treated gas' pipeline from Knapton back to the NTS;
- f. All this extra pipeline has considerable cost, which will adversely affect any project's finances;
- g. The pipelines down to Knapton and then back to the NTS are likely to have 'convoluted' routes because of the many geological, environmental and archaeological constraints within the Vale of Pickering;
- h. A convoluted pipeline route brings its own operational problems in terms of maintenance (i.e. the 'pigging' of the lines) where there are bends and dips in the pipeline alignment;
- i. The additional pipeline route also brings additional 'temporary' landscape impacts during construction;
- j. The site next to the Knapton power station has some existing landscape screening, but it does not benefit from a 5m high railway embankment; and;
- k. Siting a potential COMAH plant next to an operating power station would mean that the 'safety case' for the two plants would have to be co-ordinated. Whilst it is not suggested that this could not be done, it is a further management burden on the project.

7.121 MEL also notes that any project to locate a GPF on a site next to the Knapton power station would be contrary to policy EMP15 of the RLP<sup>124</sup>. Whilst MEL argues that the policies in this plan are 'out of date', it does seem curious that the Authorities who argue otherwise see no contradiction in suggesting that MEL explores a scheme in direct conflict with a site-specific Local Plan policy.

7.122 Perhaps the most important point to stress in relation to this alternative is that it comes with no commitment from the Authorities that they would in fact support any alternative GPF proposal at Knapton. Similarly, there is no such commitment from RDC. NYCC's reasons for refusal are carefully worded to require MEL to explore alternatives, but do not give NYCC's endorsement for any alternative. If, indeed, MEL or Third Energy were to come forward with gas infrastructure proposals at Knapton, NYCC members have (perfectly properly) left themselves entirely free to refuse planning permission for such proposals.

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<sup>124</sup> Doc.CD/E1

7.123 Once again, MEL simply has no proposals to locate its GPF at a site next to Knapton power station and has given clear reasons why any such proposal would be completely unacceptable. Such an alternative is, as were the other alternatives, simply *"vague or inchoate"* and, even if something could be worked out, could not possibly be brought forward within the same *"timescale"* as the appeal proposals.

Third Energy's screening letter

7.124 Shortly before the start of the inquiry Third Energy wrote to NYCC in relation to the potential 'screening' of various ideas that company has for potential future developments<sup>125</sup>. That document is helpful in clarifying Third Energy's position on a number of issues. The following broad points emerge:

- a. The Knapton gas turbine is *"less efficient than modern generating capacity"* (fourth page). This confirms MEL's judgement on this issue;
- b. Third Energy is currently conducting *"work overs"* of several existing wells in its Vale of Pickering (VoP) fields to *"restore production levels"* (ninth page). This simply reinforces MEL's argument that there is no evidence that spare capacity will be available to take any of the Ebberston South gas;
- c. The expansion of its VoP fields is *"entirely dependant on early drilling success and the economic feasibility of additional development"* (ninth page). This is entirely reasonable, but makes it clear that Third Energy is currently at the stage of exploring potential development options but has not determined that they are feasible;
- d. Third Energy is considering the 'feasibility' of a number of development including *"the expansion of the gas processing plant"* to allow export to the NTS (tenth page). This helpfully confirms that the existing plant at the Knapton site is not capable of treating gas to NTS standards; and
- e. Third Energy is considering a number of potential pipeline routes from its Ebberston Moor wellsite to Knapton (eleventh page) but, with the exception of MEL's route to Hurrell Lane, they are clearly schematic only.

7.125 What is also clear from the screening request is that, as well as being subject to further work on feasibility, the Third Energy ideas have no timescale. In short, Third Energy's proposals are entirely a matter for that company but what can be firmly concluded is that they do not represent a substitute for MEL's Ryedale Gas Project.

7.126 It should also be emphasised that, contrary to the impression given by the Authorities, MEL (and in particular Mr Erasmus) has had a number of meetings with Third Energy and its predecessor, Viking. It is quite wrong to suggest that MEL has simply rejected the Knapton alternatives 'out of hand'. By contrast, having considered the alternatives carefully, it is correct to say that MEL has firmly rejected them. Furthermore, in doing so it is right to record that MEL's reasons have been clearly and cogently articulated.

Other alternatives

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<sup>125</sup> Doc.CD/G5

7.127 MEL's Environmental Statement Chapter 5, Addendum to Chapter 5, letter to Mike Convey dated 6 May 2011<sup>126</sup> and Mr Erasmus's section 11 each review and discount a number of other 'alternative' GPF sites. None of those was pressed by way of submission of evidence by any of the other parties at the inquiry.

#### Conclusions on alternatives

7.128 MEL submits that this is not a case where it should even be necessary to consider 'alternatives'; MEL's application proposals should properly be considered on their own merits, not by comparison to some other project for which neither it nor anyone else has applied.

7.129 That said, the company has actually considered a number of alternative locations for the GPF (and indeed the other elements of the scheme) and these are reported in the Environmental Statement and other documents. MEL accepts that 'alternatives' have been considered at the inquiry and submits that it is, therefore, an issue which the Inspector and Secretary of State should consider. MEL wished to avoid any risk of legal challenge; however misguided.

7.130 The consideration of 'alternatives' should, however, be "*proportionate*" to the harm that the Inspector and the Secretary of State find to be caused by the proposed development. The Appellant argues that the only outstanding environmental impact in issue between itself and the Authorities is landscape and visual impact (including lighting) and that, on that issue, the impact or harm from the project is only 'modest'.

7.131 On that basis, and on a 'proportionate' approach, planning permission should not be refused unless there is an alternative that is feasible, available and clearly preferable, and which can be brought forward within the same timescale; that is simply not the case here. The alternatives at Knapton have a number of technical, operational, environmental, financial and commercial problems that mean that they are anything but feasible, available and clearly preferable. Furthermore, none of them could be available within the same timescale.

7.132 It is also important to note that neither of the Authorities, nor RDC, has stated its support for any of the alternatives canvassed. They simply want MEL to do more to explore the alternatives. MEL is satisfied that it has adequately explored all potential alternatives and argues that none is to be preferred.

7.133 It is simply not good enough for the Authorities to urge the Secretary of State to refuse planning permission on the Micawber'ish basis that "*something will turn up*". That may be the way in which publicly funded authorities in North Yorkshire think the planning system should operate, but it is not the basis on which the private sector can plan important and much needed investment in energy infrastructure.

#### Other issues

7.134 There are a number of issues that have been agreed between the Appellant and the Authorities, but which have not necessarily been agreed with AGHAST.

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<sup>126</sup> Doc.CD/J2 + attachment

Furthermore, there are some other topics where MEL simply wants to remind the Inspector and Secretary of State of its position. These points are dealt with below.

#### Noise

- 7.135 MEL's evidence on noise was set out in the proof of Mr Bennett. Mr Bennett's proof of evidence concluded as follows:
- a. The Ebberston Moor well site will not be a significant source of noise. The predicted levels of noise from the site received at the nearest residential properties will not be discernible even on a calm night.
  - b. The Hurrell Lane Gas Processing Facility can be designed, built and operated to comply with very strict noise limits. It is proposed that these limits should apply at four reference points at the four corners of the proposed fence line, in order that compliance may readily be verified.
  - c. Construction of the gas pipeline and the two permanent installations can be conducted in a manner whereby noise disturbance to local residents is kept to a minimum. The guidance in BS.5228-1 can readily be followed, and an appropriate daytime noise limit will be achieved.
  - d. Although the detailed design engineering phase has not been carried out, there is sufficient evidence that the Ryedale Gas Project in its entirety can be constructed and operated in such a way that there is no significant loss of amenity by reason of environmental noise. There is therefore no reason to withhold planning permission on noise grounds.
  - e. Appropriate noise limits in the form of planning conditions for the construction and operational phases at all relevant sites can be formulated and agreed with the Local Planning Authority.
- 7.136 The evidence set out the form of potential planning conditions based on detailed acoustic analysis. In the light of Mr Bennett's evidence, NYCC was able to withdraw its noise objection based on the agreement of a number of conditions<sup>127</sup>. AGHAST then also withdrew its noise objection on the basis of the imposition of the agreed conditions. In the event, it was not necessary to call Mr Bennett or Mr Richmond, the RDC Environmental Health Officer, who was to have appeared on behalf of NYCC.
- 7.137 MEL submits that, based on the imposition of the agreed planning conditions, there is now no proper noise impact reason for refusing planning permission.

#### Safety and perception of risk

- 7.138 In relation to safety and perception of risk it is important to note that neither NYCC nor AGHAST raised an objection about 'safety' itself; both raised objections solely about the 'perception of risk'.
- 7.139 In essence, NYCC's putative reason for refusal 9 states that planning conditions could not limit the impact of the development so as to allay "*the perception of fear over the safety of the proposed development in a worst-case scenario emergency event*". Mr Hughes's proof of evidence focused, to a large extent, on the adequacy of the safety case submitted as part of the planning

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<sup>127</sup> Doc.CD/M2

application. Dr Pitt's evidence for AGHAST was also directed towards the issue of 'perception of risk', rather than safety itself.

- 7.140 MEL accepts, of course, that the proposed Ryedale Gas Project will require a HSC from NYCC and that it could not operate without it. It is difficult to understand, therefore, the nature of NYCC's concern in the context that NYCC is the consenting authority in relation to hazardous substances.
- 7.141 There are separate regimes for seeking the grant of planning permission and hazardous substances consent and there is absolutely no obligation on a developer to apply for both authorisations at the same time. In the present case MEL has decided to establish the land-use acceptability of the proposed development first before applying for HSC. MEL cannot properly be criticised for such an approach.
- 7.142 MEL has, in fact, done considerable work to design the proposed GPF and, indeed, to understand and quantify the safety implications of the development. Mr King's evidence drew on the considerable body of work undertaken by MEL's design and safety consultants in leading to his conclusion that *"Using the established UK Government criteria for judging the acceptability of offsite risks associated with industrial activities, the risk analysis shows that there are no objective reasons for the reported adverse public perception of health and safety risks, or for the proposal being refused on the grounds of unacceptable levels of health and safety risk. Both the individual and societal risks are well within the acceptable range."*
- 7.143 During the inquiry Mr Hughes and Mr King were able to meet and, Mr Hughes was able to question Mr King about the substantial body of design and safety work that MEL had undertaken. This included information by MEL's design consultants 'Protech' and the 'consequence analysis' work undertaken by MEL's consultants 'Gexcon'.
- 7.144 Following that meeting NYCC produced a 'Position Statement' on 'Safety Risks'<sup>128</sup> in which it stated that "the County Council considers that the Appellant is undertaking appropriate assessments of the safety risks from the Ebberston and Hurrell Lane sites" (para 1) and "The County Council's objection on the grounds of the Appellant's failure to provide adequate information on safety risks is hereby withdrawn" (para 3). On the basis of this 'Position Statement', Mr Hughes was not called to give evidence on this issue by NYCC. After careful consideration, AGHAST also then withdrew its 'perception of risk' objection and Dr Pitt was not called to give evidence on this issue. In the event, it was not necessary to call Mr King as a witness as neither NYCC nor AGHAST sought to ask him any questions.
- 7.145 In the context of the control over hazardous substances that exists under the HSC regime, and in the light of Mr King's written evidence and NYCC's 'Position Statement', MEL submits that there is no proper 'safety' or 'perception of risk' reason for refusing planning permission for the proposed development.

Odour

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<sup>128</sup> Doc.CD/R2

- 7.146 There is no odour issue between MEL and the Authorities. Paragraph 16.6 of the Statement of Common Ground states that *“NYCC and NYMNPA do not raise any concerns to justify an objection to the application on air quality grounds.”*<sup>129</sup>
- 7.147 Dr Deakin’s proof of evidence sets out the Appellant’s case on this issue and appends the latest version of the Odour Management Plan (OMP). The proposed Ryedale Gas Project is a Part 1A development, which will fall within the ‘environmental permitting’ regime of the Environmental Permitting Regulations 2010.
- 7.148 PPS23<sup>130</sup> makes it clear that the planning system should not duplicate the pollution control system and that *“Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced.”*
- 7.149 The proposed Ryedale Gas Project will need an ‘environmental permit’ granted by the EA before it can operate and the ‘environmental permit’ will control odour from the plant in accordance with the guidance in the EA’s ‘Technical Guidance Note H4: Odour Management’ (2011)<sup>131</sup>. That guidance identifies the typical conditions imposed by the EA as comprising *“... two elements:*
- *the odour boundary condition, which specifies the outcome which the operator must achieve (i.e. no pollution beyond the site boundary); and*
  - *a condition requiring compliance with an OMP (where activities are considered likely to give rise to odour)”.*
- 7.150 The guidance also identifies the typical ‘boundary condition’ imposed by the EA, which requires that emission should be *“free from odour at levels likely to cause pollution outside the site”.*
- 7.151 The OMP is a document that, amongst other things, sets out the Best Available Techniques (BAT) to be applied to each part of the proposed development. The OMP appended to Dr Deakin’s evidence outlines the BATs proposed by MEL for the Ryedale Gas Project and on which it was able to secure agreement with the Authorities.
- 7.152 The evidence also dealt with a number of issues raised by objectors, including potential odour from the operation of the emergency ground flare stack (GFS). It needs to be stressed that the GFS is not used during normal operations. It is necessary to use the GFS for routine maintenance, but as was made clear, this can be undertaken using treated (i.e. non-odorous) gas. It is also important to understand that, even during emergency operation, which might never happen, it is only the flaring of gas from the first two of the seven sections of the GPF that could be odorous and, furthermore, the plant has been designed so that any section can be fully depressurised in 15 minutes.
- 7.153 Some odour dispersion modelling for the emergency GFS based on a series of very pessimistic assumptions, had been carried out<sup>132</sup>. Even on that very

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<sup>129</sup> Doc.CD/M1 – para.16.6

<sup>130</sup> Doc.CD/A14 – para.10

<sup>131</sup> Doc.CD/A31

<sup>132</sup> Doc.MEL/5/2 - para.7.6



pessimistic basis it was calculated that only two properties would breach the lower odour threshold for detectability and even then only for 15 minutes, and none would breach the upper threshold<sup>133</sup>.

- 7.154 In answer to questions from AGHAST, it was not thought that 'fugitive' gas emissions from the site would be detectable beyond the site boundary and, indeed, because of the EA's likely 'boundary condition' unusual weather patterns, such as temperature inversions, would not cause off-site odour problems. Indeed, it is important to note that there would not be general 'smells' or 'odours' detectable within Thornton le Dale that could have any impact on local tourism, as so many local residents seem to fear.
- 7.155 Whilst it is perfectly understandable that local residents may be concerned about odour issues, the evidence demonstrates that such concerns are in fact quite misplaced and that residents should be reassured by the agreement between MEL and the Authorities on this issue. It is to be noted that there is no air quality or odour reason for refusing planning permission for the proposed development.

#### Land ownership

- 7.156 Whilst an applicant is perfectly entitled to apply for planning permission on land that he/she does not own, in fact, in this case, MEL has taken a lease, secured options, or reached agreement on terms for options, on nearly all of the land required for the development. In particular, MEL has exercised its option over the Ebberston South site and taken a 15 year plus 15 year lease; has entered into option agreements with the landowners of the Hurrell Lane site and access road to take leases (those options allowing MEL to require the landowners to enter into section 106 obligation); and, has agreed terms with nearly all of the landowners along the pipeline routes and the landowner of the AGI site.
- 7.157 MEL has identified one landowner along the pipeline route where it may not be able to secure the necessary rights by negotiation and, in that case, the company will either have to use its compulsory purchase powers under the Pipelines Act 1962 or deviate the pipeline around that land. In either case, this is not an impediment to the development proceeding.

#### Conditions and obligations

- 7.158 Conditions and obligations have been considered during the inquiry. MEL has been able to agree most of the conditions to be imposed if planning permission were to be granted by the Secretary of State. MEL has also offered a unilateral undertaking in relation to certain proposed obligations.

#### The overall planning balance

- 7.159 At the end of the day, like all planning decisions, this one will come down to a planning balance. MEL's submission is a simple one – that in this case the need and other benefits of the proposed development should be accorded considerable weight and that they substantially outweigh its limited and

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<sup>133</sup> Doc.MEL/5/2 – Odour 1 Management Plan Table 7.1

modest impacts. The Appellant, therefore, requests that the Secretary of State grant planning permission for the proposed development.

## **8. The Case for NYCC**

### Introduction

- 8.1 This is unquestionably a complex and difficult decision. NYCC is the custodian and the administrative authority for a very special and unique part of our island. It seeks to protect both the area within its boundaries and additionally it takes into account the very important adjacent National Park in its decisions as it is required to do so by section 62 of the Environment Act. NYCC have acted impeccably in considering this application. They have rigorously applied themselves to understanding the case of the Applicant and have fully considered the information produced. They have sought and instructed professional consultants to advise them.
- 8.2 They considered it with diligence and thoroughness over 18 months. The level of criticism directed by MEL's planning witness is negligible. That is important. Of course MEL were frustrated at not getting consent. However this inquiry has shown that the matters contained within the application require detailed and proper scrutiny. The proposal will massively increase the exploration of the gas reserves that lie beneath the National Park and will bring with it significant development with a well site, very extensive new pipelines, a new access road and a large industrial complex within the open countryside. If it had not been subject to very rigorous scrutiny the criticism would have been much more justified. It also appears that this application may well be just the first phase in an extensive number of further planning applications if the reserves that MEL predict exist in reality.
- 8.3 There are 4 fundamental elements to consider:
- 8.3.1 MEL's commercial aspirations - MEL is understandably seeking the exploration and production of one billion pounds worth of indigenous gas found below the NYMNP. The production of such reserves is patently in the public interest and the NYCC support in principle the exploitation of such reserves. MEL have developed a plan which is viable and commercially attractive to them which is entirely understandable. They owe a duty of care to their shareholders and their fundamental aspiration is to start producing gas into the NTS. MEL are a commercial organisation who have borrowed considerable amounts of money. They are determined to get a planning permission. That is completely understandable. However they have made a strategic error in not exploring the alternatives with rigour and determination. They have sought to get consent for this site for over 2 years. It is also true that this is a project of untold riches to the company. It has near unlimited financial resources, if the gas is at the quantities that are stated, to do the right thing.
- 8.3.2 The location at Hurrell Lane is fundamentally wrong and harmful – One can call all sorts of technical evidence and plant thousands of trees and shrubs in mitigation to try and hide what is proposed but the simple inescapable truth is that this is simply the wrong site for an industrial process of this nature and scale within 10 metres of the National Park boundary and a landscape of some

beauty and tranquillity currently. The proposal will be harmful and incongruous in its location. Nothing in MEL's landscape evidence gives any reassurance.

- 8.3.3 This is a deeply unpopular and unwanted development – The level of objection is very significant. All 3 local authorities and two Parish Councils object strongly to this proposal. One of the noteworthy features of this inquiry is the level of co-operation, agreement and discussion that has taken place between the NYMNPA and NYCC. That co-operation has led to a collaborative approach and a view that the consequences of this proposal will be harmful. That collective view is important. The level of third party objection is also significant with 14,000 people having signed a petition objecting to the proposal. In those circumstances the level of objection is a material consideration for the decision maker.
- 8.3.4 There is an existing gas complex at East Knapton. It has been relatively harmless during its life and has been accommodated within the landscape with little if any harm. The owners of that complex are exploring its redevelopment and expansion.
- 8.3.5 How can these 4 fundamental elements be reconciled? - There is a sensible, pragmatic and understandable solution namely for the Inspector and the Secretary of State to recommend that the correct approach, in the light of all the evidence, is for MEL and Viking to come together in a constructive and engaged manner and apply their collective financial resources, experience and professional input into developing a co-ordinated development at East Knapton which would have the ability to be up to 70 MMSCFPD capacity and therefore allow the full development of the reserves held in both PEDL 77 and 120. The more this option is explored the more difficult it has become to sustain any material objection. It is accepted that it would create significant extra work for MEL but the prize should sustain them. We are talking about at least one billion pounds of gas reserves.
- 8.3.6 The only material point that can be made is that it will delay the exploration of the gas reserves. This is not a sensible or reasonable point. The gas is not going anywhere. The delay may be in the order of 18 months or 2 years at worst and yet the prize is so special such a delay will be immaterial in 10-15 years time.

The scale of this proposal is massive.

- 8.4 This proposal is massive in the context of which it applies. The current total level of production of gas in North Yorkshire is around 2.5 MMSCFD per day. This proposal will increase that level of production by approximately 6-7 times with a capacity of 40 MMSCFD. It represents a massive increase in production of gas from that which is currently undertaken in North Yorkshire. At most Knapton can receive 9.8 MMSCFD and therefore the proposal is four times bigger in terms of capacity than that which exists currently.
- 8.5 Additionally the proposal will require over 8.6 kilometres of new pipeline; the GPF will have an industrial compound of over 300 metres by 100 metres; and there will be a new access road within an area of high landscape value. The scale and nature of the proposal will bring about manifest change in the locality.

The benefits of the proposal have been overestimated and need to be considered with the disbenefits.

- 8.6 MEL place great emphasis on the benefits of the proposal. There are unquestionably some, but it has always been NYCC's position that these benefits have been overstated and do not outweigh the proposed harm. MEL has also been very cagey about what to put before the inquiry in terms of the amount of money it will make from this proposal whether in gross or net terms. The tax receipts are claimed as a major benefit to the inquiry and yet when that leads to scrutiny as to what income they are based upon commercial sensitivity is played as a trump card to protect them from any scrutiny of such figures. Mr Baldwin inadvertently let the cat out of the bag with his imports exercise. This proposal will generate untold riches to MEL – literally a billion pounds. In the light of those receipts there will be some financial benefit to those who live in close proximity to the development but it is not significant.
- 8.7 Those benefits include the evidence of Mr Green. He produced without any warning a figure which was far more revealing as to what it did not show than what it did show. How can any weight be put on a figure which is prevented from proper scrutiny. The simple point about the benefits is that compared to the value of tourism which amounts to £387 million a year the benefits of the proposal to the local economy are minuscule by comparison at around £1 million per annum.

The development plan.

- 8.8 There are three issues that need to be considered - what is the weight to be given to the development plan, are the policies complied with and if not are there material considerations that justify setting aside the policies in the development plan.

What weight should be applied to the development plan?

- 8.9 The provisions of Section 38(6) apply to this proposal. The intention of the plan – the NYMLP - is to control further development of gas and safeguard local environmental quality by limiting the location of such development.<sup>134</sup> The starting point is that the determination should be in accordance with the development plan. The only argument made by the Appellant in refraining from that approach is the age of the policies.
- 8.10 It is accepted that they are old. However that is not the test. The effective and material test is whether those policies have been superseded, or/and, they are in conflict with more up to date government policy. It is contended by the Appellant that they are. NYCC reject that contention. No conflict was identified in cross-examination of NYCC's planning witnesses. For MEL reference was made to later government policy relating to energy. That did not identify anything which could lead to a sensible conclusion that the policies have been superseded by recent government guidance.
- 8.11 The NYMLP policies actually amount to very defensible and understandable principles underpinning sustainable development namely that Applicants for

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<sup>134</sup> Doc.CD/C1 – para.7.1.2

planning permission should avoid duplication where possible, there should be an overall scheme of development and such facilities should avoid the countryside if possible. All these policies make blinding sense in the context of sustainable planning. To allege they have been overtaken by more recent guidance is illogical.

- 8.12 The NYMLP policies do apply and this proposal fails to comply with Policies 7/6, 7/7 and 7/8. That provides a clear impediment to the prospects of getting planning permission. In response MEL concoct a tortuous three stage approach which is that the policies are out of date, they do not actually apply but even if they do apply the proposal complies with them.
- 8.13 NYCC reject that approach as fanciful. If MEL really took the view that the policies were being misunderstood, misapplied and in any event the proposal complied with them it is incredible that on numerous occasions when the NYCC contended they did apply and the proposal failed to comply with them that they did not bring that to anyone's attention. The application of these policies is probably the most important aspect of the application process. The idea that a competent planning consultant properly directing himself would allow the LPA to behave in the manner alleged without comment or correspondence is unlikely.

Are the policies in the development plan complied with?

- 8.14 The policies are not complied with and MEL's contention that they are is simply wrong. In terms of Policy 7/6 there is no overall development scheme of any kind before the decision maker. The intention of the policy is to require maximum integration and elimination of duplication. It is considered to be in the best interests of North Yorkshire's environment to minimise duplication of surface infrastructure and to encourage companies to work together on development schemes<sup>135</sup>. Mr Erasmus has flagged up that there in effect 4 elements that should be considered namely ES1, ES2, the other reserves in PEDL 120 and the remaining reserves in PEDL 077. However no meaningful attempt has been made to consider the commercial production of those reserves together. This application has only addressed ES1. This scheme of development therefore does not provide for the full development of the proven field even though that appears to be the long term intention of the Appellant. Policy 7/6 is therefore breached.
- 8.15 In terms of Policy 7/7 very little of existing available surface infrastructure is utilised. MEL have simply made no attempt of any material kind to use East Knapton. Of course one must look at what this policy is trying to do. It is trying to avoid duplication of facilities i.e. not having a gas processing facility at both East Knapton and Hurrell Lane That is the intention and aspiration of the policy. Policy 7/7 is breached.
- 8.16 In terms of Policy 7/8 the intention is not to use open countryside and the policy seeks that the development of gathering stations forming part of a gas development scheme will only be granted where the development is located on land allocated for industrial use. Policy 7/8 is breached.

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<sup>135</sup> Doc.CD/C1 – para.7.5.5

- 8.17 NYCC conclude that the three key policies of the development plan that are relevant to this decision are breached by this proposal. It is therefore not in accordance with the development plan and should be refused unless there are material considerations that indicate otherwise.
- 8.18 MEL and its advisors have only got themselves to blame on this non-compliance. These policies have not changed since they seriously applied themselves to this project in early 2009. These policies could have been complied with if they had been taken seriously. Because they were inconvenient they had been ignored and as a result they present a major impediment to the grant of planning permission. That is why the kitchen sink is now thrown at them and it is alleged they are wrong, contrary to national guidance, not applicable and if applicable complied with. Every possible argument is deployed against them in an increasingly desperate attempt to circumvent them.
- 8.19 Do not be distracted by legalistic pedantry. The current planning system gives primacy to the development plan, those policies are clear, credible and appropriate and should be applied against this proposal.
- 8.20 Are there material considerations that indicate otherwise? The only possible material consideration that would justify setting these policies aside is a view that the need cannot be met in any other manner. In the light of the possibilities noted above this cannot be sensibly contended.

The policy balance between need and harm.

- 8.21 There is an unquestionable need for the exploitation of the gas. Government Energy Policy makes that clear, but there are also other policies that emphasise the protection of the environment. The draft NPPF makes it absolutely clear that the development should proceed unless the environmental consequences are unacceptable. That could not be more unambiguous. That guidance is applicable here. It is also completely in accordance with other relevant guidance. It cannot be contended that need is determinative on its own. For MEL it was accepted that a balancing exercise was required.
- 8.22 As a matter of approach there is not one statement of government policy which states that if there is gas present then planning permission must be granted. All the policies relating to gas go to the balancing exercise, rather than indicating that permission must be granted. That is why the approach taken for MEL is wrong in that it appeared at times to be indicating that because government policy is supportive then permission must be granted. That is not correct. It must be weighed in the balance. In reaching that balance it is made clear in paragraph 103 of NPPF<sup>136</sup>, which has to be considered in the light of all extant energy policy, that if the environmental harm is unacceptable then permission should be refused. In this case it is contended that on a proper assessment of the landscape evidence the environmental damage that will be created by this development is simply unacceptable.

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<sup>136</sup> Doc.CD/A1 – para.103

The proposal is properly considered a major development.

- 8.23 The Appellant accepts that the Well site does properly constitute major development. However they contend that the proposal must only be considered to the extent that it falls within the National Park in reaching a judgment whether it is major development. This contention should be rejected. It is not credible to salami slice the development in the manner that the Appellant desires. The development must be considered as a whole. Also guidance requires the policy to be applied rigorously<sup>137</sup>. To apply something rigorously does not mean by definition applying it in the loosest possible manner so that developers can get away with the most flexible interpretation. That would fly in the face of the guidance. Policy requires the Applicant to show exceptional circumstances that justify the proposal. MEL has not done so.

The proposal will cause harm to the landscape in the vicinity of the Site.

- 8.24 The site of the GPF is undeveloped agricultural land which has a special peace and tranquillity about it currently. It contributes to the character of the area and is used in a manner which is completely compatible with the existing uses found in the locality. The proposal represents a very significant change. It would insert a massive industrial complex within the countryside. It would appear incongruous, stark and modern. The only basis on which it would be even barely acceptable is through the most comprehensive and extensive landscaping possible which would take many years to mature. The requirement of the landscape strategy is to hide the proposal as far as possible. It must not be seen. In the context of this development visibility from the public viewpoints equates to harm. The trouble with this approach is that it depends on maturity, literally. The landscape proposals require time. However, based on the case put on behalf of MEL they do not have such time. The proposal is only considering ES 1. The reserves within this planning application will take between 3-6 years to be exploited. In that time frame the proposed landscaping will not make a material difference. The proposal will be open and exposed whilst operational. It will sit within the countryside like a beacon of incongruity. The harm which is a consequence of the grant of permission will remain in situ and visible.

There is an alternative to that harm.

- 8.25 The Secretary of State should reject unequivocally the legal and policy contention that it is not appropriate for the decision maker to consider alternative sites for the following reasons. Consideration of alternative sites is a fundamental element of the EIA regulations. MEL complied with that fully in the context of the EIA. Alternative site appraisal is required by the Development Plan in this case. Policy 7/8 demands consideration of whether existing surface infrastructure can be used for the provision of the development. It is clear that the Minerals Local Plan through the concept of avoiding duplication requires satisfaction that there is no alternative existing site which could be used for the proposed facilities.

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<sup>137</sup> Doc.CD/A26 – para.31

- 8.26 MEL accepted for 18 months from submission of this application till the exchange of evidence that it was valid for the LPA to ask for evidence as to the existence or not of an acceptable alternative site. Throughout this period those acting for MEL did not once say such considerations should not be carried out or were not a proper matter for the LPA to consider. It is a point which has evolved at the last minute in a panic about the increasing potency of East Knapton.
- 8.27 As a matter of approach when considering a proposal of this scale and magnitude both within the National Park and on the boundary of the National Park within the open countryside it would be inconceivable not to consider whether a more acceptable alternative actually exists which is less harmful. The simple fact is there exists at least one preferable and potentially less harmful alternative at East Knapton. Public inquiries greatly assist in the detailed scrutiny of proposals. Good points always gain more credence and bad points always get weaker with the passage of inquiry. The ability to use East Knapton has become stronger and stronger with examination and scrutiny.
- 8.28 The position we now find ourselves in at the end of the inquiry is that at the current time and based on the information before this inquiry there is no in-principle objection to the co-location of the facility at Knapton. It would have far less harm on the National Park, it will allow both PEDL 77 and PEDL 120 to be exploited in a full and appropriate manner and both companies will have oodles of money to come up with the right scheme and design if one adds the gross reserves from both reserves that MEL believe exists. It will also avoid the risk of having two very similar facilities within 4 miles of each other.
- 8.29 MEL's objections to the use of East Knapton relied on 5 elements: a concern over delay, technical difficulty, infrastructure capacity, commercial attractiveness and the harm from the additional pipeline.
- 8.30 In terms of technical difficulty there is simply no case. Mr Hughes gave clear and unambiguous evidence that there was no technical objection to co-location or redevelopment of the site by both MEL and Viking. That evidence remained unchallenged. There is simply no technical impediment to co-location or redevelopment. It is possible to create a facility which would either lie adjacent to the existing facility or a new GPF which could be designed up to 70 MMSCFPD. In terms of infrastructure capacity no specific concern was identified.
- 8.31 In terms of commercial attractiveness it cannot be right that because MEL would prefer to be in a commercial position of strength with Viking that justifies them going it alone. There is not one piece of viability evidence that supports any view that it would not be viable to have co-location or redevelopment of Knapton. It was open to MEL to seek to make a viability case against this scenario. There exist many such witnesses who could have been called to make such a case. There is no evidence, in the form of tables, charts or figures, on which to conclude that with the level of receipts forecast it would not be viable to redevelop East Knapton.
- 8.32 In terms of harm from the additional length of pipeline such harm would be temporary only relating to the period of construction. If it is acceptable to



tunnel through the NP without any long term harm then there is no reason why one cannot allow that to continue down to East Knapton.

- 8.33 Potential delay is a really poor justification. It also provides a charter if used as a justification to avoid duplication by rewarding those who have made no attempt to discuss their proposals with anyone else. MEL's attempts to negotiate with Viking and their predecessors have been pathetic. Mr Foster had met with Viking twice in nearly 3 years. To treat the only other operator of a gas facility with such ambivalence cannot be rewarded.
- 8.34 MEL had entirely focused on the inefficiency of the existing gas turbine which is mystifying when Viking are contemplating having a GPF now. That is a complete red herring in the context of co-location or redevelopment.
- 8.35 NYCC accept that G5 is currently vague, unsubstantiated and early in its development. While that is self evident this argument should be rejected. It is equivalent to the tortoise and hare. MEL have become the hare and rushed to a strategy which cannot be rewarded just because they are ahead of the process. Yes the Viking approach will take time to develop and work out the details. However we have enough information to know if this proposal is feasible at Hurrell Lane it can work at East Knapton with investigation and good will by both parties. The potential commercial returns will become a massive incentive to make it work. It will work. If a project is flawed it cannot be right to say notwithstanding it is flawed allow it because a flawed project will become reality in a much shorter time period than a good and sensible project. The argument will only reward those who have made the wrong journey, rather than those who have made the right journey in a longer time.
- 8.36 What is necessary is of course a comprehensive and detailed masterplan which will emerge if the SoS concludes that both Hurrell Lane is environmentally unacceptable and that the Appellant has failed to comply with policy by not exploring adequately East Knapton.
- 8.37 Remember the decision of the SoS will be a game changer in this regard. If the Inspector and the SoS endorse the approach set out in Policy 7/8 then MEL will have to set about complying with co-location and development at East Knapton. They will find a way of making it work when the price is a minimum of £1 billion pounds of income to the company.

#### Section 9 - Summary and Conclusion

- 8.38 The level of objection to this proposal is very significant. All 3 planning authorities have formally resolved that it is unacceptable. Allied to that are the objections of the Parish Councils and numerous other consultees. There is a petition of 14000 people who oppose the development. It is a development of some benefit. However it is simply in the wrong place because of the level of harm that will result from its development.
- 8.39 The GPF needs to be located at East Knapton through a comprehensive redevelopment which will also bring about the exploitation of PEDL 77. There is also the potential of another site being developed with less harm. Such a development will have minimal harm. It will be a significant distance from the National Park and the existing facility is already there. Even if East Knapton is not a viable option, this proposal is still unacceptable because the level of harm outweighs the benefit.

## 9. The Case for NYMNPA

### 9.1 Introduction

9.2 The NYMNPA is of the view that the Secretary of State should conclude, that planning permission for the appeal scheme should be refused. The starting point is s.38(6) of the 2004 Act: the scheme must be determined in accordance with the development plan unless material considerations indicate otherwise. There is a fundamental difference between the parties on this point: MEL says that the scheme complies with the development plan; the NYMNPA and NYCC are clear that it does not.

9.3 MEL's position with regard to development plan compliance needs to be put in context: their position is that this scheme would be unobjectionable even if there was no gas to be exploited from ES1. In other words, MEL say that the built infrastructure (the wellsite, the pipelines and the GPF) requires no justification; or, to put in another way, even if someone just wanted to build this scheme without going on to produce any gas through it then it would still be appropriate to grant planning permission for it. MEL's position only has to be stated for its absurdity to be appreciated.

9.4 The short point here is that the scheme would be seriously harmful, bringing it ineluctably into conflict with the development plan. There are material considerations which weigh in favour of the scheme but these are small and do not justify the grant of permission in the face of the development plan.

The scheme under consideration

9.5 It is important at the outset to be clear about what scheme is under consideration here. The position was finally made plain by Mr Erasmus in cross-examination. He confirmed that in terms of the need for the scheme, he only sought to rely on the gas that might be produced from ES1. He also confirmed that ES1 would be likely to sustain between 4 and 6 years production. He also confirmed that, had it wanted to, MEL could have sought to apply for permission for ES2 but that it chose not to do so. Mr Erasmus' evidence on this issue boils down to this: the benefits arising from the scheme are therefore those that would come from exploitation of ES1. Equally, of course, the harm caused by the scheme must be the harm caused by the proposed extraction of ES1.

9.6 With regard to future development (no part of this application) MEL has made claims for the potential for the GPF to serve further well-sites in the NP. It may or it may not. The critical point here is that no weight can be given to MEL's claims because there is no analysis before the Inquiry as to the likely harm that any future well-sites will cause. In the most basic terms it might be considered a good thing that the GPF could serve future well-sites, but that benefit would certainly be offset and could of course be outweighed by the harm that future extraction may cause. It would therefore be wrong to rely on these claimed future benefits as a factor in favour of the scheme.

The development plan

9.7 The statutory development plan comprises the Yorkshire and Humber Regional Plan (May 2008), the saved policies of the North Yorkshire Minerals Local Plan (1997, saved 2007), the North York Moors LDF Core Strategy and

Development Policies (2008) and the saved policies of the Ryedale Local Plan (2002).

- 9.8 MEL contends that the MLP is out of date and that no significant weight should be attached to it. That contention is misconceived. In particular, it was not suggested by MEL either in opening submissions (see paragraph 14) or in xx of either Mr Walker or Ms Skelly that the MLP was in any way inconsistent with national policy. That is an end to the matter. But MEL's point also has to be seen in context. The development plan has central importance in the determination of any planning application. The weight to be attached to the development plan is therefore a matter of very great significance. Had MEL really thought this was a good point it would no doubt have been at the forefront of their discussions with NYCC and the NYMNPA. Mr Foster's repeated assertion that he did not see it as part of his job to raise such matters with local planning authorities was, frankly, ridiculous and cuts across the fact that he did in fact mention it at a meeting in December 2010<sup>138</sup>. He did not mention it again. The point does not appear in the Design & Access Statement or in MEL's statement of case<sup>139</sup>. It would have appeared in both documents if MEL thought it a serious point.

Strategic requirements.

- 9.9 Policy 7/6 of the MLP states that:  
"The Minerals Planning Authority defines a gasfield ... as including a number of separate hydrocarbon reservoirs within a single area, irrespective of licence right and obligations. Planning permission for commercial production will only be granted within the framework of an overall development scheme relating to all proven deposits within the gasfield ..."
- 9.10 The policy's underlying purpose is obvious: it is to ensure maximum integration and the elimination of duplication<sup>140</sup>. It is equally obvious that it is in the best interests of the environment (and therefore in all our best interests) "to minimise duplication or surface infrastructure and to encourage companies to work together on development schemes". In this case, there has been no joint working whatsoever between the relevant companies and, as a result, there is no overall development scheme relating to all proven deposits within the gas field. The application is therefore plainly contrary to Policy 7/6 of the MLP.
- 9.11 Policy 7/7 of the MLP states that:  
"Unless such development would be technically impracticable or environmentally unacceptable, planning permission for the development of ... gas reserves as yet undiscovered will only be granted where the development utilises existing available surface infrastructure or pipelines".
- 9.12 Before dealing with the requirements of policies 7/6 and 7/7 it is necessary to deal with MEL's point that the policies do not apply to the GPF. With regard to

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<sup>138</sup> Doc.CD/O5

<sup>139</sup> Doc.CD/L35

<sup>140</sup> Doc.CD/C1 – para.7.5.5

policy 7/6 MEL argue that only the well site comprises “commercial production”. That is an unrealistically narrow interpretation of the policy; the application must be considered as a whole and, considered as such, it clearly comprises development for commercial production. Insofar as MEL run the same argument in respect of Policy 7/7 it is equally misconceived.

- 9.13 MEL concedes in terms that East Knapton comprises “existing available surface infrastructure” for the purposes of Policy 7/7: see Foster proof paragraph 8.58; see also the Design and Access Statement paragraph 4.52; and see also Foster in cross-examination: East Knapton is “existing available infrastructure”, subject to it being technically practical and environmentally acceptable. That is a very important concession.
- 9.14 In an attempt to get around policy 7/7 MEL sought to argue that the development of East Knapton would be “commercially unattractive, technically difficult and have potentially adverse effects on climate change” (ibid). It is therefore necessary to take these points in turn.
- 9.15 Commercial attractiveness. MEL chose its words carefully here. Crucially, MEL does not contend that it would be unviable to utilise East Knapton. It may be that MEL thinks it could make more money if it used Hurrell Lane, thereby making East Knapton less commercially attractive than Hurrell Lane, but that is not the test. It would of course have been open to MEL to submit evidence to explain that it would not be viable to utilise East Knapton. It chose not to do so. There is therefore no basis whatsoever on which it could properly be concluded that it would be unviable for MEL to utilise East Knapton. Indeed, such evidence as there is points overwhelmingly the other way. The only extra cost that MEL sought to identify was the cost of constructing a longer pipeline. Mr Erasmus thought that might cost in the order of £1.1m per kilometre. It is difficult to see that as even being material to the viability of a scheme that will generate hundreds of millions of pounds in revenue. Revenue does not equate to profit of course, but MEL has had every opportunity to put its cards on the table at this Inquiry and has chosen not to do so.
- 9.16 Technically difficult. Again, MEL chose its words carefully here. It does not suggest that it would be technically impracticable (the policy test) to use East Knapton; Mr Hughes gave unchallenged evidence that it would not. That is therefore an end to the point.
- 9.17 Environmentally unacceptable. No one has presented evidence to suggest that it would be environmentally unacceptable to utilise East Knapton. The only point that MEL makes is that the existing power station at East Knapton is less efficient than a new CCGT plant would be and that, as a result, putting the ES1 gas through the current East Knapton plant would result in a higher level of CO<sub>2</sub> emissions. That may be true, but it does not take into account the carbon footprint of building and operating a separate plant at Hurrell Lane. Without that analysis, MEL’s claimed benefits are effectively meaningless.
- 9.18 It follows that the appeal scheme fails to comply with Policy 7/7 of the MLP. In this regard, MEL has only got itself to blame. Despite the clear terms of Policies 7/6 and 7/7 MEL has made no meaningful attempt to engage with Viking / 3<sup>rd</sup> Energy. Finally on this point, MEL says that requiring compliance with the MLP now would result in delay. That does not change the fact that

there is a clear breach of the MLP here; these submissions address the issue of delay under “other material considerations” below.

Major Development Test.

- 9.19 The scheme also runs counter to the development plan (Core Strategy policy A) in that fails the MDT. It is common ground that the MDT can apply to development schemes – such as this one - that are built across the NP boundary. It is a matter of judgement whether it should in any particular case. Further, there is also no dispute that this application must be considered as a whole – i.e. it is not severable. Further, the Hurrell Lane facility will adversely affect the NP; even MEL accept that the GPF would have a significant impact on views in which the GPF provides the foreground to views of the NYMNP. Further, the MDT is predicated on the concern as to the impacts that major development, either in or adjacent to the National Park can cause. It is therefore plainly right that the GPF should be subject to the MDT. But even if it was not, the same considerations would effectively apply pursuant to other development plan policies mentioned above: i.e. environmental impact and potential for location elsewhere. Finally on this point, MEL gave the somewhat unrealistic example of a GPF being sited in Hull. Plainly, such a facility would not impact on the NYMNP and there could be no objection to it on those grounds.

Environmental requirements.

- 9.20 The appeal scheme fails to comply with all the development plan policies dealing with landscape protection. None of the relevant landscape policies countenance significant harm to the landscape: see e.g. RSS policy ENV10 (“safeguard and enhance”); Core Strategy policy A (“conserving and enhancing”); and ENV3 of the Ryedale Local Plan (large scale development not permitted in AHLV unless it “is incapable of being located outside the AHLV”).
- 9.21 With respect to impact on the landscape it should be noted that:
- 9.21.1 It is now common ground that the impact of the scheme on the setting of the NYMNP must be taken into account in the determination of the scheme. It is not clear why MEL ever thought otherwise. The NYMNPA is particularly concerned that the GPF – introducing large scale industrial infrastructure so close to the NP – will cause significant harm to its setting. Given the obvious importance of the NP, that is a matter to which very significant need should be attached.<sup>141</sup>.
- 9.21.2 In addition to the harm caused by construction of the entire scheme, the GPF would result in permanent adverse harm to the character and appearance of the area. The landscape here is highly sensitive to change. The GPF would be entirely out of keeping with what is an otherwise agricultural landscape (confirmed in terms at ES paragraph 8.122). MEL claim that they have respected the historic field pattern in the area. No-one looking at the GPF would be thinking about the field pattern.
- 9.21.3 The scheme would plainly not accord with the District’s own landscape guidance on this point:

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<sup>141</sup> Doc.CD/B1 – para.10.58

“The relatively high hedgerow and tree cover of the area provides a landscape that has a largely enclosed character, *which could possibly accommodate small scale, well sited and sympathetically designed development*”<sup>142</sup> (italics added).

- 9.21.4 This is the most important piece of landscape guidance relating to the area in which it is proposed to site the GPF. As Ms Toyne had to accept in cross-examination, it contains a clear statement as to the extent of the development that the area could possibly accommodate. It is beyond argument that the development does not comply with those limitations. The development is large scale, sited in the open countryside and is of an obviously industrial appearance, entirely out of keeping with its surroundings. So, in terms of scale, siting and appearance, it will harm the character and appearance of the area. As more than one local resident has pointed out, it will be an eyesore.
- 9.21.5 Ms Toyne’s evidence is that the scheme would cause no long term harm. That evidence must however be treated with utmost caution following her evidence in cross examination. This is because she gave oral evidence that ran contrary to her own professional opinion. She sought to mislead the inquiry by saying that it was her opinion that the appeal scheme was small scale. There was no ambiguity about that assertion and paragraph 6.23 of her proof revealed her answer to be untrue. That evidence was given in respect of a centrally important issue. It would obviously be wrong for any significant reliance to be placed on the evidence of a witness who is prepared to mislead an Inquiry.
- 9.21.6 Ms Toyne’s search for some sort of justification for the GPF led her to present evidence relating to various farms in the area (her appendix GT6). But as she accepted in cross examination, only two of the farms to which she drew the Inquiry’s attention are actually within Landscape Character Area K, and neither of those appear in any way industrial. The built development in the area is very limited; there is simply nothing that provides any sort of context for the proposed scheme. Again, had Ms Toyne’s point been a good one, it could reasonably have been expected to have been mentioned prior to the production of her proof, for example in the ES (which not only makes no mention of Ms Toyne’s industrial farms but also confirms – in terms - that the appeal scheme would impose industrial development in an otherwise agricultural landscape. Ms Toyne’s evidence was yet another last ditch attempt by MEL to find something to support the appeal scheme.
- 9.21.7 The scheme would include the construction of a new and intrusive access road through an area of High Landscape Value, the regrading of land adjacent to the A170, the construction of a lengthy and alien bund and (on the evidence available) the removal of some 40m of hedgerow to facilitate the necessary visibility splays.
- 9.21.8 The lighting, whilst compliant with the relevant guidelines, would only serve to attract attention to the built development. This is an inherently dark landscape and the introduction of the GPF will be significantly harmful in this regard. MEL’s (again last-minute) attempt to rely on the lighting at the

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<sup>142</sup> Doc.CD/O4

Snainton driving range was not properly thought through and was yet another example of MEL unconvincingly casting around for points to try to shore up its case. The only evidence before the Inquiry is that the lighting at the driving range constitutes a statutory nuisance. The lighting does not benefit from planning permission and authorities are duty bound to serve an abatement notice where it considers a statutory nuisance exists: s.80 of the Environmental Protection Act 1990. If Mr Foster is right then the nuisance will be abated. There is no basis therefore for including the driving range lighting as part of the baseline. It is in any event several miles from the appeal site and provides nothing by way of support for the appeal scheme.

- 9.21.9 Ms Toyne was not asked to assess the impact of the scheme against the timescales for gas extraction identified by Mr Erasmus in his evidence. In that timeframe the landscaping will not serve in any way materially to mitigate the impact of the scheme. The harm that will arise in order to meet the identified need (ES1) will be very significant indeed. In conclusion, it is clear that the scheme would not comply with the development plan.

Other material considerations.

- 9.22 MEL places very significant weight on the benefits the scheme would bring. The NYMNPA accepts that there is a need – supported in national policy - for indigenous gas reserves to be exploited, but the scheme must be put in context in that regard. It would provide approximately 0.01% of the UK's gas needs. That is, on any analysis, a very small amount indeed.
- 9.23 The scheme would also be beneficial to the local economy, but again that must be put in context. The scheme would contribute only 0.25% of the amount generated by tourism each year, i.e. barely noticeable in the bigger scheme of things.
- 9.24 Finally, MEL say that the scheme should be permitted because refusal of the scheme would lead to delay in the extraction of the gas. As set out above, the MLP is clear as to the requirements for joint working and utilisation where possible of existing infrastructure. MEL have effectively ignored this policy requirement. There would have to be a very good reason to grant planning permission notwithstanding MEL's failure here. There is however no proper evidence on which to conclude that the need for the ES1 gas (again, this is the only gas being promoted here) is so urgent as to sideline what really needs to be done in this case, i.e. for MEL to look properly at East Knapton so that gas extraction over the coming years can be sustainably delivered.

Conclusion

- 9.25 The NYMNPA considers that the scheme is contrary to the development plan and that whilst there are material considerations that weigh in favour of the scheme, these do not come close to justify the grant of planning permission in the face of so clear a breach of policy.

## **10. The Case for AGHAST!**

Introduction

- 10.1 AGHAST! represents the views of a sizeable majority of respondents to a survey independently commissioned by Thornton-le-Dale Parish Council

regarding the proposed development in a ward of over 3,300 people. The group also represents some fourteen thousand three hundred signatories to a petition against Moorland Energy's proposals<sup>143</sup>.

- 10.2 As a Rule 6 Party, AGHAST! has presented significant evidence concerning several of the material planning considerations in this case. As well as some specialist input to particular issues our case is also based on evidence that accurately reflects the first-hand knowledge and day-to-day experiences of local people over many years. AGHAST! therefore has been able to provide the Inquiry with a valuable, first-hand, local perspective on the issues under consideration.
- 10.3 AGHAST! is an informal group of local residents and businesses, composed of people generally unfamiliar with the planning system and planning inquiries. As such they put great store on the transparency of the planning system, and the ground rules such as basic statutory provision giving prominence to the 'development plan'.
- 10.4 AGHAST! is still of the view that this proposal is not in accordance with the development plan, because of the unsustainable and otherwise environmentally unacceptable way in which it is proposed to be carried out. Also, this proposal is not of a scale to warrant overriding the development plan, or other material considerations, on grounds of specific contribution to the local economy, general contribution to the regional or national economy, or to national energy security.
- 10.5 AGHAST! remains concerned with:
- i) the claims made for the importance of the development, both to the local economy and in relation to contribution to national gas requirements;
  - ii) the claims made in relation to government's statements about the urgency with which onshore gas production facilities are required;
  - iii) the effect of the development on the adjacent national park, its appearance, views from it, and the impact on residents, the tourist trade and business; and
  - iv) the consideration given by the appellants to the constitution and behaviour of gas, and the consequent perceived risks to off-site safety and smell.
- 10.6 In relation to off-site safety, AGHAST! maintains that due regard to off-site risk assessment has not taken place up to the current time, and that that limited consideration which has been taken, has focussed primarily on incidents relating only to fatality, with insufficient regard taken to non-fatal health risks. However, AGHAST! has accepted that such risks will be adequately dealt with by permitting and licensing regimes following the granting of any planning permission, and has chosen not to make further representation in these regards at this Inquiry.

#### The Development Plan

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<sup>143</sup> See Report para.11.1 below



- 10.7 Coming to the right decision on these contentious issues is, as with other issues, a question of balance - of establishing the weight to be given to the arguments presented on each issue, as a matter of policy, and fact and degree. In summarising how AGHAST! believes that weight can be established in each instance depends first on the statutory framework for determinations under the Town and Country Planning Act 1990 ("the 1990 Act"), then the relevant development plan, and then national policy and other material considerations.
- 10.8 Section 70(2) of the 1990 Act requires local planning authorities when determining planning applications to 'have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.' Section 70(2) also applies to determination of appeals by the Secretary of State (by section 79(4) of the Act). This is supported by section 38(6) of the Planning and Compulsory Purchase Act 2004, which, repeating the wording of the former section 54A of the 1990 Act, provides that:
- 'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'*
- 10.9 AGHAST! recognise that this is not a requirement that the provisions of the development plan must always be adhered to. Equally, however, '*section 38(6) creates a presumption in favour of the development plan*'<sup>144</sup>.
- 10.10 This is a qualified presumption, which can be displaced, as was explained by the House of Lords in the City of Edinburgh case, for example where Lord Hope said: '*No doubt the enhanced status of the development plan will ensure that in most cases decisions about the control of development will be taken in accordance with what it has laid down.*' But some of its provisions may become outdated as national policies change, or circumstances may have occurred which show that they are no longer relevant.<sup>145</sup>
- 10.11 However, it must be surely right that the presumption in favour of the development plan should be displaced only by considerations that are not only material, but ones which are also of at least significant weight.
- 10.12 In the *Cala Homes* judgement there were helpful observations by the Court of Appeal in this regard. In relation to the question of how to assess the weight to be given to the proposal to abolish regional strategies, it was accepted in this context, by Sullivan LJ, that any displacement of the development plan would have to be by considerations that were not only material but also of *significant weight*. He observed:
- 'Mr. Village submitted that if the proposed abolition was a material consideration, it would be irrational to give it any weight at this stage. However, Mr. Mould's submissions have persuaded me that where the issue is*

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<sup>144</sup> *Cala Homes (South) Limited v Secretary of State & Another* [2011] EWCA Civ 639, per Sullivan LJ para.6

<sup>145</sup> *House of Lords in City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, per Lord Hope at 1450 B-D.

*one of weight rather than materiality, "never say never" is the appropriate response to a submission that, as a matter of law, any decision-maker in any case would be bound to give no significant weight to a potentially material factor .*

*Mr. Mould fairly acknowledged that even within the minority of cases in which the proposed abolition of regional strategies will be relevant, there may well be very few cases in which it would be appropriate at this stage of the Parliamentary and Strategic Environmental Assessment process to give any significant weight to the proposal.*<sup>146</sup>

- 10.13 AGHAST! understand that the development plan, for the purposes of MEL's proposal, comprises the following documents:
- The YHRP;
  - The NYMLP1997 (Saved Policies);
  - The NYMCS 2008; and
  - RLP 2002 (Saved Policies).
- 10.14 The NYMCS is clearly up-to-date, and the local plans are older. However, the older ones, and the NYMLP in particular, are not 'out of date', as we have heard from Mr Walker, who saw the plan as providing a framework for exactly the situation in which we find ourselves.
- 10.15 Mr Walker said the policies 'have stood the test of time' and 'could have been written for the current situation'. The NYMLP cannot sensibly be characterised as 'antique' as claimed on behalf of MEL. If this were the case one would expect to see a great divergence between the approach taken by the Local Plan and the national policy in MPS1 & 2.
- 10.16 There is no such divergence. The positive way in which the Local Plan looks on development *which is sustainable* is not very much at odds with the thrust of the new draft NPPF 2011. Paragraph 103 of the draft provides, amongst other things, that "When determining planning applications, Local Planning Authorities should:
- *give significant weight to the benefits of the mineral extraction, including to the economy*
  - *ensure, in granting planning permission for mineral development, that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and bear in mind the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality".*
- 10.17 This refers to all mineral extraction. As is inevitable with a document that covers so much ground there is little detail on specific kinds of mineral exploitation. But specifics are exactly what are provided by the NYMLP. Indeed, it is useful to bear in mind that the statement appearing at paragraph 7.2.4 of the Local Plan informs the Development Plan:

*'Oil and gas operations are significantly different from other types of mineral development. Ownership, statutory controls, the release of land, method of working, surface installations and environmental impact all differ from mining and quarrying. In general the pursuit of such a high value product should*

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<sup>146</sup> [2011] EWCA Civ 639, per Sullivan LJ, para.33

*make it easier to attain good standards of environmental protection, landscaping and other restoration.'*

*'Because of the types of operations involved the land take is normally less than with mining and quarrying. There can be some locational flexibility within local search areas which, together with the ability to achieve directional, deviated drilling, can accommodate local circumstances. If commercial resources are not found the impact may be short term. Thus in comparison with other types of mineral working, oil and gas operations normally have less impact on local amenity and the environment.'*

- 10.18 This is an approach that sees gas and oil development as acceptable provided it is sustainable in an environmental sense. The specific policies in the Local Plan provide the details necessary for implementing that framework.
- 10.19 The proposals contravene Policy 7/6 of the North Yorkshire Minerals Local Plan. This policy sets out the Authority's definition of a gas field, and it is clear that in the current case the gas field includes all resources, proven and potential, within the vicinity of the Appellant's well site. The policy makes it clear that permission would only be granted within the framework of an overall development scheme relating to all proven deposits.
- 10.20 There has been little attempt by the appellants to tailor their proposal to conform with this policy. The Appellants' approach seems instead to be reticent about other existing resources in the locality and their intentions for developing the same. This makes the current proposal difficult to assess from the sustainability perspective, so that it cannot be said to be compliant with this policy. As such the development's negative impacts on amenity and landscape, whatever their scale, attract weighty objections.
- 10.21 MEL maintain that since the well site is within the National Park, this policy should not apply. It should be noted that the title of the Policy is "Development Scheme". Notwithstanding any attempt to subvert the diligent intentions of the policymakers, it is clear that the substantive part of "The Development" falls within the jurisdiction of the MPA.
- 10.22 The proposal also contravenes policy 7/8 of the Minerals Local Plan. Of 'Gathering stations' (and by implication processing facilities) the plan says at paragraph 7.5.6 ....'*Such development in the open countryside or served by road only would require particular justification to demonstrate why an environmentally better alternative site was not available*'. Policy 7/8 provides that '*Unless such development would be technically impracticable or environmentally unacceptable, planning permission for the development of gathering stations forming part of an oil or gas development scheme will only be granted where the development is located on land allocated for industrial use and/or where it is associated with rail or waterway transport.*' There appears to have been no or very limited investigation by the appellants of alternative sites. They have preferred instead to base their rejections of other sites on unexplored technical limitations, or commercial incompatibility (e.g. at East Knapton), and perfunctory land-use assessment (at Thornton-le-Dale).
- 10.23 It is clear that the intentions and thrust of these saved policies is as described by explanatory note 7.5.5 '*it is considered to be in the best*

*interests of the North Yorkshire environment to minimise duplication of surface infrastructure and to encourage companies to work together on development schemes'.*

- 10.24 A small or short-term proposal for the extraction of gas is expected to make a more thorough appraisal of alternative sites than is in evidence with the appellants' proposal. Again, we do not know whether the policy could have been complied with, only that it has not been. And the issues raised by the appellant such as contribution to the economy, even if of large scale (which of course is contradicted by the evidence) should not be given significant weight whilst such policies are contravened. This is for the very simple reason that the benefits, whatever they are, could be secured without the construction of this new facility.
- 10.25 The new NPSs (EN-4 (Gas Supply Infrastructure and Gas and Oil Pipelines) and EN-1) should be given no weight in relation to the proposal. In cross-examination Mr Gabbott agreed that they could not apply to a development of the kind proposed.
- 10.26 AGHAST! acknowledges that the new NPPF is material. However, it is inappropriate to give that draft policy significant weight until adopted. This is simply because the final content of the document is not yet known. However, even if adopted in the form currently proposed, AGHAST! makes the following observations.
- 10.27 The draft Framework does not say that if a policy is out of date planning permission should be granted. The decision maker should still take into account other national policy and any other material considerations, consistent with the planning framework's 'golden thread' and presumption in favour of sustainable development.
- 10.28 Policy is not necessarily out of date because it is old. Policy can be old and deal with the same issues and the same approaches as newer policy or guidance. Indeed the draft NPPF uses the term 'local policies' (for example at paragraphs 19 and 20) which is a general term that appears to range wider than Development Plan Documents and Local Development Documents, and appears to take cognisance of a wide range of documents.
- 10.29 It is not clear to what extent other national policy, including guidance, is to be revoked e.g. MPSs, circulars; and whether all existing PPSs are to be revoked in their entirety and at once. The opening words of the NPPF, which talk of replacing over a thousand pages of policy with around fifty suggest this. It would not be unprecedented for parts of existing national policy to be retained. Examples could be found in those subject areas about which the draft Framework is relatively sparse, e.g. development plan preparation, or more technical subjects such as noise, historic environment, telecommunications, or unstable land.
- 10.30 There is no policy in the draft NPPF that specifically relates to the granting of planning permission for the exploitation of gas reserves. The general objective (para.100) is to 'facilitate sustainable use of energy minerals'. As noted above when determining planning applications, local planning authorities should:

- give significant weight to the benefits of the mineral extraction, including to the economy;
  - ensure, in granting planning permission for mineral development, that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and bear in mind the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality.
- 10.31 AGHAST! believes that the inability of the planning system to ensure sustainable development within the second limb of paragraph 103 within the context of the very small scale of this potential resource means that the proposal would not be consistent with the draft NPPF if introduced in its current form.
- 10.32 The proposals ignore an opportunity, which currently exists, perhaps as never before, for operators to work together, as required by Chapter 7 of the NYMLP, to utilise the resources within the framework of a properly considered and comprehensive overall development scheme.
- Odour
- 10.33 Dr Pitt submitted evidence that carbon absorbers, proposed to remove odorous materials during the process of venting to atmosphere, will require replacement at intervals whose frequency it is not possible to pre-determine, due to the variability of contaminants and their inevitable deterioration at rates dependent upon amounts of water vapour and heavy hydrocarbons.
- 10.34 Mr Deakin indicated that the BAT to deal with the unexpectedly premature degradation of these absorbers was to have spare filters available. This contradicts his assertion that maintenance would be scheduled to coincide with favourable atmospheric conditions. Given the considerable propensity for odour this entails, this approach represents a continued concern to AGHAST!
- 10.35 Mr Deakin confirmed that extensive modelling, using detailed meteorological data, has only been performed upon four items of the proposed plant, namely the regenerator heater, two gas-fired boilers and, recently, the ground flare. The latter item was omitted from original modelling, and was only included following concerns from objectors. The modelling confirmed that receptors would be subject to odour during some conditions. Mr Deakin acknowledged that the receptor location chosen would not be the only affected property, and acknowledged that he had taken no consideration of users of public rights of way nor outdoor workers as potential receptors.
- 10.36 All other identified likely and potential sources of odour did not benefit from modelling, and instead were considered only with regard to prevailing winds, on average for only a third of days as shown by the wind roses.
- 10.37 No consideration is given in the OMP nor in Mr Deakin's evidence to odours released during maintenance operations requiring replacement of plant items (such as pumps, valves, filters, etc.). The only consideration given in the OMP to those unintended occurrences which might give rise to odour nuisance is in respect of small spills, for which the provision of sodium hydroxide as a clean-up is the appropriate best available technique. For such occurrences Mr Deakin has assessed the risk as being 'very low'.

- 10.38 Such an approach can only be seen as flawed, since it is impossible to determine in advance the magnitude of an unintended event such as a spill, which may be caused by any of a number of factors. It is notable, from the recently-submitted Protech Planning Support Document, that provision has been made at the gas processing facility for the storage of 13,000kg of sodium hydroxide.
- 10.39 The Appellants have failed to consider the incidence of atmospheric temperature inversion conditions, which will have the effect of preventing or retarding dispersion of odorous (or indeed harmful) pollutants from the vicinity of the gas processing facility. Such conditions occurred on two of the first three days of this Public Inquiry.
- 10.40 Temperature inversions are recognised by the EA as factors affecting management of odour nuisance, and the issue was raised in AGHAST!'s representation of October 2010 as being pertinent to the area. They remain absent from Mr Deakin's evidence, or indeed any of the Appellant's assessments of odour nuisance.
- 10.41 The EA guidance 'H4 - Odour Management' suggest that 'You may be able to avoid peak impacts by timing your operations. For example, suspending operations when there are inversion or cold drainage flow conditions or when the wind direction is towards nearby residents, or by undertaking activities at a time of day when residents are not present or are likely to be indoors.'
- 10.42 Although Mr Deakin said in cross-examination that such measures can be used, including scheduling maintenance with due regard to weather forecasting, no such considerations are to be found in the OMP.
- 10.43 It is AGHASTs' view that insufficient regard has been given to the possibility of odorous emissions from the facility during times of maintenance, or of unintended breakdown or loss of containment. These omissions undermine the assessments of detriment to residential amenity, and, given the toxic nature of the pollutants, will in addition have implications of risks to health. Further, omissions have been made in assessing the atmospheric pathways by which such pollution may reach receptors.

#### Perception of harm amongst the Local Community

- 10.44 Notwithstanding any actual harm represented by the proposals, there remains by their very nature the material consideration of a significant perception of harm amongst the local community. The evidence for this lies within the considerable volume of objection letters sent to both planning authorities and to the Planning Inspectorate, and in the transcripts of several of the speakers who attended the public session of the Inquiry on 1<sup>st</sup> November 2011.
- 10.45 These public fears might have been averted had there been a more inclusive and receptive approach by the Appellants throughout the planning application stage. Instead what was seen was a one-way flow of public information, and an attitude seen as being dismissive of residents' concerns. This persists right up to the current time with the evidence of Mr Foster at his paragraph 8.87, in which he states that:

*'In my opinion, in circumstances where the actual risk has clearly been demonstrated to be very low, then very little weight should be placed on these perceptions in the determination of this appeal'.*

It remains the case that, at the current stage, the actual risks by posed by the development have yet to be ascertained, a process which will not be undertaken until such time as an operating licence and HSE approval are sought.

- 10.46 Despite claims by Mr Erasmus the MEL have *'communicated in good faith and been truthful throughout this process'*, evidence emerged that the company has sought to present an overly favourable image both of the development and of the Appellant's approach.
- 10.47 This was demonstrated visually with reference to the artist's impression which failed to show the full visual impact of the gas processing facility, and with regard to public consultation, where claims to have relocated the flare stack in response to residents' complaints were shown to have been false, in that the decision to move the stack was taken prior to the first public exhibition.

#### Landscape, Setting and Proximity to The National Park

- 10.48 Mr Goodchild observed that the landscape strategy proposed *is inappropriate, in responding to the development, and not to the landscape*. While reviewing photomontages presented by Ms Toyne, he was asked to comment upon the effectiveness of the screening at years 5 and 8 (reflecting the anticipated potential life of the project as proposed, and commented that the screening would *'not be performing the intended function at this timescale.'*
- 10.49 The Hurrell Lane site is in an area classified by *Gillespies* in their 1999 report "The Landscapes of Northern Ryedale" as Linear Vale Farmland (Area K). To the south of this classification area lies Area H - Open Vale Farmland.
- 10.50 Ms Toyne commented that individual fields within any such classification may have varying individual characters. Ms Toyne was invited to compare her "Landscape Character Photographs" F and I, representing examples of each of the two classification areas respectively. Ms Toyne was further invited to compare Landscape Character Photograph A, depicting the Hurrell Lane site.
- 10.51 It was suggested to Ms Toyne that the true character of the Hurrell Lane site, as represented by these photographs, is closer to that of the Open Vale Farmland of Area H than to the Linear Vale in which it was included by *Gillespies*. Ms Toyne declined to take the opposite view, but reiterated that *Gillespies* was a respected work.
- 10.52 *Gillespies* outlines the sensitivity to change of the Open Vale Farmland thus: *"Extensive built development is unlikely to be a possibility in this flat, low-lying landscape, but further engineering works related to the river channels, drainage ditches and transmission lines are all potential forces for change. Large scale vertical elements such as transmission lines represent the most significant threat to landscape character, as they would dominate the landscape and detract from its remote and open character."*
- 10.53 Comparisons were drawn variously with existing built and lit form within the Vale, by way of suggesting that the new development would not be so

dissimilar for example to some of the agricultural sheds associated with farmsteads in the area. It was agreed that the presence of such sheds did not alter the characters of the farmsteads, and could not reasonably be described as industrial, in the way that the proposed structures would be.

- 10.54 Mr Chadwick said that *'because of the location, in open agricultural land, the Hurrell Lane Sour Gas Processing Facility will create an awareness of an industrial site, which will be visually alien to the immediate surroundings of Thornton-le-Dale. Efforts to mitigate the visual impact of this processing facility are unlikely to succeed in bringing about an unawareness of its presence.'*
- 10.55 Mr Chadwick noted that construction spanning two full tourist seasons would be a constant reminder for local residents and visitors of a significant industrial intrusion into the countryside, and that activities associated with the operation of the plant, following completion, would further draw attention to the facility. He commented that *'Coupled with the illumination of the site at night', and the possibility of bad odours from time to time, these issues further add to awareness of the industrial development and a consequent likely detraction in the quality of the visitor and resident experience.'*
- 10.56 For MEL it was noted that Snainton Golf Course, further to the East, has significant intrusive lighting, visible from a wide area, and he expressed surprise that Mr Chadwick was not aware of that site. It is notable that lighting there is used as required, and the site is therefore not always lit in this way. Of further note is that planning permission was refused by Ryedale District Council in 1998 for these floodlights, and contravention of Policy ENV1 was cited as a reason for refusal. The lights currently in use are classed as "temporary", and are outside the control of Ryedale District Council planning enforcement.
- 10.57 Ms Toyne was asked why Zones of Visual Influence study diagrams appeared to indicate almost no views of, for example the compressor-building at Year 1, from the North of the disused railway embankment. She stated that the ZVI studies provide a starting point, which would be verified from on-site assessment. She was asked to produce evidence for the methodology used to arrive at measurements for the heights of the embankment and of its associated tree-line of 7 metres and 20 metres respectively. (AGHAST! and others have estimated these at 5 and 12 metres respectively, and the Appellant's Environmental Statement acknowledges the former height to be 5m). Ms Toyne stated that she had visited site and visually estimated the heights. These heights are apparently input parameters for the ZVI modelling.
- 10.58 Mr Chadwick was asked his view on the impact of the proposals as portrayed in the photomontages. He commented that, as an art teacher, he did not use such photographs, as such photographs always failed to convey the true scale of the subject
- 10.59 DEFRA's 2010 document "UK Government Vision and Circular for the English National Parks and Broads" notes that 'Major development in or adjacent to the boundary of a Park can have a significant impact on the qualities for which they were designated'. AGHAST! conclude that the ZVI studies are significantly flawed, and should be afforded no credibility; their reason for



inclusion as "evidence" at a Public Inquiry was questioned, and AGHAST! consider them potentially to be an attempt to misrepresent the true scale of the visibility of the completed development.

#### Economic Benefit

- 10.60 Mr Green asserted that there would be 'a direct economic impact in terms of wages' for Thornton le Dale and environs from the additional employment of between 20 and 25 people. He made the assumption that the average salary of the employees to be recruited by the Appellant would have been between £23,000 and £25,000 *per annum* in 2009. He calculated what this salary would be in 2015, the year which he was informed would be the first year of operations, had it been subjected to average inflation, and then added all nine subsequent years, each adjusted for inflation. He then presented this total at Table 20 – a minimum of £5,697,415 and a maximum of £7,741,053 - as being the 'Total Direct Expenditure' which would be generated by this project over 10 years. Mr Green made three mistakes.
- 10.61 Firstly, he assumed a life for the project of at least ten years. We now know that the project, as set out in the planning application, has a projected life of around four years, and perhaps up to seven years, on Mr Erasmus' highest estimate.
- 10.62 Secondly, he made the mistake of citing his perceived economic benefit without eliminating the effects of inflation. An employee may earn a salary of £23,000 today and that salary, because of inflation, may become £28,000 in ten years' time. However, if all costs have increased by the same proportion, the employee will be no better, and no worse, off. Similarly, the effect which he will create by spending his salary in the locality will be neither greater nor less in the later years than in the earlier. A pound in 2021 is likely to be worth less than a pound of 2011. They are, in effect, different currencies. For economic exercises of the sort that Mr Green has conducted, it is usual to bring them to the same currency, i.e. pounds of today (or indeed any other year).
- 10.63 Mr Baldwin did so when calculating the future income stream of the project; he assumed that the price per therm would be 70p throughout a 20 year period and calculated that the income of the Ebberston South gas field would be £1bn. He is well aware that inflation, albeit controlled, is a policy target of the government and it was far from his intention to suggest that gas, by retaining a price of 70p per therm over the next 20 years, would in effect become cheaper.
- 10.64 It would be untenable and economically illiterate to suggest that the 20 to 25 new jobs would contribute more to the economy over 10 years if inflation during that period were 10% rather than 5%. In those circumstances it would be the case that more pound notes were spent, but that the value of each of those pounds was less.
- 10.65 Thirdly, Mr Green assumed that the salary was spent locally in its entirety. He failed to take into account the fact that each employee is required to pay tax, the basic rate of which is 20% and the higher 40%, and National Insurance contributions. This portion of an employee's salary is paid directly to Westminster and is therefore not available for expenditure locally.

- 10.66 It is also the case that some costs, for example mortgage payments and pension contributions, are similarly not available for expenditure locally by the employee. It is also possible that some employees, given the temporary nature of the project, might decline to relocate to the area and instead maintain their home elsewhere - and with that home a significant financial obligation. None of these facts was taken into account when Mr Green computed the benefit to the area of the additional employment.
- 10.67 In summary, it can only be that Mr Green has over-estimated the economic benefit to Thornton-le-Dale, and possibly significantly so.
- 10.68 In respect of tourism, it is common ground between the parties that both construction and operation phases will result in disturbances which will see the transformation of an agricultural field into an industrial installation. It is logical that such disturbances are more likely to repel tourists than to attract them. This will have only negative impacts and it is the scale and duration of these which are in debate.
- 10.69 In his conclusions, at paragraph 6.1, Mr Green assesses these negative impacts as unlikely to be 'significant' and as being limited to a small number of businesses. He reaches these conclusions, however, despite acknowledging at paragraph 2.0 that there is *'no standard methodology for estimating the impacts of any given development on tourism'*.
- 10.70 AGHAST! submit that the loss of even a small part of the more than £387 million which Mr Green reports as being spent annually by tourists in Ryedale could be significant. It would be unsafe, and unsubstantiated by evidence, to conclude that this project might hold any net positive economic benefit for Ryedale.

#### Scale, Importance and Urgency

- 10.71 It is not disputed that Government seeks to encourage the production of indigenous resources where so to do is technically feasible, economic, commercial and environmentally sustainable. It is the case that a balance must be struck between the benefits of exploiting these natural resources and the disadvantages of so doing.
- 10.72 Mr Gabbott produced evidence, which at no point was contested, that this project would produce a quantity of gas which, at around one tenth of one percent of national gas consumption, was 'small'. Mr Foster accepted both the calculation and the evaluation.
- 10.73 Mr Erasmus asserted that the "bankable" estimate of reserves accessible from the proposed well amount to some 20.17 billion cubic feet. He stated that the well is expected to produce an average of 12 - 15 million standard cubic feet per day for its useful productive life.
- 10.74 Such a rate of extraction would indicate a productive life of between 3¾ and 4¾ years on these estimates. Mr Erasmus offered no satisfactory explanation for his assertion in paragraph 3.3.9 of his proof that the well life would be *circa 7 years*.
- 10.75 It was accepted that in the light of these figures, which it was noted had not previously been made available, many of the assumptions and claims of

benefits in the Proof of Mr Baldwin, the Appellant's witness on Need, would require considerable downward adjustment. Mr Baldwin had been led to believe that average production rates would be of the order of 20 MMSCFD and that this might be sustained for some twenty years.

- 10.76 Mr Baldwin's estimate of reduced import values, would therefore be reduced to around 15% of the total claimed, estimates of numbers of homes supplied with energy would in fact be reduced by at least a quarter, and claimed reductions in carbon dioxide emissions also reduce by a similar amount.
- 10.77 Mr Baldwin accepted that benefits claimed for this project would also be obtainable should the gas instead be processed at East Knapton, through upgrade or co-location there.
- 10.78 Mr Gabbott considered that the benefits associated with the production of the gas from these proposals are also small, describing them as 'nugatory'. Mr Foster accepted that those benefits were 'of limited significance'. It is indeed, difficult to think that the benefits of producing gas would be other than broadly proportional to the quantity of gas produced. The Appellant has described the quantity of gas to be produced, in a national context, as 'small' and in that national context, the benefits must also be small. Mr Gabbott's opinion that the benefits are less than small was not seriously challenged in cross-examination.
- 10.79 It is accepted that generally the government policy is that, where consistent with other policy, for example on sustainable development, reserves be depleted without undue delay. Mr Foster goes beyond this. He has asserted that the Government has identified an 'urgent national need' for the production of gas and therefore for this development.
- 10.80 Mr Foster was asked whether this was his own view or the Government's. He said that it was both. In his Proof of Evidence, at paragraph 8.30 he states that: '*EN1, the overarching NPS, makes clear that there is an urgent need for new energy infrastructure to be consented and built which will contribute to a secure, diverse and affordable energy supply.*' He further claims: '*The consequences of a refusal must be weighed against the clear and unequivocal national urgent need for additional gas supply infrastructure, which is covered in John Baldwin's evidence.*'
- 10.81 Mr Foster was invited in cross-examination to identify where in Mr Baldwin's proof an *urgent* need was asserted. He could not find such an assertion and agreed that there was none. He was further invited in cross-examination to substantiate his assertion that the government's policy statement EN1 supported his claim that there was an urgency for this project. He produced none.
- 10.82 Policy Statement EN1 refers to urgency in the following contexts:
- global emissions must start falling as a matter of urgency (para 2.2.8)
  - large-scale energy infrastructure (para 3.2.3)
  - new electricity nationally significant infrastructure projects (para 3.3.1)
  - new electricity nationally significant infrastructure projects (para 3.3.15)
  - renewable electricity generation (para 3.4.1)
  - renewable electricity generation (para 3.4.5)

- electricity generation plant, including nuclear (para 3.5.1)
  - low-carbon electricity (para 3.5.9)
  - carbon capture and storage demonstration projects (para 3.6.8)
  - new electricity network infrastructure (para 3.7.4)
  - new electricity transmission infrastructure (para 3.7.7)
  - new electricity transmission and distribution infrastructure (para 3.7.10)
  - new energy nationally significant infrastructure projects (para 4.1.2)
  - new energy infrastructure (para 4.4.3)
  - the projected increase in coal use globally places a greater urgency on tackling emissions from coal (para 4.7.4)
- 10.83 The only reference specific to gas supply capacity is to be found at para 3.8.20 which reads: *'Some market participants may judge that their requirement for additional gas supply capacity is urgent.'* This clearly distances the government from any view of urgency, which any developer of a gas-supply project might have of his own proposals. Further, EN-4, the National Policy Statement specific to oil and gas makes not a single reference to urgency, other than in its preamble, when describing the scope of EN-1.
- 10.84 On the other hand Mr Gabbott gave evidence that the view of government is that the country is well supplied with infrastructure which he described as *'robust'* and *'sufficiently resilient... to withstand most foreseeable problems'*. That part of his evidence was not challenged in cross-examination.
- 10.85 AGHAST! submit that in the absence of evidence from Mr Foster and silence by Mr Baldwin as to the urgency of the project, and the cogent and compelling evidence adduced by Mr Gabbott, there are no grounds to believe that the government would consider this project to be urgent. If it is urgent, it is urgent only in order to satisfy the Appellants' commercial interests.
- 10.86 Mr Foster was asked why the Appellants had requested an extension of two years on the standard condition that development be commenced within three years of approval. He explained that various permits were required and that it was necessary to obtain financing.
- 10.87 Mr Erasmus has given evidence that if construction were started in Q1 of Year 1, the plant would not be operational until Q3 of Year 3, i.e. some 10 quarters later. It is therefore possible that if permission were granted in mid 2012 and construction were not to start until five years later, i.e. in mid 2017, the plant would not be commissioned until late 2019 or early 2020.
- 10.88 Mr Foster declined to comment on the relevance of these scenarios to the Appellant's claims of urgency of need. It was suggested to Mr Foster that perhaps the extra two years would be better spent holding meaningful, substantive talks with the new owners of Knapton Generating Station, who have clearly demonstrated a different approach than that of their predecessors.
- 10.89 It should be noted that the application to permit the construction of an open cycle gas turbine generating station at East Knapton was granted permission on condition that the development started within 2 years of the permission being granted. AGHAST! submit that in a timescale which spans the best part of a decade there is sufficient flexibility for alternative gas production options to be considered without causing undue delay to the date of first gas.

10.90 It must therefore be reasonably concluded that in a national context this is a small project, of limited significance and that this is a material fact to be considered in the balancing exercise which the Secretary of State will undertake. The project cannot, other than perhaps for the Appellant's own commercial purposes, be considered as urgent.

## 11. Cases for Interested Persons

- 11.1 Copies of statements from interested persons heard at the evening session of the inquiry held on 1<sup>st</sup> November are included in CD/S.2 and summarised below. At the start of the session a petition was submitted. This petition stated - *'We believe that Thornton-le-Dale is not an appropriate location for a Gas Processing plant, and that a different site should be chosen from the other, more suitable alternatives available'*. The petition contains some 14,000 signatures. A copy of a petition previously submitted to NYCC by residents of Wilton was also handed in.
- 11.2 **Janet Sanderson** stated that residents were fearful of a GPF located so close to the village. The economy of the village was dependant on tourism, farming and retirement. The importance of tourism is reflected in the 14,000 signature petition supporting opposition to the proposal. The perception of fear and pollutants is not conducive to a relaxing retirement.
- 11.3 The proposal would make an insignificant contribution to national gas supply but a decision to approve the scheme would do considerable damage to the emerging 'localism' bill. The appellant company and those operating at East Knapton should be asked to make commercial concessions and co-operate. This gas does not have a 'sell-by' date and a delay for further negotiation would not be unreasonable.
- 11.4 **Mike Hargreaves**, on behalf of Wilton Parish Meeting, noted the proximity of the village to the GPF which it would overlook. The village was predominantly agricultural but now had a strong tourism element with a small caravan park and holiday accommodation. The GPF would have a visual impact that could not be disguised. The prevailing south westerly wind would mean any odour released from the plant would quickly envelop the whole village. Sour gas fumes would be obnoxious and possibly dangerous. There are no guarantees that odours will not be released to the longer term detriment of residents of Wilton
- 11.5 **Mrs Juliet Drake** indicated her reasons for choosing to live in a country village; beauty, clean air, the natural world, open space, peace and the community. This project threatened all those reasons for living in Thornton-le-Dale. Local residents would receive no benefit. Local firms and labour would be unlikely to be employed to build the plant as experienced labour would be brought in. Similarly, the plant's appropriately qualified operating staff would also be brought in.
- 11.6 The project would be the inappropriate industrialisation of a beautiful and tranquil area of natural countryside. If the plant must be built it should be located next to the extraction site.
- 11.7 Tourism, the primary economy of Thornton-le-Dale, is threatened both during the building of the plant and during its operation; the site being visible from

most of the roads approaching the village and from some local villages. The 'Olde-Worlde' image of Thornton-le-Dale is its main attraction and needs to be kept intact to prevent harm to the local economy. Visitors come for the peace, beauty and country walks. The plant would make the place less attractive and less special.

- 11.8 Other concerns included traffic impacts, undesirable emissions, safety, noise, and potential damage to the environment and local ecology. The distress this project has caused to both local residents and visitors cannot be adequately described.
- 11.9 **Andrew Payne** opposed the location of the GPF and noted that the village relies on tourism to support local businesses and shops throughout the year to the benefit of local residents. If the GPF affected tourism then some of these shops may well close, and this would be to the detriment of villagers who rely on these local facilities. It would also lead to losses of local employment that would more than outweigh any benefit from jobs created by MEL.
- 11.10 **John Fox**, Chairman of Levisham Parish Meeting, noted that the residents of this small village within the NYMNP relied heavily on tourism for their income. The Horseshoe Inn was dependent on walkers using the local footpath network and motorists visiting Thornton-le-Dale and the VoP. Local farmers relied in part on the diversification of tourist accommodation to provide year-round income. The village would not benefit from the gas as it had no gas supply.
- 11.11 Health and safety were primary concerns and no-one had explained what, in the event of process failure, would be the impact on the landscape, land and residents of the VoP. It would not be possible to landscape the chimney and buildings in an open valley, nor hide process noise in a silent night-time environment. The well-head is out of public view and away from the tourist routes. The GPF should be located there or co-located with the existing plant at East Knapton.
- 11.12 The benefits of this scheme were limited and could not outweigh its detrimental impacts. New energy resources were needed but not at the expense of the environment or existing jobs in tourism.
- 11.13 **Sir Peter Newsam** argued that in order to assess the weight to be given to the benefits of the proposal when compared with its many disbenefits there needed to be a financial comparison between the Hurrel Lane scheme and MEL's next least worst alternative.
- 11.14 **Iain Turnbull** stated that MEL had not investigated with sufficient diligence the alternative sites available. The most obvious location was adjacent to the well site. The GPF could be sited in an isolated location hidden within the existing conifer plantation. Adjacent fields outside the NYMNP boundary could be used subject to appropriate archaeological mitigation.
- 11.15 The site adjacent to the existing turbine site at East Knapton has the advantage of existing infrastructure – good access roads, mains water, electricity supply, and foul and surface water drainage. It also benefits from an existing mature tree line that would significantly hide the site from view. While there would be some engineering difficulties in laying a pipeline to East

Knapton they were not impossibilities and water courses and the railway line could be passed under using standard techniques.

- 11.16 The visual mitigation proposed for Hurrel Lane is inadequate. The existing trees on the railway embankment provide cover to less than 15% of the site perimeter and, as deciduous trees, provide limited cover from November to April. The trees would not screen lights or reflected sunlight off structural steel elements. The existing tree cover has taken 55 years to reach its current maturity. Any new tree growth would be unable to provide similar visual screening during the life of the plant.
- 11.17 The existing embankment was a poor site to quickly establish tree and vegetation growth. There was a very thin layer of poor quality topsoil, ash, clinker and railway ballast overlying a clay and rubble core – conditions noted during the recent demolition of the Hurrel Lane bridge. The poor growing conditions are confirmed by the fact that deciduous trees planted following the demolition of the bridge have failed to establish. The east, south and west perimeters would need fast growing trees to have any effect and the only effective species would be ecologically inappropriate and alien to the landscape. In addition, the security fencing and industrial design would be totally inappropriate in this rural setting.
- 11.18 **Brenda Sillito** stated that the proposal would be of no benefit to the area. The area depended largely on tourism which promoted many more jobs than those offered by this proposal. The scheme would have a detrimental impact on tourism resulting in job losses at a time when jobs are increasingly hard to find. The emission of noxious fumes, both odorous and odourless, would have a detrimental effect on the health of both the young and the elderly. There is also concern at the potential effects on farm and wild animals.
- 11.19 **Tara Dudley-Smith MD** noted that her family's links with the area went back to 1669 and members still lived in the village. During school holidays the family come to enjoy the magic of the village and surrounding countryside. With rides along bridleways and walks along the many footpaths they come to Thornton-le-Dale expecting to find tranquillity and peace, fresh air and the sense of escape from the frenetic pace and pollution of city life.
- 11.20 Visiting tourists similarly expect to find Thornton-le-Dale as a beautiful and unspoilt village that upholds the values of village life. It has shops, restaurants, pubs and cafes where they can relax. These amenities are rare in the villages lining the A170 and Thornton-le-Dale is the flagship. If this present stability is threatened many people who run these businesses could lose their livelihoods. The GPF would destroy the tranquillity and charm of this NP village and set an undesirable precedent for other proposals. The damage would have been done and the magic of Thornton-le-Dale broken.
- 11.21 **Chester Bosomworth**, who has both agricultural and tourism businesses in Thornton-le-Dale, is concerned about the impact of process odour on tourists enjoyment of the area. The visual impact of the GPF would have a detrimental impact on tourists enjoyment of his holiday cottages resulting in a decline in their value as a business. These impacts would be exacerbated by the temperature inversion that is prevalent in the VoP. Willow Grange and Charity Farm had some 1000 cattle that were reliant on a private water supply. In the event of an accident or explosion blocking Hurrell Lane

residents would be unable to leave and emergency services would be unable to get to the residents.

- 11.22 **Diane Stenton** expressed concern at the impact of the proposal on holiday accommodation business. The tourist lodges overlook the VoP and directly towards the GPF site. It would be visually intrusive and spoil the present idyllic view across the vale. The situation would be worse in winter when the trees were not in leaf. Existing customers made aware of the appeal proposal have indicated that they may not book future holidays if the GPF is built.
- 11.23 The GPF could have been built next to the well site but the NYMNPA did not want it there. If the NYMNPA can reject that site because of impact on the NP then there is no reason why the Secretary of State should not similarly reject these proposals for a site adjacent to the NP boundary.
- 11.24 The VoP is low lying and prone to mist and fog. Fumes from the plant will not readily disperse in such conditions and this will create noxious smells for both residents and tourists. Such fumes will blight a village which is an important tourist attraction.
- 11.25 The construction of the GPF, resulting in traffic, dust, noise and light pollution will have a detrimental effect on tourists enjoyment of the area and they will choose alternative holiday locations. The chosen access on an unrestricted section of the A170 is likely to significantly increase the risk of further accidents.
- 11.26 There is also concern for the impact of the proposal on both wild animals in the immediate locality, and on sheep grazing on neighbouring land. Not all agricultural land here is arable. The adverse effects of the GPF on the tourist economy of the village will far outweigh any financial benefit it might bring.
- 11.27 **Lyne White and Graham Webster**, proprietors of Prospect Farm Cottages, run self-catering equine holidays which take advantage of the many bridleways in the area. Their establishment is located at a higher level and to the north-east of the GPF site. It would appear as an eyesore and would discourage return visits. The route of the proposed pipeline follows the main bridleway from Thornton-le-Dale to Givendale Head. This bridleway is used constantly by guests and their horses to provide access to other areas of the moors. The route would need to be off limits during the construction period and would remain unsightly for several years until recovery had taken place.
- 11.28 The GPF would be clearly visible to guests approaching the area from all directions and would not make a good impression on people expecting to visit an area known for its outstanding natural beauty. In an area so heavily dependant on agriculture and tourism any development that detracts from the natural beauty poses a serious disadvantage for residents and local businesses.
- 11.29 The proposed screening and landscaping would be inadequate and out of keeping with the natural surroundings. Fast growing trees are inappropriate species, while slower growing deciduous trees would take too long to mature and would in any event provide little screening in winter. Light pollution, the flaring of excess materials and the release of odours would be a problem to all residents and visitors.



- 11.30 The GPF should have been sited either at a redeveloped East Knapton site, next to the production well at Givendale Head or on agricultural land south of the well site. NYMNPA should have considered these implications before granting permission for the exploration well. These sites close to the well are already well shielded from public view and the only disturbance would be to a waste re-cycling plant and passing livestock.
- 11.31 **Tony Bryars**, proprietor of The Grange Guest House, emphasised Thornton-le-Dale's role as an historic tourism destination lying in and next to an area of outstanding natural beauty. The introduction of an industrial use such as the GPF was inappropriate and would conflict with the village's tourism role. The uncertainty and undesirable publicity associated with this extended planning process does not help local businesses or tourism and may well continue to blight the area. Existing brownfield sites such as that at East Knapton should be used instead.
- 11.32 **Jon Bates** referred to the impact the GPF would have on the landscape. It would be hugely detrimental and the suggested screening woefully inadequate. To extend this with fast growing species would be inappropriate. Rather than enhancing the area it would further detract from the quality of the landscape. The GPF would have the appearance of a large, visually intrusive industrial complex, seriously detrimental to the visual amenity of the Edge of the Moors Area of High Landscape quality and detrimental to the visual amenity of the VoP. MEL's approach appears to be driven solely by economics irrespective of the long term damage inflicted on the environment. Its environmental statement accepts that the proposal will affect land that is predominantly rural, and the GPF and access road will introduce utilitarian components into an otherwise agricultural landscape with subsequent detrimental effect on landscape character; an impact that appears to be acknowledged by MEL's CEO.
- 11.33 **Graham Hunt** noted that some of the best views of Ryedale are as one entered the area from the south over the Wolds. The panoramic views from several roads are simply stunning. From this height the GPF will be clearly visible and totally out of keeping. People coming to the area to enjoy its unparalleled beauty will be presented with something that resembles Teesside or Runcorn. This would not be just Thornton-le-Dale's or Wilton's eyesore but an eyesore visible from large areas of Ryedale.
- 11.34 **Roy James** noted that the GPF site lay outside the limits of development for Thornton-le-Dale and Wilton and was an abhorrent concept. In addition to its visual impact it would have detrimental impacts on wildlife, residential amenity due to odour, as well as health and safety. Proposals for restoration at the end of its life were vague. The site of the former gas plant at Outgang Lane Pickering was still affected by contamination. It was noted that at a meeting in Thornton-le-Dale in 2010 MEL had indicated that it's preferred location for the GPF was close to the well head and Givendale Head.
- 11.35 **Peter and Margaret Smith** object to the loss of green fields in circumstances where alternative processing methods and sites were available. The most appropriate method for exploiting the resource would be by electricity generation at the well head. If that site is unacceptable then the East Knapton site would appear to be a suitable alternative. This would

be an ideal opportunity to upgrade that existing plant. If gas purification is the preferred method then an existing brownfield site should be used.

- 11.36 While any additional employment is to be welcomed the majority would be sourced from outside the area. Those who may come from the local area could readily access the alternative sites suggested, and Hurrel Lane is not unique in this regard. While MEL emphasise the short-term benefit to hotels from workers from outside staying locally, any detrimental impact on tourism would have a far greater impact in terms of job and income losses locally.
- 11.37 The rural aspect of the village is treasured and is especially significant to the continued and future success of the village as a tourist destination. The proposed plant is a threat to the sustainability of this tourism. From the vast majority of aspects; and from surrounding homes, tourist attractions, accommodation and villages the plant will be clearly and fully visible. A blot on the landscape for many years to come.
- 11.38 **Tim Lamb** noted that the loss of ambience is the overriding fear of a large section of the village. Although it has a largish working population, with children and students, there is also a mainly middle class and middle aged population who have settled in the area over the years. Often having brought up their children elsewhere they have brought to the benefit of the village other attributes – trained skills, spending power and spare time.
- 11.39 If the GPF is approved the likely consequences in the medium term will be a downturn in people wishing to settle in the village, increasing number of holiday cottages being put up for sale and fewer people offering bed and breakfast. A 10-15% reduction in holiday makers would affect the demographic mix and the overall economics of the village. The drop in income would have a domino effect. 3 public house would reduce to one with a loss of 12 -15 jobs and little chance of alternative employment. The loss of business would seriously affect the viability of the milkman, butcher, greengrocer and baker. The lost jobs would be predominantly for young people, increasing unemployment in the area. Other shops and facilities would then be at risk. This general downturn would affect the ambience of the village, ultimately bringing it to its knees.
- 11.40 **Patrick Turner** accepted the need to develop supplies of natural gas to help meet national requirements for clean energy and avoid expensive and potentially unreliable imports. However, the challenge was to do this in a way which does not result in the wanton and unnecessary destruction of the assets of an essentially rural area. The GPF will present an eyesore for the residents of Thornton-le-Dale and Wilton and be highly visible from the Wolds. The screening measures proposed by MEL would be inadequate. The proximity of the plant to Thornton-le-Dale raise worries about safety and the potential to cause substantial nuisance to the whole area from traffic, smell, light pollution and explosion hazard.
- 11.41 Alternative sites to be considered should include the former GPF site at Outgang Lane in Pickering and the East Knapton site. The latter would also provide an opportunity to upgrade outdated generating equipment. This would also make best use of the existing infrastructure. It would also have minimum environmental impact while providing maximum use of the gas resource.

- 11.42 **Dr M C Pitt**, on behalf of TAGS, noted that residents of Hurrell Court were concerned about possible health effects and impact on quality of life. There remained a tangible risk to those with mobility difficulties, or asthma, emphysema and other bronchial problems. Householders to the east of Thornton-le-Dale and in Wilton were concerned about the devaluation of properties close to the GPF site. Many are retired and fear the consequences of this reduction in their capital reserves.
- 11.43 Some residents in upper Troutsdale rely on spring water. These are currently very pure sources and there is concern at possible contamination from the spillage of toxic liquids used at the well site and from any contaminated fire-water runoff in the event of a fire at the well site.
- 11.44 The installation of the pipelines would cause significant nuisance and disruption. Both pipelines would contain significant amounts of hydrogen sulphide and water under high pressure. This mixture is highly corrosive, reducing service life and resulting in further disruption during service and replacement. The accidental release of gas from the sour gas pipeline without ignition was of low probability but would present a high risk if it occurred. Two accidents of this type, in China and Belgium, had been widely reported. Any gas cloud released would be formed at low level and spreading either downhill or in all directions. It would be extremely flammable, explosive and toxic, presenting a high risk to anyone encountering it. Some hydrogen sulphide would dissolve in the humidity in the air to produce an acidic vapour highly corrosive to the lungs.
- 11.45 **Gordon Bell** noted that elected members from 5 councils representing some 0.5m people in North Yorkshire had concluded that the proposal would result in unacceptable impacts. Introducing a bias in favour of development is procedurally untimely and improper. There is a legitimate expectation that the secretary of State will uphold decisions of locally elected representatives consistent with the provisions in the devolution and localism bill. The Applicant's policy of withholding a fully comprehensive Safety report until planning permission is granted fetters the exercise of due diligence by individuals and competent authorities. This was exacerbated by the failure to address the fundamentals of a robust risk assessment by means of a comprehensive detailing of 'worst case' and 'worst case possible' scenarios at the three key locations of well-head, pipeline and GPF; the failure to satisfy the test of 'urgent and critical' national need; and the failure to demonstrate the 'exceptional, indispensable and unique features of the preferred site. These proposals should be withdrawn and a fully inclusive Ryedale Gas Development Plan produced.
- 11.46 **Richard Davies** objected on the grounds of impact on the environment and impacts on wildlife. The potential risk from the plant, pipeline, processes to remove sulphur compounds, the transport of contaminated chemicals and the damage caused by atmospheric and light pollution all add up to an unacceptable level of risk for such a small quantity of gas.
- 11.47 When viewed from Wilton the true sense of the potential effect on Wilton and the VoP becomes apparent. Currently the outlook is one almost devoid of industrialisation. With the GPF it will become an industrial landscape more reminiscent of Teesside than rural North Yorkshire. The villages of Wilton, Allerston, Ebberston and Snainton will be directly down wind and the

recipients of any leaks of odour and impurities. Increased traffic on the A.170, especially during the construction phase, is a potential disaster in the making. In addition to agricultural traffic there are many times in the summer when the road is very congested.

- 11.48 Important protected species live within 2 metres of the site. The former railway embankment forms a unique set of habitats because the substrate was excavated and transported here when the railway was built. The flora appears to be lime tolerant and could be badly affected by acidic pollution from the site. Specific wildlife risks relate to impacts on owls, badgers, bats, migrating birds, great crested newts, raptors and hawks and moths and butterflies
- 11.49 **Mr Adam White** also read a short statement on behalf of AGHAST. However, as a Rule 6 party, AGHAST's case has been recorded in Section 10 above.

## 12. Summary of Written Representations

- 12.1 **Mrs Anne McIntosh LLB MP** enclosed copies of letters from 3 residents. She considers the consultation process to be flawed in that many local residents did not receive MEL's publicity leaflet and had no access to a computer, thus negating the company's invitation to visit its website. She noted that there was widespread local concern regarding this proposal.
- 12.2 **Timothy Kirkhope MEP** noted that he had been approached by a number of constituents. He also stated that he was not impressed by the economic case made on behalf of the developer.
- 12.3 The **Environment Agency** indicated that it had no objection to the proposed development, subject to the imposition of various planning conditions on any subsequent planning approval. These conditions addressed construction period dewatering, treatment of surface water run-off during the construction phase, the provision of foul and surface drainage and construction in accordance with the approved FRA.
- 12.4 **Ebberstone with Yeddingham Parish Council** indicated that it did not raise any specific objections.
- 12.5 **Thornton-le-Dale Parish Council** objected to the grounds that a survey of local residents carried out on behalf of the Parish Council indicated that 81.9% of respondents were against the proposal. The Councillors considered that, due to its proposed location close to residential houses and open farmland, a more appropriate location should be found for the GPF.
- 12.6 **I S Neale** raised concerns over noise, smell and hazards. The site for the GPF was considered inappropriate, and that there must be other sites available that would be less conspicuous, less sensitive and further from habitation.
- 12.7 **Lt.Col W D Douglas MC** objected on grounds of detrimental impact on tourism and suggested that alternative sites north of the Pickering-Scarborough road were available and would reduce the cost of any pipeline.
- 12.8 **Mr E Davison** objected on the grounds of proximity to both Thornton-le-Dale and neighbouring villages. He raised concerns about smell and light pollution

and suggested the appropriate location for any processing facility should be next to the well site within the NYMNP. It would also have a detrimental impact on tourism. There is no need for this gas as alternative energy sources are available.

- 12.9 **Mr & Mrs Scott** objected on the grounds of harm to the tranquillity of Thornton-le-Dale.
- 12.10 **Mr and Mrs James** objected on the grounds of impact on open countryside and proximity to the NYMNP.
- 12.11 **D L Croft** objected on the grounds of pollution, smell, illness and danger.
- 12.12 **Mrs B Kemp** objected on the grounds of proximity to Thornton-le-Dale, pollution, upheaval during development, impact on tourism and the availability of better alternative locations.
- 12.13 **Mrs V S Barker** objected on the grounds of visual impact, smell, emissions, traffic pollution and impact on tourism.
- 12.14 **Mr and Mrs A C James** consider it inappropriate to bring potentially dangerous and/or unpleasant industry to a country village. The suggested employment and financial benefits for the area would still occur if built in a less sensitive location and other options are available. This is the wrong location for this development.
- 12.15 **B G Turnbull** objected on the grounds of impact on the NYMNP, impacts on residents, many of whom are retired, impact on tourism, impact on views into and from the vale of Pickering, limited economic benefits, and the introduction of an industrial complex into an area of open countryside.
- 12.16 **W B Midgely** objected on the grounds of unnecessary damage to the local environment and economy, introducing potentially high risks and causing local people to fear for their safety for no measurable benefit to the country's energy requirements. The appellant's evidence in support of its proposals is inadequate.
- 12.17 **Roland Hudson** objected on grounds of the visual impact of the GPF and highway safety. There were suitable alternative locations in Pickering and west of the A169. The development was unlikely to provide much local employment or opportunities for apprentices.
- 12.18 **T L A Burgess** objected to the siting of the GPF. There were more suitable sites between the wellhead and the edge of Dalby Forest.
- 12.19 **Mr Andrew Davies** objected on the grounds of safety, impact on countryside/wildlife and quality of village life.
- 12.20 **Sir Peter Newsome** objected on the grounds of the availability of alternative sites and the impact of the proposal on the unspoilt countryside of the Vale of Pickering
- 12.21 **Mr and Mrs Phillips** object on the grounds of impact on tourism and property values.
- 12.22 **Keith Woodward** objected on the grounds of impact on tourism and agriculture and the need to safeguard the beauty and quality of the landscape

- to maintain the economic wellbeing of the area. There would be visual damage and disruption caused by noise, smell and light pollution. The plant would introduce an element of danger from explosion and this risk would be imposed on local residents.
- 12.23 **Mr and Mrs Ingham** objected due to the unsuitability of the site chosen for the GPF. There were other suitable industrial areas in nearby towns. If planning permission is to be granted for this facility its life should be limited to the life of the gas well to which it is to be connected.
- 12.24 **Mr Robert Batty** objected on the grounds of proximity to Thornton-le-Dale, health and safety risk and smell. It would have a detrimental visual impact as well as impacts on tourism, and on local residents, many of whom are retired. There would also be noise and light pollution. More appropriate locations would be at the well head or the existing gas plant to the south.
- 12.25 **Mrs Karen Galacki** objected on the grounds of impact on tourism. The GPF would be better located close to the well-head.
- 12.26 **Mr J C N Weston and Ms M K Weston** objected on the grounds of odour, noise and light pollution, hazards from heavy goods haulage and construction dust. The gas should be treated at other alternative sites.
- 12.27 **Prof. G H & Mrs K M Bell** objected on the grounds that the proposal lacked detail with respect to safety and tourist and environmental impacts. The proposals relied on 'national need' for gas supplies but it had not been demonstrated beyond reasonable doubt that this need was sufficiently urgent to justify immediate action. The global recession and imminent development of shale gas fields in mainland Europe required a revision to gas supply estimates and gave time for the appeal proposals to be reviewed and improved.
- 12.28 It remained to be demonstrated that the preferred option of the GPF is sufficiently critical for the security of UK gas supplies that it justifies breaching saved planning policies and industrialising a valued part of the national park and its immediate environs. There is a strong case for conserving such supplies until the provisions in the NPPF for Local Plans and neighbourhood Plans have been prepared. As there is no urgency for national need to be satisfied by the immediate construction of the proposed GPF, and that its preferred location is not critical to UK gas supply, more attention should be given to alternative means of processing gas including supplying gas for generating electricity at Knapton. A Ryedale Sour Gas Development Plan should be prepared.
- 12.29 **Ms M I and Ms D M Addinall** objected on the grounds of impact on the environment and impact on the tourist industry.
- 12.30 **Mr Ronald Douglas Finch** objected on the grounds of smell and light pollution. The GPF would also be only some 3 miles from the existing plant at East Knapton. It would provide little local employment. The locality suffers from a high water-table, the site is overlooked from nearby villages and the area is subject to temperature inversion. The GPF could not be readily screened from view. The correct location for the GPF is adjacent to the well-head. That site would allow fumes to disperse over open countryside, it is not close to habitation, and will be hidden from view from most properties

and villages due to landform. It would also avoid the need to transport a toxic high-pressure gas over a substantial distance.

- 12.31 **Nigel and Dawn Wright** objected on the grounds of the visibility of the GPF from the NYMNP, the A170 and the Marishes. It could not be adequately screened. There would also be light pollution visible over a wide area. Further concerns were odour, precedent for further industrial development in a rural area, the impact of construction traffic and potential hazard associated with a GPF.
- 12.32 **Mr Jonathan Bates** objected on the grounds of the inappropriate nature and location of the proposal. In addition to visual impact, there were concerns relating to traffic impact, pollution and plant safety. The pipeline would also traverse an extremely sensitive landscape. This could be overcome by siting the GPF at the wellhead at Givendale.
- 12.33 **Mr Philip G Askew** objected on the grounds of visual impact and impact on the tranquillity and amenity enjoyed by local residents, many of whom are retired. It would be extremely difficult to screen the GPF from views from the south looking north towards Thornton-le-Dale and the NYMNP.
- 12.34 **R E Ward**, on behalf of E, D J & P Neson & Son, objected on the grounds that the pipeline would disrupt valuable agricultural land and render it unusable. The new access from the A170 and the GPF would take valuable agricultural land out of production and would appear as a blot on the landscape. The existing gas plant at Knapton could be used to treat the gas without causing such an eyesore. There is a risk of odour pollution. There is a badger population on the site which, if moved, will cause T.B. to flare up in an area of the country heavily stocked with farm animals.
- 12.35 **Mr D & Mrs N Ellis** objected on the grounds of impact on their tourism businesses and on tourism in the area generally. Of particular concern is odour from the GPF, and the difficulty in screening the plant from wider views. Locating the plant at Givendale Head would be safer and reduce pipeline length. It would also avoid disturbance to residents from plant noise, particularly at night. Fire water containment appeared inadequate. Groundwater contamination at the well-head site would have a serious impact on domestic water supplies and surface water in Troutsdale.
- 12.36 The following 3 representations were handed to the inquiry at the evening session held on 1 November 2011.
- 12.37 **Claire Lealman** of Baldersons Bakery objected on the grounds that the GPF was inappropriately located in this rural area. As a small business the bakery employs 9 full-time and up to 15 part-time staff, all of whom live locally. The local businesses all rely on tourism and any detrimental impact from the GPF would result in job losses, shop closures and a loss of local facilities.
- 12.38 **Revd. Canon Michael Vincer** objected on the grounds of visual impact on the VoP. The proposals will require appropriate security, including high powered lighting. This scale of development is wholly inappropriate to this rural location. There are already three significant developments in the area which have a notable impact on the VoP; the accumulation of silo's relating to the silo adjacent to the A64 at Knapton, the recreational development at Flamingo land at Kirby Misperton, and the Golf Range at Snainton. All are

clearly visible causes of light pollution. The impact of night-time lighting is best demonstrated by that at RAF Fylingdales. Further industrial development of the nature proposed on land never zoned for such use in strategic planning projections is wholly out of character with the area.

- 12.39 **Richard T Benson** objected on the grounds that the wildlife assessments undervalued the worth of the locality. There was undue reliance on desktop studies, only one visual assessment, the survey area was too small, only the winter season was assessed, important wildlife was not identified and impacts were not correctly identified and impacts on a number of species that have been sited within a mile of the site were not addressed.
- 12.40 The economic benefits to the locality were exaggerated as it was known that few jobs would be created. Any detrimental impact on tourism would have a disproportionate effect on the local economy. Local heritage is at risk with no regard given to increase in noise levels due to the plant and associated traffic. This resource would provide only a fraction of 1% of the nations gas needs. Its contribution to economic and other national needs is exaggerated.

### **Application Stage Representations**

- 12.41 Representations were received by the two authorities following the submission of the two planning applications now the subject of these appeals. Those representations, which have been forwarded to the Secretary of State by NYMNPA and NYCC respectively, do not raise any additional matters material to this case that have not otherwise been raised in the cases for the principal parties, the written representations received by the Planning Inspectorate following notification of the appeals or the statements by interested persons summarised above.

## **13. Conditions and Obligation**

### Obligation

- 13.1 The appellant company submitted a draft unilateral undertaking under Section 106 to the 1990 Act. At the inquiry NYCC raised concerns with regard to the enforcement of those terms of the undertaking aimed at the eventual restoration of the Hurrell Lane GPF site against whoever might be the land-owner(s) at that time. On behalf of the appellant it was agreed that the wording of Schedule 2 should be reviewed to ensure that this matter was addressed and the Inspector indicated that any such amended undertaking should be signed and submitted by 30 November 2011.
- 13.2 The matters included in Schedule 2 to the undertaking as signed and submitted<sup>147</sup> addressed apprenticeships; financial guarantees regarding the restoration of the site; and application of the terms of the unilateral undertaking to successors in title in the event of commencement of the development other than by the Developer as defined (MEL).

### Conditions

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<sup>147</sup> Under covering letter dated 29 November 2011



- 13.3 Conditions were discussed at a conditions session and a list of conditions, for the most part agreed, subsequently submitted<sup>148</sup>. The agreed conditions and matters remaining at issue are set out below.
- 13.4 Condition No.1 addressed the duration of commencement. MEL sought 5 years to allow for the time required to obtain other related permits. The authorities and AGHAST considered that there was no justification, in view of MEL's expressed urgency to proceed, to justify a variation from the normal 3-year time limit.
- 13.5 Condition 2 addressed approved details and the schedule drawings to be approved and is an agreed condition.
- 13.6 Condition 3 addressed the duration of the permission (20 years) and specified that the start of this period would be the date on which processed gas was first exported to the NTS. This is an agreed condition.
- 13.7 Condition 3A addressed ground levels and is an agreed condition.
- 13.8 Condition 4 addresses submission of details of external finishes and is an agreed condition.
- 13.9 Condition 5 address the submission and approval of a Construction Environmental Management Plan and is an agreed condition.
- 13.10 Condition 5A addresses the issue of construction noise and is an agreed condition.
- 13.11 Condition 6 addresses soils handling and storage and is an agreed condition.
- 13.12 Condition 7 addresses the submission of details of the temporary construction and decommissioning access. The condition also states that no construction vehicles shall enter the application site (south of the A170) except by this access. This final sentence is not agreed by MEL as it wishes to be able to gain access to the southerly part of the GPF site for some construction plant and machinery directly from Hurrell Lane. The authorities oppose this on the grounds of loss of amenity for local residents and the inadequacy of Hurrell Lane to carry such traffic.
- 13.13 Condition 7A addresses the submission of details of the decommissioning and aftercare of the well-site and is an agreed condition.
- 13.14 Condition 8 addresses the submission of details and implementation of boundary treatments and is an agreed condition.
- 13.15 Condition 9 addresses on-site storage of oils, fuels and chemicals and is an agreed condition.
- 13.16 Condition 10 addresses the notification of commencement of the development and is an agreed condition.
- 13.17 Condition 11 addresses the notification of commissioning of the development and is an agreed condition.

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<sup>148</sup> Doc.I/2

- 13.18 Condition 12 addresses cessation of operations and the restoration of the GPF and is an agreed condition.
- 13.19 Condition 13 addresses cessation of operations and the restoration of the well-site and is an agreed condition.
- 13.20 Condition 14 addresses disposal of surface water run-off and is an agreed condition.
- 13.21 Condition 15 addresses surface water drainage works and is an agreed condition.
- 13.22 Condition 16 addresses foul water drainage works and is an agreed condition.
- 13.23 Condition 17 addresses GPF construction works de-watering and is an agreed condition.
- 13.24 Condition 18 addresses treatment and disposal of suspended solids and is an agreed condition.
- 13.25 Condition 19 addresses external lighting and is an agreed condition.
- 13.26 Conditions 20 and 21 address pipeline construction impacts on public rights of way and are agreed conditions.
- 13.27 Condition 22 was deleted.
- 13.28 Condition 23 addresses archaeological investigation and is an agreed condition.
- 13.29 Condition 24 addresses tree and hedgerow protection and is an agreed condition.
- 13.30 Conditions 25 and 26 address road surveys and subsequent remedial measures and are agreed conditions.
- 13.31 Condition 27 addresses construction working hours. These are not agreed. The authorities seek 08.00 – 19.00 Mondays to Fridays, and 07.00 – 13.00 on Saturdays. MEL want the construction hours to reflect those set out in the ES i.e. 07.00 – 19.00 Mondays to Saturdays, in order to complete construction as quickly as possible. It is noted that the construction programme set out at Appendix 6.1 to the ES was based on those working hours.
- 13.32 Condition 28 addresses the permitted timings of construction goods vehicle arrivals, departures, loading and unloading and is an agreed condition.
- 13.33 Condition 29 addresses the permitted timings of operational phase service vehicle deliveries and is an agreed condition.
- 13.34 Condition 30 was deleted
- 13.35 Condition 31 addresses land contamination discovered during construction and is an agreed condition.
- 13.36 Condition 32.1 specifies maximum operational noise levels at 4 corners of the GPF site and is an agreed condition.
- 13.37 Condition 32.2 requires the submission and implementation of a GPF plant noise attenuation scheme and is an agreed condition.

- 13.38 Condition 32.3 addresses operational noise monitoring at specified receptors and is an agreed condition.
- 13.39 Condition 32.4 addresses tonal noise and is an agreed condition.
- 13.40 Condition 33 addresses protection of public sewers and is an agreed condition.
- 13.41 Condition 34 addresses the reporting of gas extraction and processing and is an agreed condition.
- 13.42 Condition 35 addresses restoration and reclamation in the event of the cessation of gas extraction and processing occurring over a continuous period of 24 months and is an agreed condition.
- 13.43 Condition 36 addresses landscaping and is an agreed condition.
- 13.44 Conditions 37(i) – (iv) address restoration and are agreed conditions.
- 13.45 Condition 38 addresses matters of ecology and species protection and is an agreed condition
- 13.46 Conditions 39 – 46 address highways and traffic matters and are agreed conditions.
- 13.47 Conditions 47(i) and (ii) address well-site workover and tubing replacement operations and are agreed conditions.
- 13.48 Condition 48 addresses well-site OMP operation and is an agreed condition.
- 13.49 Condition 49 withdraws permitted development rights with respect to the erection of plant or buildings not expressly permitted and is an agreed condition.

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## 14. Inspector's Conclusions

### Pre-amble

- 14.1 In these conclusions, the numbers in <sup>[ ]</sup> brackets indicate the preceding paragraphs or inquiry documents where the relevant information can be found.
- 14.2 Both an Environmental Statement <sup>[CD/H1-4, 6 + 10]</sup> and a Design & Access Statement <sup>[CD/H.6]</sup> were submitted as parts of the applications. These meet the requirements of the regulations and I have taken them into account in arriving at my conclusions and recommendations.

### Principal considerations

- 14.3 The principal considerations in these 2 appeals are:
- i) whether the proposals are contrary to development plan policies for the management of the extraction and processing of natural gas in North Yorkshire, including the North York Moors National Park;
  - ii) whether the proposals would have an unacceptable visual impact on the landscape of this part of North Yorkshire, including views from and into the North York Moors National Park;
  - iii) whether the proposals would have an unacceptable impact on the amenities of local residents and visitors to the area;
  - iv) whether the perception of risk from the operation of the proposed gas processing facility amounts to a harm sufficient to justify a refusal of planning permission;
  - v) whether the measures proposed would be sufficient to ensure the satisfactory restoration of the sites following cessation of gas extraction;
  - vi) whether there are alternative sites for the location of the GPF; and,
  - vii) whether the local and national benefits of the exploitation of the gas reserves are sufficient to outweigh any harm associated with the above considerations.
- 14.4 **Whether the proposals are contrary to development plan policies for the management of the extraction and processing of natural gas**
- 14.4.1 The appeal proposals are a single scheme, albeit made up of 5 distinct elements; those being the gas well and well site, the pipelines, the access to the gas processing facility (GPF), the GPF, and the above ground installation (AGI) for connecting the GPF to the NTS. Of these, the well site and a short length of the proposed pipelines lie within the NYMNP, the remainder within North Yorkshire.
- 14.4.2 It is accepted that for the convenience of considering the various impacts of the appeal proposals it can be broken down into the above 5 elements. It is also an extensive scheme that lies within two MPA areas and not all elements lie within both authority areas. However, as a single and un-severable proposal, in the event of one element of the scheme being unacceptable and warranting a recommendation of refusal of planning permission, both appeals would be subject to that recommendation.

- 14.4.3 For MEL it was a matter of some concern that NYMNPA appeared to be applying its policies to the assessment of the impacts of those elements of the proposal, particularly the GPF, which lay outside the boundary of the NYMNP and beyond its jurisdiction. Ultimately, that must be a matter for the courts. However, as noted above, as this is a single and un-severable proposal – all components being interlinked and none being able to operate in isolation without the others - it appears not unreasonable for NYMNPA to consider the impacts of the proposal as a whole against its adopted strategies and policies.
- 14.4.4 Sections 7.5 and 7.6 of the NYMLP addresses development, production and restoration of oil and gas infrastructure. Policy 7/5 address the conversion of exploration wells to production wells but as ES-1 lies within the NYMNPA area I am satisfied that this is more appropriately dealt with under the terms of the NYMCS and I deal with this aspect of the proposal at para.14.4.12 below.
- 14.4.5 NYMLP Policy 7/6 indicates that *planning permission for commercial production will be granted only within the framework of an overall development scheme relating to all proven deposits within the gas-field.* Policy 7/7 indicates that, *unless technically impracticable or environmentally unacceptable, planning permission ... will only be granted where the development utilises existing available surface infrastructure or pipelines.*
- 14.4.6 Policy 7/8 states that, *unless technically impracticable or environmentally unacceptable, planning permission for gathering stations forming part of a ... scheme will only be granted where ... located on land allocated for industrial use and/or associated with railway or waterway transport.* Policy 7/10 addresses restoration.
- 14.4.7 For MEL it was argued that little weight should be attached to these policies of the NYMLP because of the age of the plan (adopted 1997) and the extensive national policy guidance that has been published since then, culminating in NPSs EN1 and EN4 published in July 2011
- 14.4.8 The supporting text to policy 7/6 <sup>[CD/C1 – para.7.5.5]</sup> points out that sustainable development principles require maximum integration and elimination of duplication, and that a gas-field should, where relevant, be regarded as consisting of several relatively small deposits in a single area brought together into one set of proposals. That approach in no way conflicts with either national energy policy or wider planning principles as set out in PPS 1 – Delivering Sustainable Development. The plan goes on to recognise the difficulties in co-ordinating different projects within a gas-field as a result of the licensing system, but that is not a justification for accepting unnecessary duplication and unsustainable development.
- 14.4.9 Policy 7/7 seeks to ensure development proposals utilise existing available surface infrastructure or pipelines. Again, that clearly accords with the general approach to sustainable development. Where there is spare capacity available and a project that could use it fails to do so and it remains unused it may well represent unnecessary duplication and it would clearly not represent an efficient use of existing infrastructure. Neither of these policies can be said to be out of date, albeit that they are now some

15 years old, and similar policies aimed at a sustainable approach to development are likely to be included in any replacement plan.

- 14.4.10 Policy 7/8 addresses the location of 'gathering stations'. In the context of developments in the gas industry the wording of parts of the policy reflect its age and the technology prevalent at that time. As to the requirement to use land allocated for industry (unless technically impracticable or environmentally unacceptable) the plant associated with a GPF has all the hallmarks of an industrial process and such land is clearly an appropriate location, all other factors being acceptable. Reference to rail or waterway transport is less applicable to gas production than to oil, but that does not render the main thrust of the policy obsolete.
- 14.4.11 On this matter I conclude that setting aside the locally adopted policies of the NYMLP on the grounds of their age and the existence of more recently published national guidance is not justified.

#### The Well Site

- 14.4.12 Core Policy E of the NYMCS addresses a limited range of mineral developments; primarily quarrying. Supporting paragraph 6.31 indicates that proposals for gas production will be considered against national guidance contained in Annex 4 to MPS1<sup>[CD/A5]</sup>. Neither MPA objects to the principle of the exploitation of the gas reserves at ES-1. Both accept that there is a national need for an increase in gas supply infrastructure<sup>[6.13]</sup>.
- 14.4.13 NYMNPA accept that if these resources are to be exploited, then the most appropriate location for a production well site is that proposed in this scheme and that there is no other site capable of accessing these reserves which would result in a lesser environmental impact. This is a view with which I concur. While there is a bridleway which passes to the south of the well site following, at this point, the boundary of the NYMNP, vegetation on the northern side of this bridleway limits views into the site. Views of activity on the site from the north and east are restricted by forest plantations. From the information contained in the Forest Enterprise felling proposals plan<sup>[CD/Q2.2]</sup> it is apparent that this woodland is unlikely to be felled before gas extraction has ceased and the well-site restored, and the well-site would not become an exposed and prominent feature in the landscape on this part of the national park in the future.
- 14.4.14 While the NYMNPA accepts the location of the well-site it has, from the outset, opposed the principle of locating a GPF in close proximity to the well-site or elsewhere in the national park and this was made clear in preliminary correspondence with MEL<sup>[CD/H3 – App.5.1]</sup>. MEL stated, both at the inquiry and previously<sup>[CD/H1 – 5.13]</sup>, that its preferred location for a GPF would have been in close proximity to the well-site but, in response to NYMNPA's wishes, designed the current scheme with the GPF located outside the national park.
- 14.4.15 On this latter point it is to be noted that some local residents also suggested that locating the GPF adjacent to the well-site would be superior in both visual impact terms and with respect to potential impact on receptors sensitive to noise, odour and fear of accidents. However, in view of the NYMNPA's stance, MEL has understandably not sought to assess such a

scheme in the alternatives considered in the applications and associated submissions.

- 14.4.16 The guidance in Annex 4 to MPS1 notes that individual well sites can raise environmental issues but points to the fact that sites '*required for sustained production which separate, purify and treat raw materials are likely to take up the most land*' ... and '*should not be sited where they would have unacceptable adverse environmental impacts*'.
- 14.4.17 Activities associated with the operation of the production well, while visible in some limited close-proximity views, would not result in unacceptable adverse environmental impacts. To the extent that this accords with the guidance in Annex 4 to MPS1, that such proposals within the national park will be assessed against this guidance, and subject to the provision of appropriate conditions, the siting and operation of the production well as proposed does not conflict with the NYMCS.

#### The Pipelines

- 14.4.18 The choice of the route for the pipelines connecting the production well to the GPF at Hurrell Lane is not in dispute between the principal parties, and the MPAs are satisfied that this route, when compared with the other options investigated in the ES <sup>[CD/h1 – Fug.5.2]</sup> would have the least detrimental impact on both the environment and on archaeological remains <sup>[6.13]</sup>. For parts of its length it follows closely the pipeline that previously connected the natural gas well-site at Ebberston Moor to a former GPF at Outgang Road Pickering. That pipeline now forms part of the system that supplies gas to Whitby and connects to the NTS at Pickering.
- 14.4.19 The construction of the pipelines would cause some temporary disturbance and the impact on the use of bridleways in the vicinity of the alignment is a matter of concern to some local residents, particularly the proprietors of Prospect Farm Cottages who run equine holidays <sup>[11.27]</sup> and whose clients make use of the bridleways connecting Thornton-le-Dale with the rides in Dalby Forest. I do not accept, however, that this construction phase would prevent the continued use of the bridleways during the construction period. Moreover, experience of progressive pipeline construction elsewhere suggests that the temporary scars made in the landscape quickly recover and revert to their former appearance.
- 14.4.20 For a substantial part of its length wider views of the pipeline construction would be screened by Forestry Commission woodland. Moreover, in view of the temporary nature of the visual disturbance, and the limited duration of the pipeline construction phase, I do not accept that it would have a materially detrimental impact on tourism or on the propensity of tourists to make return visit to the area.
- 14.4.21 Neither the NYMCS nor the NYMLP include policies that refer directly to pipelines other than the expectation in NYMLP Policy 7/7 that existing available pipelines will be used in preference to duplication. As I have already noted, the former production pipeline linking the Ebberston Moor well to former Pickering GPF is now used to supply natural gas from the NTS to Whitby, while the site of the former GPF has been cleared and reclaimed. The plan clearly anticipates the use of pipelines to connect

production wells either directly to consumers, or via a GPF for onward transmission to the NTS<sup>[CD/C1 – para.7.5.1]</sup>.

- 14.4.22 Insofar as the pipelines are a necessary adjunct to the location of the GPF at Hurrell Lane, and the obvious statement that without the GPF there would be no need for the pipelines, I conclude that the construction of these pipelines would not conflict with the policies of the NYMLP nor, to the extent that a short length of pipeline would lie within the NYMNP, result in material harm causing conflict with the NYMCS.

Access from A170

- 14.4.23 Agreement has been reached with the highway authority as to the design of the junction of the access with the A170<sup>[6.9]</sup>. Details include localised road widening to enable the provision of a traffic island and right turn lane for traffic approaching the site from the west. Visibility splays of the required standard can be achieved subject to ground levels within those splays being lowered.
- 14.4.24 A number of local residents expressed concern that the new access, which would be used by heavy goods vehicles visiting the site, would unacceptably increase traffic hazards on this length of the A170, a route that is heavily trafficked particularly during the holiday season.
- 14.4.25 Overall peak traffic flows would increase by some 1% during the construction phase. An increase which, in the context of normal variations in traffic flow, could not be said to amount to a material harm in terms of reductions in safety or increase in congestion. Peak HGV traffic during the construction phase would increase by a more significant 7%. The significant impact of such traffic would be the increased congestion and reduction in safety associated with right-turning traffic wishing to access the site. However, the inclusion of a protected right-turn lane within the design would overcome both of these potential problems and would not give rise to a material reduction in safety for motorist and other users of the A170.
- 14.4.26 Traffic generated by the operation of the GPF is anticipated to result in a maximum of 12 two-way vehicle trips per day. This would have negligible impact on either congestion or highway safety. Subject to consideration of the visual impact of the proposed access which I address below, I conclude that this element of the proposals would not be contrary to development plan policies for the management of the extraction and processing of natural gas.

The GPF

- 14.4.27 The appeal proposal seeks planning permission to exploit the reserves of well ES-1. Within relatively close proximity (within 6km) are the capped wells at Ebberston Moor 1, Lockton 1 and Wykeham 1. This would appear to constitute a 'gas-field' under the terms of policy 7/6. Irrespective of where that gas could or would be processed, it was not suggested that the definition of the field should be widened to encompass the VoP reserves, and this appears to be confirmed by reference to the Third Energy scoping request which distinguishes their various interests in north Yorkshire by reference to the VoP gas-field and the 'northern' gas-field<sup>[CD/G5 – Section.2.2]</sup>.



- 14.4.28 The MPAs criticised MEL for not preparing and coming forward with a development scheme for the whole field in accordance with the requirements of policy 7/6. I consider this criticism to be unjustified. MEL have not ignored the other reserves within the field and it is clear from the capacity of the processing plant they wish to install, and the expected length of life of that equipment and the planning permission sought, that they intend to not only develop further their own reserves by the sinking of an additional production well from their existing well site, but are willing to provide access to gas from the currently capped wells referred to above in the event of their licensees wishing to reopen those wells.
- 14.4.29 It is to be noted that while MEL had previously attempted to reach agreement to purchase with the former owners of the licenses and associated facilities in the VoP gas-field that company had subsequently decided to dispose of all of its UK assets, including those not within North Yorkshire. It is also to be noted that not only were the applications the subject of these appeals submitted in April 2010, but the appeals against failure to determine were submitted in June 2011 and thus before Third Energy became the new owners of the VoP assets. In those circumstances it would be unreasonable to expect MEL to put forward a detailed development scheme for resources that they neither held licences for nor had detailed information as to the extent of those reserves. Moreover, some of those wells had been drilled, partially exploited and then capped many years before<sup>[4.2.2]</sup>.
- 14.4.30 In the light of the above, I conclude that to put forward proposals that had the capability of accommodating the resources of the remainder of the gas-field should its licensees so wish was acting in the spirit of the terms of the policy. I arrive at this conclusion taking into account NYCC's recognition, as expressed in the supporting text to the policy, of the difficulties that the licensing system creates where more than one company holds licenses within an area. I do not accept that the proposals can reasonably be said to conflict with NYMLP Policy 7/6.
- 14.4.31 Policy 7/7 seeks to ensure that development utilises existing available surface infrastructure or pipelines. As noted above<sup>[14.4.9]</sup>, I have already concluded that such an approach, in the generality, accords with the concept of sustainability.
- 14.4.32 In the context of these proposals, which aim to supply treated gas to the NTS, existing available infrastructure is limited. No pipelines exist to get the gas from the ES-1 gas well, or any of the neighbouring wells in the national park, to a processing facility. The one pipeline bringing unprocessed gas to the former GPF at Pickering now forms part of the national gas supply pipeline system and connects the NTS at Pickering to Whitby and is therefore not available. The proposed GPF would connect to the NTS via an AGI facility sited immediately south of the junction of Hurrell Lane with New Ings Lane. The NTS here has the capacity to accept the gas from the appeal proposal GPF and so its proposed connection to the NTS accords with policy 7/7.
- 14.4.33 There is currently no capacity in the locality to treat the gas from ES-1, or the other capped gas wells within this part of the NYMNP, to the standard required for its acceptance by National Grid for disposal via the NTS. It is

a feature of the appeal proposal, unlike the existing facilities at East Knapton, that the treated gas should be capable of being transmitted by pipeline to wherever it needs to be consumed.

- 14.4.34 Attention is drawn by the MPAs to the existing gas powered electricity generating facilities at East Knapton. That facility processes the gas to a standard sufficient to allow it to be burnt in an on-site simple-cycle gas-turbine powering a generator feeding electricity to the national grid. No H<sub>2</sub>S removal, dehydration or hydrocarbon dew-point control is necessary for use as a fuel gas <sup>[CD/G5 – 1.8]</sup>. It is simply filtered, reduced in pressure then heated prior to combustion in the turbine. This plant, having been installed some years ago is not of a particularly modern design and is acknowledged to be relatively inefficient when compared with modern combined-cycle technology now installed in modern gas-fired power stations. The gas treatment process undertaken here does not produce a gas of a quality/specification acceptable to national grid for injection into the NTS.
- 14.4.35 In addition to the differences between the intended output of the appeal proposals (gas) and the current output of East Knapton (electricity), the intention by Third Energy to ‘workover’ existing VoP wells to restore production levels, together with the limited capacity of the East Knapton facility to consume gas (9MMSCFD) compared with the rate of production anticipated in the appeal proposals (15MMSCFD), indicate a clear lack of capacity in the existing infrastructure at East Knapton.
- 14.4.36 I therefore conclude that notwithstanding the existence of the East Knapton facility its lack of spare capacity to use the ES-1 gas, together with the absence of plant capable of processing the gas to NTS standards, indicates that there is not currently available surface infrastructure here and that the appeal proposals are not contrary to NYMLP policy 7/7.
- 14.4.37 NYMLP policy 7/8 addresses the location of ‘gathering stations’ and seeks to locate them on land allocated for industry. The supporting paragraph to the policy notes that, at 1997, hydrocarbon developments in North Yorkshire had not lead to a need to consider gathering stations and major treatment plants. However, this statement appears to overlook the development of the former gas processing plant located at Outgang Lane, Pickering granted permission in 1970 to treat gas from the now capped wells in the NYMNP not far from well site ES-1. That plant ceased operation after a relatively short period of time, was demolished and the site returned to grassland.
- 14.4.38 With respect to the policy references to rail or waterway transport, that is not relevant to the consideration of this appeal as processed gas would be exported by pipeline; the NTS being located immediately adjacent to the GPF.
- 14.4.39 The Hurrell Lane GPF site is not allocated industrial land and, as it is located in open countryside, the location of a GPF here conflicts with the principal aim of the policy to locate such facilities in areas with least environmental impact <sup>[CD/C1 – para.7.5.6]</sup>. However, NYMNP clearly oppose the location of a GPF anywhere within the NYMNP, while NYCC were unable to point to any other allocated industrial land within the settlements of the

VoP that was available and suitable. I consider the issue of alternative sites below and conclude that, setting aside the East Knapton site, (which is itself a site within the open countryside not allocated for industry but granted permission on appeal for a temporary period) there are no other sites within reasonable proximity of the well site as defined in the 'study area' that could accommodate the GPF.

14.4.40 There are two caveats to the preference for the choice of an allocated industrial site under policy 7/8, one of which is technical practicability. At its most basic, the lack of available allocated industrial land effectively falls within this category. This appears to be acknowledged in the supporting statement which indicates that '*such development in the open countryside ... would require particular justification to demonstrate why an environmentally better alternative site was not available*' [CD/C1 – para.7.5.6].

14.4.41 Subject to my conclusions on East Knapton which I address below, I conclude that while the location of the GPF in open countryside would conflict with the aim of NYMLP policy 7/8, in the absence of a suitable alternative site this would not amount to an over-riding in-principal policy objection to the proposals the subject of these appeals.

The AGI

14.4.42 In order to connect to the NTS the AGI needs to be located in close proximity to it. In so far as this element of the appeal proposals is located so as to take advantage of available capacity in the NTS it accords with NYMLP policy 7/7.

#### 14.5 **Whether the proposals would have an unacceptable visual impact on the landscape of this part of North Yorkshire, including views from and into the North York Moors National Park**

Policies

14.5.1 There are a number of policies in the plans and strategies comprising the development plan which address landscape matters [3.2 – 3.5]. YHRP Policy ENV10 states that the region will safeguard and enhance landscapes that contribute to the distinctive character of the region. The supporting text emphasises that development in areas adjacent to the National Parks must not prejudice the qualities of the designated areas.

14.5.2 NYMCS core policy C seeks to conserve and enhance the quality and diversity of the natural environment of the NYMNP. Core policy G seeks to conserve and enhance the landscape, historic assets and cultural heritage of the NYMNP. Supporting text to Development Policy 3, which addresses the approach to the design of development, emphasises that new development ... should ensure ... that the landscape of the park is conserved and enhanced. Development Policy 4 indicates that development within or immediately adjacent to a CA should preserve or enhance the character and appearance or setting of the area.

14.5.3 It is the aim of the NYMLP to limit the adverse effects of mineral extraction on the environment and local amenity. Policy 4/1 criterion (d) addresses

landscaping. It is an objective of the plan to protect areas of high quality landscape.

- 14.5.4 RLP policy ENV1 sets out criteria for assessing new development outside development limits, including the avoidance of adverse impacts on landscape. Policy ENV3 resists developments which would detract from the scenic quality of the Moors Area of High Landscape Value. Policy ENV7 addresses the landscaping of development.
- 14.5.5 Given its age, and the more recent publication for consultation of a draft Core Strategy for Ryedale <sup>[CD/E2]</sup> MEL questioned the weight to be attached to the RLP <sup>[7.32]</sup>. However, the importance placed on preserving the character of the Yorkshire Wolds and the Fringe of the Moors as areas valued locally for their natural beauty and scenic qualities continues in the emerging documentation, and does not conflict with the national objective of protecting valued landscapes as set out in the draft NPPF. While the Wolds and Fringe of the Moors areas may not attract the same level of protection as nationally designated areas such as the NYMNP or Howardian Hills AoNB, and while the draft NPPF continues previous national policy which encourages a hierarchical approach to such designations, that does not support setting aside the landscape protection afforded by the RLP.

#### The Well Site

- 14.5.6 As noted above <sup>[14.4.13]</sup> NYMNP accept that if these resources are to be exploited, then the most appropriate location for a production well site is that proposed in this scheme and that there is no other site capable of accessing these reserves which would result in a lesser environmental impact. Semi-permanent structures at the well site would be neither tall nor extensive in area covered. The compound, some 115m x 146m, would be enclosed by a 2.85m security fence. The local equipment room, located close to the southern boundary fence, would be some 10m square and 3.93m high, the associated CCTV tower 5.25m high, and satellite communication dish slightly lower.<sup>149</sup> The associated wellhead plant – two inhibitor ‘packages’ and the wellhead separator – would be free-standing ‘packaged’ plant units located closer to the wellhead. The largest of these would be some 5m wide, 15m long and some 4m in height save for emergency lighting columns some 6.1m high<sup>150</sup> and a single vent pipe some 7.3m high.
- 14.5.7 Although only partially screened in close proximity views from the public footpath immediately to the south of the well site, these structures would be well-screened in longer views by woodland to the north, north-west and east, and by a shallow belt of vegetation – Lingy Plantation - to the south. The structures would not be visible in longer views and would not have so significant a detrimental impact on the landscape of this part of NYMNP as to result in an unacceptable impact. In arriving at this conclusion I note that the Forest Enterprise felling plan does not contemplate the clear felling of forest trees to the north-west, north and north-east of the well

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<sup>149</sup> Application Plan 18761900-2 Rev.3

<sup>150</sup> Application Plan 18761900-7 Rev.1

site until 2047, which would be at least a decade after this gas production equipment would be expected to have been removed and the site reclaimed. Woodland immediately to the east would be felled in the period 2032 – 2037, while that further to the east would be subject to management by alternatives to clear felling [CD/Q2 – Sheet 19].

#### The pipelines

- 14.5.8 The impact of the pipelines on the landscape would be limited to the construction phase. There are no permanent surface features associated with the pipelines – the facilities for inserting or retrieving the ‘pigs’ being located within either the well compound or the GPF site. There is also no intention to excavate and remove the pipelines following the cessation of gas extraction.
- 14.5.9 Irrespective of where the gas was to be processed there would need to be a pipeline linking the production well to a processing facility. The route chosen in this case is acceptable to both MPAs and it is to be noted that while its construction will be noticeable in wider views of and over Wilton Heights for a substantial part of its route wider views are contained by existing woodland and forest. In any event, it is to be noted from experience elsewhere that the initial scars left by the construction of a pipeline quickly recover and leave little or no trace of the previous construction activity and there is no reason to suggest that that would not be the case here.
- 14.5.10 I conclude that the construction of the pipelines would not result in an unacceptable visual impact on the landscape through which it would pass.

#### The Access

- 14.5.11 The proposed new access on to the A170 would have a visual impact for the life of the development. For road users the principal impact would be limited to the appearance of the access at its junction with the A170, together with views down the access towards the former railway embankment; a distance of some 1,000 m. The bell-mouth and first section of access road would be of sufficient width to allow HGVs to pass, narrowing to a single 3m carriageway with passing bays for the remainder of its length. Views of this linear feature would be partially screened from the east and west by the hedgerow along its eastern edge and the proposed earth bund along its western side. From the highway the bell-mouth would have the appearance of the type of access provide to modern industrial or commercial enterprises, and to some larger agricultural enterprises. This would be in contrast to the current appearance of this part of the AHLV with its traditional hedgerows and field gateways. However, taking into account the various changes in width and alignment on the A170 this new access would not appear especially incongruous.
- 14.5.12 Public views from the rising ground to the north are limited. There would, however, be clear and uninterrupted elevated views from parts of the bridleway to the north-west of Wilton. From here there are wide and attractive views over the VoP. The lengthy access would appear as an artificial and ‘engineered’ feature within the AHLV and as such would appear out of keeping with the character of this rural area and in conflict

with local policies which seek to protect the AHLV and the appearance of the countryside in general. This weighs against the proposal. However, there are no other suitable alternative means of access to the GPF site and, in view of the limited number of public viewpoints from which the access would be seen, if the appeal proposal is otherwise acceptable the harm by way of the visual impact of the access would not be so great as to warrant a refusal of planning permission for that reason alone.

The GPF

- 14.5.13 The activities and processes undertaken at the GPF would be industrial in nature, with tanks, towers, vessels and pipe-work of a type and form one would anticipate seeing at any industrial plant dealing with hydro-carbons, although clearly not as massive or extensive as those associated with modern petro-chemical works. The largest of the proposed buildings, the compressor building, would have a ridge height of some 10.25m, a width of some 15m and a length of some 20m. The various vessels and stacks, with their attendant pipework, would have heights varying between 10m and 15.5m. The ground flare would be contained within a substantial circular structure some 15m high and 7.5m wide. The whole complex would be enclosed by a security fence some 2.85m high.
- 14.5.14 The nature of this proposed industrial development would clearly be out of keeping with the character of the local landscape which is one of hedgerow-lined open fields with some hedgerow trees and occasional pockets of woodland.
- 14.5.15 For the appellants, reference was drawn to a number of substantial modern agricultural buildings at farm holdings in the locality. One of the largest of these is at Charity Farm, about 1km south of the GPF site, and also accessed from Hurrell Lane. The group of barns at this farmstead are visible in various views from local bridleways and other public rights of way. In some longer views, for example from the A170 in the vicinity of the proposed access, and from the bridleway across Wilton Heights the extensive roof structure of one of the barns at this farm is a particularly conspicuous feature.
- 14.5.16 I also saw that there is a similarly large modern barn at Wath Hall Farm, Low Marishes, some 6km south-east of the GPF site, as well as other substantial, albeit smaller, modern barns at the farmsteads at Willow Grange and Derwent Farm. Derwent Farm also has a tall and conspicuous grain silo. While these are all examples of substantial farm buildings set within the flat and relatively open landscape of the VoP they are all unmistakably agricultural in appearance and, while much larger and generally less attractive when compared with traditional agricultural buildings, do not appear unacceptably out of place because their shape, size and appearance reflect their use and the requirements of modern agricultural practice.
- 14.5.17 While the compressor building would not be significantly taller than some of the newer barns, and the switch-gear room somewhat lower, they would have the appearance of industrial premises. More significantly, the various stacks, processing plant, and associated pipe-work would in places be substantially taller and would have an industrial appearance totally

different to that of buildings and structures on the farmsteads referred to above.

- 14.5.18 The ZVI plans <sup>[MEL/4/3 – Figs.LT4+5]</sup> suggest that the compressor building would be visible primarily in views to the south and south-east, with restricted views from the rising ground due north in the area of Thornton High Fields. The principal reason for the abrupt cut-off of the majority of views from the north is the presence of the embankment to the former railway line which runs along but within the northern boundary of the GPF site; the central and eastern end of that length of embankment having the benefit of mature tree growth greatly increasing screening when those deciduous trees are in leaf.
- 14.5.19 What is less clear is the extent to which other taller structures on the site, some exceeding 15m in height, would be visible in wider views from the north. The land to the north of the GPF site rises moderately towards the A170, and then more steeply across Thornton High Fields and Wilton Heights. These areas, which exceed 100m AOD, compare with the elevation of the GPF on the edge of the VoP at some 23m AOD. There would be views of some of these taller structures from the public footpaths to the west of Outgang Lane above Thornton-le-Dale because of the limited screening afforded by the trees on the railway embankment. They would also be likely to be visible in views from Wilton Heights and within Wilton village to the north-east; all areas that fall within the AHLV and whose southern boundary here follows the railway embankment.
- 14.5.20 Attention was drawn to the way in which the Knapton Maltings are a conspicuous and unattractive feature within the VoP clearly visible from the Fringe of the Moors AHLV. While that is true it is not a reasonable comparison. Those structures are both substantially taller and more massive than the GPF plant. Their site is also exposed and generally unrelieved by any form of screen planting. The roadside planting that does exist only screens the lower levels of that site and not the overall scale and mass of these structures.
- 14.5.21 To the south of Wilton along that section of Cliff Lane south of the former railway, there would be clear views of the plant, albeit seen against the rising ground of Harrow Cliff immediately west of the GPF site.
- 14.5.22 In views from the various footpaths to the south and south-west the plant would be seen mainly against the backdrop of the railway embankment trees, although those taller parts of the plant would break the tree line they would then be seen against rising land of the Fringe of the Moors AHLV and the NYMNP further to the north. Other than when viewed from the close proximity of New Ings Lane these structures would not break the sky line.
- 14.5.23 From the south-east the plant would be seen against the backdrop of rising land towards Harrow Cliff and Thornton-le-Dale. However, from the public rights of way crossing Wilton Carr, which are at a distance of 1.5 to 2 km from the site, the upper parts of the plant would be visible as the intervening vegetation is limited to field boundary hedgerows with occasional hedgerow trees.

- 14.5.24 The former railway embankment is some 5m high and, but for two short gaps, runs the full length of the northern boundary to the GPF site. For some  $\frac{2}{3}$  of its length it is tree-covered, providing a screen some 15m high [MEL/5/2 – App.LT1 photos A + B]. The western  $\frac{1}{3}$  has vegetation on the side of the embankment but its screening effect is provided solely by the remains of the embankment.
- 14.5.25 The bulkier elements of the plant, other than the ground-flare stack and compressor building, are generally of a limited height and so centrally positioned on the site that they would generally be screened from northerly views by the embankment trees. Those bulkier elements would not be seen in views from the A170 except in winter, and even then those views would not be clear or prominent due to the density of the woodland on the embankment. Ground-level equipment would be screened by the former railway embankment.
- 14.5.26 I am satisfied that, for the most part, the plant would not be visible in views from residential properties in Thornton-le-Dale to the north-west of the GPF site. There would, however, be views of the western part of the GPF from that part of Hurrell Lane serving the south-facing bungalows sited on the southern side of the Hurrell Court complex and located a little over 1km north of the GPF site.
- 14.5.27 The proposals provide for additional woodland and hedgerow planting along the southern, eastern and western boundaries, and along part of the hedgerow that currently divides the GPF site into two fields. The quality of the soils here is such that this planting would quickly establish itself. It would, however, take a number of years before it is was of sufficient height to screen the longer distance views of the upper levels of the plant. The likely impact of attempts to improve the screening effect of the western part of the former railway embankment are less certain. Soils on the sides and tops of such embankments are often thin, the main structures often being composed of ash and imported materials favoured at the time for their 'engineering' competence rather than plant growth potential.
- 14.5.28 For those viewing the site from close proximity, allowing the currently trimmed hedgerows, which are mature, to grow up would have a relatively speedy impact, albeit limited by the relative narrowness of these hedges. However, this would have limited impact on the wider views referred to above.
- 14.5.29 My overall conclusion on the impact of the proposal on the wider landscape is that the GPF would introduce an obviously industrial plant into an area of generally open countryside, that parts of that plant would remain visible and incongruous features for most of its intended life and that it would appear out of keeping with the surrounding rural countryside of the VoP to the south and fringe of the moors AHLV to the north. It would therefore conflict with NYMLP Policy 4/1 and RLP ENV1.
- 14.5.30 The GPF falls within the locally defined landscape area 'K' referred to as linear vale farmland. Arguments as to whether the GPF site should have been included in the open vale farmland character area H rather than area K have little bearing on the analysis of the impact of this development on those areas. The landscape character assessment for area K 'Linear Vale



Farmland', is that *'the relatively high hedgerow and tree cover of the area provides a landscape that has a largely enclosed character, which could possibly accommodate small scale, well sited and sympathetically designed development. However, the historic field pattern that characterises this area is highly vulnerable to damage and loss, particularly given its location in the midst of highly productive farmland. The landscape should be viewed as highly sensitive to change'*.

- 14.5.31 I saw that, in contrast to the areas of the VoP further to the south and east, those fields immediately surrounding the GPF site were bounded by substantial hedgerows and, by comparison, engendered a greater sense of enclosure. However, that sense of enclosure also varies dependant on the extent to which those surrounding hedgerows, as at the appeal site, are kept well trimmed. Notwithstanding that variation, of greater significance is the fact that the GPF cannot reasonably be said to be either small in scale or sympathetic in design. It is a substantial industrial complex with a built form of some 150m x 100m and is not capable of being readily accommodated within this landscape.
- 14.5.32 Although the NYMNP boundary follows the western side of Hurrell Lane north from the appeal site, and west along the alignment of the former railway line, there are no public vantage points within the NYMNP that would give close views of the GPF, although limited views would be available from that part of Longlands Lane which lies on rising ground some 900m north-west of the site. As already noted, when approached from the south the GPF would be seen against the backdrop of the rising ground to the north, the locally designated Fringe of the Moors AHLV. However, it would have little impact on views of the NYMNP, whose boundary to the east of Thornton-le-Dale, runs in a north-easterly direction towards Givendale Head along a ridgeline. To the extent that the NYMNP is visible in these views, it is as a fringe of woodland above the Linear Scarp Farmland and High Eastern Farmland of the AHLV.
- 14.5.33 For the NYMNPA emphasis was placed on the potentially detrimental impact on the setting of the NYMNP. While it is appropriate that proposals outside but close to the boundary of a national park should be assessed against their impact on that park, in this instance, other than with regard to the limited visibility from certain parts of Thornton-le-Dale described above, the plant on the GPF site would not be visible from within the NYMNP. Moreover, to the extent that the Fringe of the Moor AHLV forms a setting for the NYMNP here, there would be few places where the GPF would intrude into views from public vantage points across the AHLV and towards the NYMNP. I conclude that the proposal would not have a seriously detrimental impact on the setting of the NYMNP. I also conclude that the Major Development Test to be applied to proposals in or close to a national park would not be failed by these proposals.
- 14.5.34 In arriving at this conclusion I have taken account of the potentially detrimental effect of security lighting at the GPF. The NYMNP and VoP are areas where dark skies predominate, although there are exceptions and I saw that lights at Snainton Golf Club, when switched on, produced a sky glow clearly visible from Hurrell Lane and the GPF site some 8km to the west. Irrespective of the legality or other wise of that installation, it does

highlight the detrimental impact inappropriately designed, sited and controlled lighting can have. Permanent fixed security lighting will clearly be necessary for the GPF plant. However, I am satisfied that the luminaires can be so designed and located as to ensure no sky glow is created and that the lighting elements would not be visible beyond the site and that 'Dark Skies' standards can be achieved. It is also to be noted that the issue of external lighting is the subject of an agreed condition.

- 14.5.35 Concerns were raised by some local residents that the GPF would have a detrimental impact on views of the NYMNP from the higher ground on the southern side of the VoP. While these are very attractive views, they are panoramic views from a distance of 10km or more from the GPF site. The taller parts of the plant, if seen, would be seen against the rising ground of the Fringe of the Moors AHLV and would be neither conspicuous nor overtly detrimental to the quality of these panoramic views.

The AGI

- 14.5.36 The AGI would have no significant impact on the landscape. The two compounds would together extend to some 47m x 40m. The compounds would be surrounded by 2.85m high security fencing. Within the MEL compound there would be an instrumentation room 4m x 2m and some 3m high. Within the NTS compound there would be an attached pair of similar sized units<sup>151</sup>. They would be somewhat smaller than the agricultural building fronting New Ings Lane to the east and although obviously associated with some infrastructure use because of their containment within a security fence, would not appear significantly out of keeping when compared with other small agricultural buildings in the locality.

**14.6 Whether the proposals would have an unacceptable impact on the amenities of local residents and visitors to the area.**

- 14.6.1 Prior to the inquiry RDC, on behalf of NYCC, were concerned that there was insufficient information to conclude that noise from activities on the site would not result in detrimental impacts on amenity. Outside inquiry time that matter was further addressed and NYCC and AGHAST satisfied that subject to the imposition of appropriate conditions, uncertainties with respect to potential noise nuisance had been adequately addressed<sup>[7.136]</sup>. Conditions, based on noise levels not to be exceeded (a) between 07.00 and 19.00 on weekdays, and (b) at all other times, at 4 specified monitoring locations at the corners of the GPF, and a noise attenuation scheme for the GPF site, together with monitoring schemes for the GPF and wellhead sites, were agreed.
- 14.6.2 Gas from the ES-1 well will contain hydrogen sulphide, and a major component of the plant is equipment designed to produce elemental sulphur as a valuable by-product. Local residents are understandably concerned that operation of the plant should not result in odours escaping and resulting in detrimental impact on the amenities of local residents and tourists. I accept that, of the various factors that tourists coming to this locality seek, fresh air is an important quality of the NYMNP and VoP.

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<sup>151</sup> Application Plans 18761960-1 + -2 Rev.1

Uncontrolled releases of hydrogen sulphide have, therefore, the potential to have a greater impact on tourism locally than any other aspect of these proposals. As noted by AGHAST, the importance of tourism to this locality, and North Yorkshire in general is such that any material reduction in the numbers of visitors as a result of the failure of the plant to operate properly and without odour problems would be likely to far outweigh the local financial benefit of the scheme <sup>[10.70]</sup>.

- 14.6.3 This project is a Part1A development and will require an environmental permit from the EA under the 'environmental permitting' regime of the Environmental Permitting Regulations 2010 <sup>[7.147]</sup>. Typical conditions to be imposed by the EA are set out in its Odour Management Guidance Note H4 <sup>[CD/A31]</sup> and include, inter alia, a boundary condition requiring no pollution beyond the site boundary, as well as conditions requiring compliance with an OMP where odour is a potential problem. The appellant's OMP sets out the BAT to be applied to each process and is the basis on which agreement was reached with the authorities. The SoCG states that *'NYCC and NYMNPA do not raise any concerns to justify an objection to the application on air quality grounds.'* <sup>[CD/M1 – para.16.6]</sup>.
- 14.6.4 PPS23 makes it clear that the planning system should not duplicate the pollution control system and that planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced <sup>[CD/A14 – para.10]</sup>. In this context, while it is acknowledged that the VoP is subject to temperature inversion weather conditions on occasions, I conclude that an odour boundary condition, and the installation of plant designed to comply with such a condition, would ensure no off-site odour problems. This is clearly important in the context of these proposals given the importance of Thornton-le-Dale as a focus for tourism.
- 14.6.5 Given the importance of the avoidance of odour problems here I have considered whether, in the event of a planning permission being granted, that planning permission should in any event include an odour boundary condition. However, the Environmental Permitting Regulations require the control of pollution, including odour, and I am satisfied that a condition in the form contained in the guidance, would be imposed. I shall, therefore, not recommend such a condition be attached to any planning permission.
- 14.7 **Whether the perception of risk from the operation of the proposed gas processing facility, or the associated pipelines, amounts to a harm sufficient to justify a refusal of planning permission.**
- 14.7.1 The transportation of gas under pressure by pipeline is a common feature of current energy infrastructure in both the UK and abroad. To the extent that all such pipelines carry an element of risk with their operation there is nothing to suggest that the chosen pipeline route is somehow of particular risk or represents a special danger. For much of its length it follows the alignment of a previous pipeline transporting gas from wells to processing facilities; pipes that continue to be used, although now as part of the regions gas supply system.
- 14.7.2 While I note the concerns of local residents raised in oral statements and as presented on their behalf by AGHAST as to the particular hazard

presented by 'sour gas' due to the toxicity of hydrogen sulphide, 'sour gas' is already carried under pressure by pipelines transporting gas from the VoP wells to the gas processing and electricity generation facility at East Knapton. Moreover, the pipeline which formerly connected the wells at Ebberston Common to the processing plant at Pickering followed a route that took the pipeline far closer to residential properties than would be the case with the appeal proposal, and was also a significantly longer pipeline. There is no suggestion that there had been any problems of events leading to an emergency associated with the operation of those 'sour gas' pipelines. Similarly, the length of pipeline connecting the GPF to the NTS is commendably short and located well away from any residential property.

- 14.7.3 A number of local residents expressed fear and apprehension at the prospect of the GPF being located so close to Thornton-le-Dale. These fears related to the consequences of an explosion at the processing facility and the consequences of a major release of hydrogen sulphide.
- 14.7.4 Following detailed discussions between representatives of MEL and NYCC, which included a view of consequence analysis by Gexcon and information provided by the appellant, NYCC reached the view that MEL is undertaking appropriate assessments of the safety risks from the Ebberston and Hurrell Lane sites. No opinion is given on behalf of MEL at this time on risk to life as it is considered that this will be given by the duty holder (MEL) as part of due process involving other regulatory requirements and regimes. NYCC's objection on the grounds of MEL's failure to provide adequate information on safety risks was then withdrawn <sup>[6.14 + 7.144]</sup>.
- 14.7.5 MEL is fully aware of its need to apply for various consents and permits under other legislation before the plant can be either constructed or commissioned <sup>[7.140 + 7.147]</sup>. In accordance with national guidance which sets out to ensure that planning controls do not duplicate the controls rightfully administered by the HCA, the HSE and others as appropriate <sup>[7.148]</sup>, I have no doubt that these controls will be effectively applied to ensure that the plant and its procedures are so designed and implemented as to achieve safe operation for both the employees on site and the wider public in the local community.
- 14.7.6 Fear as to the potential impact of an emergency event can be a material consideration in the determination of a proposal. However, the weight to be attached to those fears, and whether that would be sufficient to justify refusing planning permission, would need to reflect the degree to which those concerns relating to the running of a GPF plant would be addressed under COMAH regulations and other permit systems. The processing of natural gas prior to use or onward transmission is not a new or novel activity. Within this part of North Yorkshire it is obviously undertaken currently at East Knapton, and was previously undertaken at the former site close to the urban area of Pickering. In the context of the accepted location of GPF elsewhere I conclude that residents' fears associated with the potential use of this site for a GPF should carry only limited weight and, in general terms, do not amount to a strong argument for dismissing these appeal proposals. With respect to arguments that there are no examples in the UK of the specific form of the sulphur extraction process and plant to be used here, and that it is therefore a novel process, is a matter for those

authorities tasked with authorising the safe use of such plant and equipment. The plant and process will not be permitted unless those authorities are satisfied that it will be safe to do so.

**14.8 Whether the measures proposed would be sufficient to ensure the satisfactory restoration of the sites following cessation of gas extraction**

- 14.8.1 It is MEL's intention to remove all above ground structures, hardstandings and the access road. It would purge and leave in place the below ground pipelines etc. As they note, this is normal practice for gas infrastructure sites. The site would be restored to agricultural use <sup>[7.98]</sup>. Neither NYCC nor NYMNPAs argued that their respective parts of the appeals site could not be suitably restored, although AGHAST raised concern as to the likely adequacy of final restoration and expressed the view that the site of the former GPF at Pickering, although returned to agriculture, had not been restored to a standard equivalent to the quality of the land prior to that development.
- 14.8.2 On this latter point it is generally accepted that the standards of restoration, both expected and achieved, are much higher than in the 1980's. More importantly, restoration schemes are now expected to be submitted and approved prior to development commencing so that all parties to the development are aware of what needs to be done in the way of protection and storage of soils necessary to achieve the required quality of restoration, and a condition to that effect has been agreed.
- 14.8.3 In view of the multiplicity of land ownership interests over this extensive site, and the potential for the gas field developer to change over the life of the development, NYCC were particularly concerned to ensure that there was sufficient financial support in place to enable restoration to take place, at whichever time was deemed appropriate, without recourse to public funds. This concern related principally to the GPF site and its access. It was accepted that issues relating to the restoration of the well site could be adequately addressed by condition.
- 14.8.4 MEL emphasised that the company was subject to international financial reporting standards which require it to make provision in its accounts for future liabilities, and that it would also have to satisfy DECC of its financial standing before being granted field development approval <sup>[7.100]</sup>. However, MEL also expressed sympathy for these concerns, undertook to address them during the inquiry, and then prepared and subsequently amended a unilateral undertaking. I address these matters in section 15 below. My conclusion on the unilateral undertaking is that it addresses the concerns of NYCC both in the provision of appropriate finance and application to successors in title in the event of MEL not being the developer at the time of restoration, whether that be at the end of the life of the permission, or after the premature cessation of gas processing.
- 14.8.5 On this matter I conclude that the measures proposed would be sufficient to ensure the satisfactory restoration of the sites following cessation of gas extraction.

## 14.9 Whether there are alternative sites for the location of the GPF

14.9.1 As part of the preparation of the ES MEL addressed the issue of alternative sites for the GPF [CD/H1 – Chapter 5 + Fig.5.1]. In addition to a GPF and power station at the well site – producing electricity for the national grid, sites for a GPF were considered to the south of Givendale Head Farm, at Wilton Heights Quarry and Caulklands Quarry, at Broadmires Lane south-east of Thornton-le-Dale, adjacent to the Pickering NTS site, at East Knapton Generating Station, and at Hurrell Lane.

14.9.2 Several local residents suggested that any GPF should be located on industrial land and noted that land adjoining industrial units on the south-eastern side of Pickering had previously been the location of a natural gas processing plant associated with the original exploitation of gas at Ebberston Moor. That location suffers from proximity to both residential properties and other businesses on the industrial park. The authorities were unable to point to any other allocated industrial land that could be used for a GPF, neither did they express any strong support for any of the alternatives other than the existing site at East Knapton. I am satisfied that, other than that latter site, there are no other sites within reasonable proximity to the well site as defined in the 'study area' that could accommodate the GPF.

### East Knapton

14.9.3 As noted above the East Knapton site does not currently contain plant capable of processing the gas for onward transmission to the NTS, nor is it served by an interconnecting pipeline. It is now an issue before this inquiry because Third Energy, the new owners of the East Knapton facility, have recently submitted a screening request with respect to its intended development of gas resources at the Ebberston Moor and Wykeham (Northern) field and VoP field. That development, if proved feasible, would consist of the drilling of additional development wells in both gas-fields, the construction of pipelines from the northern field to East Knapton and from East Knapton to the NTS, and the expansion of the GPF at East Knapton to allow both continued energy generation in the form of electricity and gas export to the NTS [CD/G5 – 2.2].

14.9.4 The authorities and many of those other interests opposed to the appeal proposal point to the existing power generation plant at East Knapton and suggest that the appeal proposal gas well should be connected to that plant, with the gas burnt at East Knapton, or processed there and then directed back to the NTS. They consider that this site, which is well screened and located somewhat further from the NYMNP will have far less impact on the landscape in the vicinity of the NYMNP and the AHLV.

14.9.5 While NYCC claim the appeal proposals conflict with NYMLP Policy 7/7 this is on the basis that the plant and facilities at East Knapton can and will be upgraded. It should be noted that the time limited planning consent for operations at East Knapton granted for 15 years in 1993, and extended by RDC in 2006, expires in 2018 and there is no commitment by RDC for any extension to that permission. NYCC, as MPA, would become the determining authority for the new gas-wells, pipelines and processing facilities in the event of the development currently envisaged in the

scoping request coming forward as a planning application unless the scale of development or length of pipeline required would result in the proposal being dealt with by the IPC under the 2008 Act. On the assumption that NYCC/NYMNPA would determine the applications (some additional wells and parts of the pipelines being within the NYMNP) neither authority is currently in a position to make any commitment towards the approval of such a scheme.

- 14.9.6 This raises the issue of timescale. With regard to the VoP development the screening request notes that *'this expansion is entirely dependent upon early drilling success and economic feasibility of additional development'*. It goes on to note that *'if the developments are feasible'* they will involve the drilling of additional development wells, and these will require separate planning permissions. Alternative routes for the additional pipelines are indicated in the screening request but it is emphasised that these should only be regarded as conceptual due to the environmental and archaeological constraints that would need to be addressed. It is also clear from the screening request that these proposals, described as *'a major expansion of the company's operations'* <sup>[CD/G5 – 2.1]</sup> are at a very early stage and that the screening application is one of the first steps. There is, therefore, considerable uncertainty at this stage as to the extent to which the various elements of these proposals will be pursued, and over what timescale(s).
- 14.9.7 NYCC claim that the delay would be only some 18 months, or 2 years at most <sup>[8.3.6]</sup>. There is no evidence before this inquiry to support that assertion and to do so on the basis of details contained in an initial screening request which itself expresses considerable uncertainty is unhelpful. The history of local decision making with respect to such proposals does not give one confidence that any determination would be made within these timescales, whether in favour or otherwise. Equally important is the work that Third Energy would need to do to be able to put forward firm proposals for the redevelopment of the East Knapton site. These would include the sinking of development wells in both the VoP and in their 'Northern' field to prove/confirm the extent of the resources to be exploited. This in turn would influence both the capacity and form of plant to be installed at East Knapton, and also the route and timing of pipelines to serve the Northern field. The uncertainty of this latter requirement is highlighted by Third Energy who state that the alternatives should be regarded as conceptual at this stage <sup>[CD/G5 – 2.3]</sup>. Moreover, of the routes shown, two of them start within PEDL120 – the area licensed to MEL. These proposals are clearly at a very early stage in their development.
- 14.9.8 This is also confirmed by information contained in Appendix II to the screening request which states that Third Energy *'is currently preparing a number of short-term well workovers and side tracks to improve the present level of production'*. This confirms MELS understanding from contacts with Third Energy that its management focus is initially on improving output from its existing production wells in the VoP. The appendix also goes on to state *that 'the company is also looking at longer term plans to expand VoP production and bring the Northern Fields on stream again'*.

- 14.9.9 Guidance on the consideration of alternatives in relation to energy infrastructure is set out in NPS-EN1 <sup>[CD/A-3]</sup>. While this is guidance to the IPC for considering schemes of national significance, the NPS also advises that its guidance can also be relevant to smaller proposals coming forward through the 1990 Act planning system. This guidance indicates that *'the IPC should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development; and, alternative proposals which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the IPC's decision'* <sup>[7.108]</sup>.
- 14.9.10 One of the starting points for national policy is that there is an urgency of need for new energy infrastructure. It is accepted that while the gas reserves here are small in comparison to off-shore finds, in the context of local energy demand they are not insignificant. I conclude that these are not circumstances where it would be appropriate to set aside the guidance contained in NPS-EN1.
- 14.9.11 While I note the suggestion on behalf of NYCC that a refusal of permission for the appeal proposals would automatically result in MEL and Third Energy working together on some combined scheme of benefit to both this appears hopeful in the extreme. MEL has no interest in the East Knapton site as either a landowner or plant operator. Equally, Third Energy has no interest as a licensee in the reserves in PEDL120. There is clearly uncertainty as to the timescale of appropriate development and I do not accept that the emerging range of options put forward by Third Energy in its screening request represent proposals with the same capacity and same timescale as those for Hurrell Lane. While the principles underlying the options are clear, important details on which necessary conclusions could be based are vague. NYCC acknowledge that the proposals constituting the screening request from Third Energy are currently vague, unsubstantiated and at an early stage in their development <sup>[8.35]</sup>. I conclude that the potential developments set out in the screening request do not represent a reasonable alternative to the appeal proposals in the form or state anticipated in the national guidance as constituting an alternative to be considered.
- 14.9.12 Irrespective of whether Third Energy and MEL would be in a position to work together there is clear disagreement between MEL and NYCC as to whether the East Knapton site would be large enough to contain the plant necessary for both companies. While I note NYCC's view that technically the site is big enough, it clearly could not contain the plant proposed by MEL for the Hurrell Lane site. Moreover, Third Energy's screening request notes that the new facilities would occupy a slightly larger area than the current office complex, that it was expected to be located in that position, and that the office complex and control room would be displaced and need to occupy part of the area currently used as the site car park <sup>[CD/G5 – 2.3]</sup>. No timescale is indicated in relation to these complex changes to the operation of the East Knapton site.
- 14.9.13 I place little weight on NYCC's suggestion that MEL could occupy land adjacent to the East Knapton site. Such a proposal would clearly be



contrary to RLP policy EMP15 which states that further development around the power plant at East Knapton will only be permitted where, inter alia, it is situated wholly within the existing site boundary. Para.6.13.2 of the RLP also notes that, due to the flat open aspect of the site, it would also be likely to have an adverse effect on the landscape of the surrounding area.

14.9.14 I am not persuaded by MEL's argument that there are significant technical difficulties associated with a longer pipeline to East Knapton in that it needs to cross under an operational railway line and the River Derwent, and that the VoP has a different surface geology to the rising ground north of the proposed GPF. These are not unusual circumstances for the onshore pipeline industry to address, although from the point of view of both maintenance and the reduction of risk to ALARP standards, it is accepted that the shorter the length of necessary pipeline connecting a gas well to a GPF the better.

**14.10 Whether the local and national benefits of the exploitation of the gas reserves are sufficient to outweigh the harm set out above**

14.10.1 NSP-EN-1 notes that decisions on gas supply infrastructure are initially a commercial matter for gas market participants. They will assess their requirements for additional capacity. *The nature of that capacity (as between indigenous production, imports and storage)...are all commercial matters* <sup>[CD/A3-3.8.20]</sup>. The fact that a PEDL has been granted – in this case to MEL – reflects continuing national support for the exploitation of indigenous gas reserves irrespective of their size <sup>[7.45]</sup>. This also reflects the Government's response to the Wick's Review which indicated that it is committed to maximising the economic production of the UK's oil and gas reserves <sup>[7.25]</sup>.

14.10.2 For MEL and the authorities the need for an increase in gas supply infrastructure in the UK is agreed <sup>[6.13]</sup>. For AGHAST it is accepted that Government seeks to encourage the production of indigenous resources where it is technically feasible, economic, commercial and environmentally sustainable <sup>[10.71]</sup>.

14.10.3 NYCC draw attention to the contrast between the income to the company of the wider gas resource – a gross figure of the order of £1 billion <sup>[8.6]</sup> – with its benefit value to the local economy of £1m/pa and the value of tourism to the local economy of £387m/pa <sup>[8.7]</sup>. In these terms the contribution of the scheme to the local economy is small. A number of local residents also point out that they would gain no direct benefit from the scheme as their villages are not served by any local domestic gas supply network.

14.10.4 What that income sum of £1 billion also represents is the value of the gas resource in this part of the NYMNP to the national economy in terms of indigenous reserves that could displace imports.

14.10.5 For the authorities it was argued that the only benefits that could be taken into account in assessing the balance with any harm associated with the proposals were those benefits associated with developing well ES-1. MEL acknowledged that it could not ask the Secretary of State to take account

of the benefits of development that is not included in its current planning application, and noted that the annual value of the gas produced from ES-1 would be some £37.5m and a rate of supply equivalent to the annual energy needs of over 75,000 dwellings <sup>[7.52]</sup>. However, the application does include the opportunity for the GPF and pipelines to facilitate the recovery of further reserves. These reserves would be likely to give the whole facility a production life approaching 20 years <sup>[7.50]</sup>.

- 14.10.6 To fail to take these additional non-monetary benefits into account would be perverse. NYMLP policy 7/6 and supporting para.7.5.5 address the issue of and support for the integration of proposals for the exploitation of a gas field notwithstanding the difficulties created by the licensing system. While the authorities have criticised MEL for not producing a 'development scheme' I have already concluded that MEL's approach addresses the spirit of this policy within the information constraints placed on it by the licensing system. There is clearly a value to be placed on a scheme that would enable other locked-in reserves to be exploited, albeit that one cannot place any monetary value on the benefit at this time
- 14.10.7 While NYCC and AGHAST draw attention to the short life of the resources of ES-1, AGHAST pointing to a period of between 3¾ and 4¾ years <sup>[10.74]</sup>, this assumes that the gas resource would be exploited as speedily as possible. With the increase in infrastructure for wind energy, for example, there is an increasing need to be able to use gas reserves flexibly to respond to those occasions when wind power fluctuates <sup>[EN-1 para.3.3.11]</sup>. In this regard onshore gas resources are better placed than off-shore due to the longer time delay for those gas resources travelling greater distances such as from the northern North Sea and Norway; an issue also addressed in national policy <sup>[EN-1 para.3.8.12 + 19]</sup>. MEL has been quite open in its explanation of both the variations in output that are anticipated to reflect both time of the year and variation in demand, and the provision of a scale of plant which would be capable of accommodating the output from other wells within the NYMNP whether those be an additional well at the ES-1 site, other existing capped wells in neighbouring licensed areas or wells yet to be drilled in those areas <sup>[7.51]</sup>.
- 14.10.8 MEL has drawn attention to the fact that Third Energy, at the East Knapton site, appears subject to the contractual requirements of Scottish Power for the disposal of its generated electricity and argues that, in the event of MEL being required to pipe its gas to the East Knapton site, it would constrain MEL's ability to determine how and when its gas could be used. It was further claimed that such constraints were both anti-competitive and would make MEL's development of the ES-1 resource unviable.
- 14.10.9 NPS EN-1 notes that a great strength of the British gas market is the way that separate commercial decisions, by a number of separate companies, contribute to the overall diversity of our gas supply, promoting secure supplies at competitive prices <sup>[CD/A3 – 3.8.13]</sup>. However, as that guidance also notes, these are essentially commercial decisions for the market participants. To the extent that there is a wider benefit in the context of these appeal proposals, the supply of gas to the NTS permits a more flexible end use of that gas compared with immediate electricity production.

- 14.10.10 It is also to be noted that, with respect to RLP policy EMP15, para.6.13.3, which addresses the issue of further development at the East Knapton site, states that *development proposals which increase the fossil fuel supply capacity of the plant will be expected to include measures for recycling the waste heat produced for heating local homes or businesses*. Such an approach clearly accords with current national aims with respect to energy efficiency but, in view of its relatively isolated location, this requirement may well be difficult to achieve. MEL's proposal to supply gas direct to the NTS avoids such constraints.
- 14.10.11 The proposals would create temporary jobs for some 150 people and permanent posts for a further 23. The offer of 10 post gas-production apprenticeships would be over and above those numbers. These are not large numbers, and it is accepted that many of the skilled construction workers would be likely to be brought in by the contractors, while the permanent skilled posts were also likely to be filled by already experienced staff from outside the area. Nonetheless, some local jobs would be created. Equally importantly, at a time of national economic difficulty, existing skilled employees would be retained and have job security for the life of the project.
- 14.10.12 In arriving at a balanced recommendation in this case it is necessary to weigh the benefits of these proposals against the various impacts assessed in the previous sections of these conclusions.
- 14.10.13 With respect to the well site it is accepted that there is no environmentally superior site for the location of a well to exploit these particular gas resources. I have concluded that activities associated with the operation of well ES-1, while visible in some close-proximity views, would not result in unacceptable adverse environmental impacts or conflict with the policies of the adopted NYMCS.
- 14.10.14 With respect to the pipelines I have noted that insofar as the pipelines are a necessary adjunct to the location of the GPF at Hurrell Lane, and the obvious statement that without the GPF there would be no need for the pipelines, the route chosen is acceptable to NYCC and NYMNP, and I conclude that their construction is a temporary event whose visual impact would be short lived. I have further concluded that the construction of these pipelines would not conflict with the policies of the NYMLP nor, to the extent that a short length of pipeline would lie within the NYMNP, result in material harm causing conflict with the NYMCS.
- 14.10.15 With respect to the safety of the access from the A170 I have concluded that the detailed design meets required standards and is acceptable. With regard to the impact of the access road on the landscape as it crosses the AHLV, I have concluded that it would be visible from only a limited number of public view-points; the most significant being the elevated view from the bridleway north-west of Wilton. From this location the access road would appear to be an artificial and 'engineered' feature somewhat out of keeping with the character of this part of the AHLV and as such would be contrary to policies which seek to protect the quality of that landscape. I have also concluded, however, that there are no other suitable alternative means of access to the GPF site and, in view of the limited number of public viewpoints from which the access would be seen, if the appeal proposal is

otherwise acceptable the harm by way of the visual impact of the access would not be so great as to warrant a refusal of planning permission for that reason alone.

- 14.10.16 My overall conclusion on the impact of the proposed GPF on the wider landscape is that it would introduce an obviously industrial plant into an area of generally open countryside, that parts of that plant would remain visible and incongruous features for most of its intended operational life and that it would appear out of keeping with the surrounding rural countryside of the VoP to the south and fringe of the moors AHLV to the north. It would therefore conflict with NYMLP Policy 4/1 and RLP ENV1. I have further concluded that the GPF would not cause visual harm to the NYMNP, nor would it fail the National Parks major development test.
- 14.10.17 NYCC and NYMNPA have indicated that they do not raise concerns justifying an objection on the grounds of impact on air quality. However, local residents are understandably concerned that the plant should not result in unpleasant odours escaping and resulting in detrimental impact on the amenities of local residents and tourists. I accept that, of the various factors that tourists coming to this locality seek, fresh air is an important quality of the NYMNP and VoP. However, this project is a Part1A development and will require an environmental permit from the EA under the 'environmental permitting' regime of the Environmental Permitting Regulations 2010. Typical conditions to be imposed by the EA include, inter alia, a boundary condition requiring no pollution beyond the site boundary, as well as conditions requiring compliance with an OMP where odour is a potential problem and I am satisfied that this potential problem will be appropriately controlled by the EA.
- 14.10.18 In the light of the above I finally conclude that the national, and more limited local benefits of the scheme are sufficient to outweigh the more limited harms by way of visual impact on the landscape and, in the absence of an alternative scheme demonstrably capable of providing equivalent capacity within the same timescale I shall recommend that, subject to the imposition of appropriate conditions, which are addressed below, the appeals be allowed.

## **15. Conditions and Obligation**

### **15.1 Obligation**

- 15.1.1 The matters addressed in the unilateral undertaking set out at Schedule 2 to that document address 3 matters; a financial guarantee regarding the restoration of the site, the application of the terms of the undertaking to any successors in title and the provision and funding of apprenticeships.
- 15.1.2 Previous operations to develop the gas resources within North Yorkshire have not always been successful, with some proving initially satisfactory before then suffering early closure for technical or economic reasons. The authorities understandably wish to avoid becoming financially responsible for the restoration of the development, especially the GPF, in the event of the premature cessation of gas processing operations on the site. To that end the authorities had on this occasion sought the lodging of a financial

bond at the outset, although they accepted that when granting planning permission for mineral development they did not normally do so <sup>[7.101]</sup>.

- 15.1.3 In accordance with the requirements for planning permission for mineral development, restoration conditions are proposed <sup>[13.3.39 + 41]</sup>. However, for its part MEL acknowledged the authorities particular concerns with regard to the GPF site and offered a unilateral undertaking to address those concerns. The undertaking would require the developer, prior to commencement, to secure a Conditional Bond, or other such financial instrument acceptable to NYCC, in the sum of £1.7m. In the event of the developer failing to restore the site within 24 months of the cessation of gas processing operations at the site (as required by draft condition 35), the council would be entitled to the benefit of the Conditional Bond. The developer would also be required, on an annual basis, to provide proof of the continuing existence of the bond for the duration of operations at the site.
- 15.1.4 At the inquiry NYCC expressed some concern as to the enforcement of the terms of the undertaking in the event of MEL not being the company that undertook the development. In the light of these concerns the undertaking was further amended to ensure that the owners of the land comprising the site of the GPF and its access from the A170, together with others with any interest in that land, and their successors in title, would remain subject to the provisions of the agreement.
- 15.1.5 NYCC did not raise issue with MEL's assessment of the costs of restoration of the GPF site and I am satisfied that the terms of the undertaking would achieve its aim of removing from NYCC any financial liability for restoration in the event of the cessation of gas processing prior to the anticipated expiry of planning permission.
- 15.1.6 The obligation also provides for an apprenticeship scheme. Within 12 months of commencement of the supply of gas to the NTS the developer would establish that scheme to fund and oversee at least 10 apprenticeships. The authorities did not object to the scheme but argued that it was of little benefit given their wider objections to the proposals.
- 15.1.7 This is an area of high youth unemployment and any apprenticeship scheme will increase employment opportunities and the local skills base. By including the scheme in the obligation the authorities can be confident that these youth employment opportunities will be forthcoming. In the balance of this case they could not be said to be a significant item. Nonetheless, they would represent a modest and worthwhile local benefit.

## 15.2 Conditions

- 15.2.1 A draft list of some 49 conditions was jointly prepared by MEL, NYCC and NYMNPA. Following discussion at the inquiry they were amended, as appropriate and the majority agreed. With regard to the agreed conditions I have concluded that they are all relevant to the development the subject of these appeals and, if permission is granted, necessary for control over its implementation and operation, and subsequent restoration following cessation of gas processing.
- 15.2.2 The following conclusions relate to those conditions that were not agreed.

### **Draft Condition 1 – Duration of Commencement**

- 15.2.3 MEL sought 5 years to allow for the time required to obtain other related permits. The authorities and AGHAST considered that there was no justification, in view of MEL's expressed urgency to proceed, to justify a variation from the normal 3-year time limit.
- 15.2.4 The standard time limit is applied to all forms of development, both simple and complex. In this case, following any grant of planning permission the appellant would need to seek other permits and consents relating to the detailed design of the plant as well as satisfying any conditions requiring the submission and approval of further details. While MEL clearly hope that such permits and consents will be swiftly forthcoming, if these were not to be fully gained within a 3-year period the imposition of the 3-year limit to commencement may have the unintended effect of extending the overall construction period, which is obviously undesirable. In these circumstances a 5-year commencement period is both reasonable and justified and I recommend accordingly.

### **Draft Condition 7 – Access for construction vehicles off Hurrell Lane**

- 15.2.5 This condition addresses the submission of details of the temporary construction and decommissioning access. The condition also states that no construction vehicles shall enter the application site (south of the A170) except by this access. This final sentence is not agreed by MEL as it wishes to be able to gain access to the southerly part of the GPF site for some construction plant and machinery directly from Hurrell Lane. The authorities oppose this on the grounds of loss of amenity for local residents and the inadequacy of Hurrell Lane to carry such traffic.
- 15.2.6 The principal access to the GPF site during both the construction and operational phases of the development would be from the proposed new access (replacing and modifying an existing agricultural access) off the A170. The highway authority sought the imposition of a condition which would restrict all vehicular access to the GPF site to this new access. MEL stated that being allowed access for some construction vehicles to the southern end of the GPF site via Hurrell Lane would allow a quicker start on the construction of the GPF in that access to the southern part of the site would not have to wait for the construction of the new access road.
- 15.2.7 Construction vehicles are often delivered to site on the back of large articulated low-loader lorries. Both the horizontal and vertical alignments of the junction of Hurrell Lane with the A170 are poor, with visibility to the east along the A170 also being restricted. In addition, Hurrell Lane is in places somewhat restricted in width, while at its northern end it also passes close to residential properties. I note that Hurrell Lane provides access to Charity Farm; an enterprise that is regularly visited by HGVs. However, I also saw that its narrow width severely restricts the passing of vehicles.
- 15.2.8 I conclude that Hurrell Lane is not of sufficient standard to be used as an access by construction vehicles and the limited benefit associated with the more speedy commencement of construction on the GPF site does not

outweigh the harm that would be caused by way of impacts on both highway safety and residential amenity. I shall recommend no change to the draft condition.

### **Draft Condition 27 – Construction Working Hours**

- 15.2.9 Construction working hours are not agreed. The authorities seek 08.00 – 19.00 Mondays to Fridays, and 07.00 – 13.00 on Saturdays. MEL want the construction hours to reflect those set out in the ES i.e. 07.00 – 19.00 Mondays to Saturdays in order to complete construction as quickly as possible. It is noted that the construction programme set out at Appendix 6.1 to the ES was based on those working hours.
- 15.2.10 The principal aim in relation to this condition must be to minimise the length of the construction period while at the same time avoiding unacceptable impacts resulting in loss of amenity to local residents or tourists through noise and disturbance. In assessing the likely impacts I have taken into account condition 28 which limits construction activity goods vehicle arrival and departure, loading and unloading times to an 08.30 start, a 17.30 finish on weekdays and a 12.30 finish on Saturdays. There would be no construction activity or goods vehicle movements or loading/unloading on Sundays.
- 15.2.11 Activity at the well site would be intermittent and completed within a total period of 205 days. Due to the relative isolation of this location a 07.00 start would have little detrimental impact on either residents or tourists. To the extent that there are likely to be more day-visit tourists on a Saturday there would be some additional disturbance for walkers passing the site by the extension of Saturday working to 19.00. However, this impact would be limited to a short length of the right of way in front and either side of what is a relatively limited site frontage. I am satisfied that this would not result in an unacceptable impact on amenity.
- 15.2.12 The pipeline construction is a moving event; activity remaining in one location for a relatively short period. The pipelines generally cross open countryside, occasionally coming into closer proximity to individual more isolated properties. Within the fringe of Dalby Forest the pipeline runs parallel to a bridleway for about 2km. The total duration of the pipeline construction is anticipated to be 164 days, of which 98 days relate to the continuous process of fabrication and installation. I am satisfied that this activity, if undertaken between 13.00 and 19.00 on a Saturday, would not result in noise and disturbance sufficient to amount to an unacceptable impact on amenity.
- 15.2.13 The GPF site is located some distance from the nearest residential properties. Moreover, ground level construction activities on site would be shielded from receptors to the north, particularly dwellings in Thornton-le-Dale and Wilton, by the embankment of the railway. Construction activities would not result in noise and disturbance for local residents and a further restriction in construction hours over those set out in the ES would not be justified. Walkers on the public footpath linking Charity Farm to Thornton-le-Dale, and which passes some distance to the west of the GPF site would be largely unaffected by construction noise. Residents and tourist walking along Hurrell Lane in the vicinity of GPF would be aware of

construction activity, although the main plant area would be set back from the Hurrell Lane frontage. Earthworks, foundations etc. are anticipated to take some 75 days, while installation of equipment, buildings and piping would take up to a further 110 days.

- 15.2.14 I conclude that neither an 07.00 start to construction activity, nor its continuation to 19.00 on Saturday afternoons, would result in an unacceptable loss of amenity for either local residents or tourists.
- 15.2.15 Access to the GPF site from the A170 would take some 10 weeks to construct. Its location some distance from the nearest residential properties means that an 07.00 start would result in little noise or disturbance for local residents. I arrive at a similar conclusion with regard to an extended Saturday construction period. Moreover, in view of my conclusions on the unacceptability of a temporary access for construction vehicles from Hurrell Lane, greater emphasis would be placed on the need for the speedy construction of this access.
- 15.2.16 Taking into account the limitations placed on the movement and loading of goods vehicles, I conclude that there would be no unacceptable loss of amenity to residents and tourists as a result of allowing construction activity to start no earlier than 07.00 hours and cease no later than 19.00 hours on weekdays and Saturdays, and I shall recommend accordingly.

#### **Recommended Conditions**

- 15.2.17 In the event of the appeals being allowed and planning permission granted I recommend that the conditions to be imposed, taking into account my conclusions on the disputed conditions, should be as set out in Schedule 2 to this report. The numbering does not follow directly that of the draft list of conditions as some were deleted during inquiry discussions.

## **16. Formal Recommendation**

- 16.1 The appeals be allowed, and planning permissions granted subject to the conditions set out in Schedule II to this report.

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## APPEARANCES

### FOR NORTH YORK MOORS NATIONAL PARK AUTHORITY

Robert Walton of Counsel	instructed by Katie Turner, solicitor at NYCC
He called	
Caroline Skelly MRTPI	Planning Policy Officer, NYMNPA
BA(Hons) MSc MA	
Stephen Goodchild	Technical Director, WA Fairhurst & Partners
BA(Hons) LA Dip.LA MLI	Called jointly on behalf of NYMNPA & NYCC (see below)

### FOR NORTH YORKSHIRE COUNTY COUNCIL

Sasha White of Counsel	instructed by Laura Renaudon, solicitor NYCC
He called	
Miles Walker Dip TP	Divisional Director, WA Fairhurst & Partners
MRTPI	
Peter Hughes FICE MEI	Principal Consultant, Jacobs Consultancy
Steven Richmond	Health & Environment Manager, Ryedale District
BSc(Hons) MBA MCIEH	Council*

\* Not subsequently called following submission at inquiry of agreed joint statement on noise

### FOR THE APPELLANT:

Michael Humphries QC	instructed by
He called	
Lawrie Erasmus	CEO, Moorland Energy Limited
John Baldwin MA CEng	Energy Consultant, CNG Services Ltd
MIME MIGEM MEI	
Alan Howard	Associate Director, WSP UK Limited
BEng(Hons) CEng FILP	
Lisa Toyne BA(Hons) LA	Landscape Planning Associate, Barton Willmore
Dip.LA MLI Dip.TP	
David Deakin	Principal Air Quality Consultant, URS Scott Wilson
BSc(Hons) Ph.D	Ltd
MIEnvSc MIAQM	
Steve Green	Director, Bowles Green Ltd.
HND Dip.CM	
Paul Foster BSc(Hons)	Planning Director, Barton Willmore
Dip.TP MRICS	
John King	Senior Consultant, Edward Francis Ltd
BTech(Hons) CEng FIET	(proof submitted but not subsequently called)
CFIOSH HonFIMMM	
Ian Bennett BSc CEng	ACIA Engineering Acoustics*
MIOA	

\* Not subsequently called following submission at inquiry of agreed joint statement on noise

FOR 'AGHAST' - THE RULE 6 PARTY:

Adam White	3 Whitbygate, Thornton-le-Dale YO18 7RY
He called	
Tom Chadwick	Chair, North York Moors Association
Joseph Gabbott MA	Accountant
Dr M C Pitt	Safety Consultant

INTERESTED PERSONS WHO SPOKE AT LOCAL RESIDENTS' EVENING SESSION HELD ON 1/11/2011:

Janet Sanderson	Walnut Cottage, Priestmans Lane Thornton-le-Dale YO18 7RT
Mike Hargreaves	Grange Cottage, High Street, Wilton YO18 7LE
Ms Jules Drake	Daisy Cottage, Church Lane, Thornton-le-Dale YO18 7QL
Andrew Payne	5 Hall Farm Cottages, Maltongate, Thornton-le-Dale YO18 7SA
John Fox	Braygate, Little Field Lane, Levisham YO18 7PG
Sir Peter A Newsam	Greenlea, Church Lane Thornton-le-Dale YO18 7PG
Ian Turnbull	The Mill Race, Main Street, Allerston YO18 7PG
Brenda Sillito	Manor Vale, South Lane, Thornton-le-Dale YO18 7QU
Dr Tara Dudley-Smith	Brook Lane, Thornton-le-Dale YO18 7RZ
Chester Bosomworth	Willow Grange Holiday Cottages, Hurrell Lane, Thornton-le-Dale YO18 7QY
Diane Stenton	East Hill, Wilton Road, Thornton-le-Dale YO18 7QP
Lyne White	Prospect Farm, Wilton YO18 7JY
Tony Bryars	The Grange, High Street, Thornton-le-Dale YO18 7QW
Jonathan Bates	Orchard House, South Lane, Thornton-le-Dale YO18 7QU
Graham Hunt	Hilltop, Wilton Road, Thornton-le-Dale YO18 7QP
Roy James	Church Farm, Cliff Farm, Wilton YO18 7LB
Peter & Margaret Smith	Croftburn, Maltongate, Thornton-le-Dale YO18 7SD
Tim Lamb	The Cottage, Church Hill, Thornton-le-Dale YO18 7QH
Patrick Turner	Pine Tree Cottage, Westgate, Thornton-le-Dale YO18 7SG
Dr Mike Pitt	Park House, High Street, Thornton-le-Dale YO18 7QW
Gordon Bell	West Croft, The Rise, Thornton-le-Dale YO18 7TG
Richard Davies	Corner House, High Street, Wilton YO18 7RY
Adam White	Brandysnap Bistro, 3 Whitbygate, Thornton-le-Dale YO18 7RY

## **DOCUMENTS**

### **Inspector List**

- I/1 Lists of persons present at the inquiry
- I/2 List of draft Conditions following discussion at the inquiry

### **Inquiry Proofs and Appendices** (Summary Proofs not listed)

NYMNPA/1/2	Proof of evidence of Caroline Skelly
NYCC/1/2	Proof of evidence of Stephen Goodchild
NYCC/2/1	Proof of evidence of Steven Richmond
NYCC/2/2/1-4	Appendices to proof of Mr Richmond
NYCC/3/2	Proof of evidence of Peter Hughes
NYCC/4/2	Proof of evidence of Miles Walker
NYCC/4/3	Appendix to proof of Mr Walker
MEL/1/2	Proof of evidence of Laurie Erasmus
MEL/2/2	Proof of evidence and Appendices of John Baldwin
MEL/3/2	Proof of evidence and Appendices of Alan Howard
MEL/4/2	Proof of evidence of Lisa Toyne
MEL/4/3	Appendices to proof of Ms Toyne
MEL/5/2	Proof of evidence of David Deakin (including copy of Odour Management Plan)
MEL/6/2	Proof of evidence of Steve Green
MEL/7/2	Proof of evidence of Paul Foster
MEL/7/3	Appendices to proof of Mr Foster
MEL/8/2	Proof of evidence and Appendices of Ian Bennett
MEL/9/2	Proof of evidence of John King
AGH/1/2	Proof of evidence of Tom Chadwick
AGH/1/3	Appendices to proof of Mr Chadwick
AGH/2/2	Proof of evidence of Joseph Gabbott
AGH/2/3	Appendices to proof of Mr Gabbott
AGH/3/2	Proof of evidence of Dr Pitt
AGH/3/3	Appendices to proof of Dr Pitt

### **Core Documents List (CD).**

## **SECTION A GOVERNMENT DOCUMENTS, LEGISLATION AND NATIONAL GUIDANCE**

- A1 Draft National Planning Policy Framework (July 2011)

- A2 PINS Guidance to Inspectors on draft NPPF
- A3 EN1 National Policy Statement for Energy (July 2011)
- A4 EN4 National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (July 2011)
- A5 MPS1 – Planning and Minerals (November 2006)
- A6 MPS2 - Controlling and mitigating the environmental effects of mineral extraction in England (March 2005)
- A7 PPS1 – Delivering Sustainable Development (January 2005)
- A8 PPS1 Planning and Climate Change - Supplement to Planning Policy Statement 1 (December 2007)
- A9 PPS4 – Planning for Sustainable Economic Growth (December 2009)
- A10 PPS5 – Planning for the Historic Environment (March 2010)
- A11 PPS7 – Planning for the Historic Environment (August 2004)
- A12 PPS9 – Biodiversity and Geological Conservation (August 2005)
- A13 PPG13 – Transport (April 2001)
- A14 PPS23 – Planning and Pollution Control (November 2004)
- A15 PPG24 – Planning & Noise (October 1994)
- A16 PPS25 – Development and Flood Risk (March 2010)
- A17 PPS25 Companion Guide - Development and Flood Risk - Practice Guide (December 2009)
- A18 Ministerial Energy Need Statement 16 May 2006
- A19 Energy White Paper 2003
- A20 Energy White Paper 2007
- A21 Circular 11/95 - The use of Conditions in Planning Permissions
- A22 Circular 04/00 – Planning Controls for Hazardous Substances
- A23 Circular 05/05 – Planning Obligations
- A24 Circular 06/05 - Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System
- A25 Circular 03/09 - Costs Awards in Appeals and Other Planning Proceedings
- A26 English National Parks and the Broads – Vision and Circular 2010
- A27 Natural England Character Assessment (areas 25 and 26)
- A28 ILE Guidance notes for the reduction of obtrusive light
- A29 CIE 150:2003 Guide on the limitation of the effects of obtrusive light from outdoor lighting installations
- A30 DEFRA Odour Guidance for Local Authorities, March 2010
- A31 Technical Guidance Note H4 – Odour Management, Environment Agency 2011
- A32 Gasification, Liquefaction and Refining Installations (EPR 1.02) Sector Guidance Environment Agency 2009

- A33 Energy and Emissions Projections, Annex C Final Energy Demand, DECC 2011
- A34 Planning (Hazardous Substances) Regulations 1992
- A35 COMAH Regulations 1999 - SI/1999/743: The Control of Major Accident Hazards Regulations 1999
- A36 COMAH Amendment Regulations 2005 - SI/2005/1088: The Control of Major Accident Hazards (Amendment) Regulations 2005
- A37 IUCLID Data Sheet for Natural Gas Condensate (CAS No. 68919-39-1)
- A38 The Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996
- A39 Borehole Sites and Operations Regulations 1995
- A40 Pipeline Safety Regulations 1996
- A41 DECC Gas Security of Supply April 2010
- A42 Gas Transportation Ten Year Statement 2009
- A43 Gas Transportation Ten Year Statement 2010
- A44 Planning Policy Statement 22 Renewable Energy 2004
- A45 BS 4142:1997 Method for rating industrial noise affecting mixed residential and industrial areas
- A46 Onshore Oil and Gas discoveries 1983-Present
- A47 Plan of PEDLs
- A48 Public Reactions to Major Disasters - HSE Technical Note 03/2009
- A49 Review of Public Perception of Risk - HSL, 2005
- A50 Management of Health & Safety at Work Regs.1999 – SI:1999 No 3242
- A51 Reducing risks, protecting people – HSE, 2001
- A52 Measures in use for gas pipelines to mitigate against damage caused by third party activity – HSE 2001
- A53 Pipeline Accidents and their Consequences – New Jersey Institute of Technology
- A54 A review of high-cost chemical/petrochemical accidents since Flixborough 1974 - IchemE Loss Prevention Bulletin, 1998
- A55 Public Report of the fire and explosion at the ConocoPhillips Refinery, HSE
- A56 Risk Associated with Cross-Country Natural Gas Pipeline, IORS 2009
- A57 Gas Guzzle - Article from The Sun, 21 December 2010
- A58 NatGrid sees manageable peak winter gas demand - Reuters article 2011
- ~~A59 (deleted as duplicates B3)~~
- A60 Valuing our Environment - report to Countryside Council for Wales, 2006
- A61 The Science of Smell Part 1 - Iowa State University, 2004
- A62 Report of the National Parks Committee (England & Wales)
- A63 Planning for Growth (March 2011)

- A64 Presumption in Favour of Sustainable Development and accompanying press release (June 2011)
- A65 EIA Regulations 1999 (as amended)
- A66 The Energy Challenge 2006 – DTI Energy Review, July 2006
- A67 Government Response to Malcolm Wick's Review 2009
- A68 MPS2 Annex 1 – Dust
- A69 MPS2 Annex 2 – Noise
- A70 PADHI HSE's land use planning methodology
- A71 T&CP (GPD) (Amendment) (England) Order 2011 – SI 2011 No. 2056
- A72 Explanatory Memorandum to T&CP (General Permitted Development) (Amendment) (England) Order 2011 – SI:2011 No. 2056 et al
- A73 NPAs Assessment of Benefits working paper - DEFRA May 2011
- A74 Scottish Power Environmental Performance Report 2003/04
- A75 National Parks Awareness Survey 2007 - Report for 'National Park's Britain's breathing spaces' by GfK NOP Social Research
- A76 Yorkshire Dales National Park Authority & North York Moors National Park Authority Awareness and Understanding Research July 2008 by QA Research
- A77 National Parks Committee England & Wales - Summary Survey Report - North York Moors & Coast April 1946
- A78 Planning & Minerals - Practice Guide 2006
- A79 H&S Risks & Regulatory Strategy - Energy Developments - HSE 2006
- A80 Chief Planning Officer to Local Planning Authorities dated 29 July 2011 regarding Planning Guarantee and Information Requirements
- A81 Development of Energy Scenarios TBE2011 – National Grid
- A82 MPG7 – Reclamation of Mineral Workings

## **SECTION B REGIONAL DOCUMENTS**

- B1 Regional Spatial Strategy for Yorkshire & the Humber 2008
- B2 GOYH Regional Energy Strategy 2005
- B3 The Economic Impact of National Parks in the Yorkshire and Humber Region – Council for National Parks, 2006
- B4 Regional Energy Infrastructure Strategy for Yorkshire and Humber 2007
- B5 A Flourishing Economy - Regional Economic Strategy for Yorkshire and Humber 2006-15

## **SECTION C NORTH YORKSHIRE COUNTY COUNCIL DOCUMENTS**

- C1 NY Minerals Local Plan 1997 (Saved Policies)
- C2 GOYH Saved Policies Direction dated 17 September 2007

- C3 NY Minerals and Waste Development Framework Fact Sheet number 11: Oil and Gas
- C4 NY Minerals Core Strategy Issues Paper - July 2011

#### **SECTION D NORTH YORK MOORS NATIONAL PARK AUTHORITY DOCUMENTS**

- D1 Core Strategy & Development Policies 2008
- D2 National Park Management Plan 1998
- D3 Review of NPMP 2004
- D4 NYM Design Guide Part 3: Trees & Landscape
- D5 NYMNP Landscape Character Assessment – White Young Green, 2003
- D6 National Park Designation
- D7 Extracts: Hambleton LDF; Redcar LDF; & South East Plan

#### **SECTION E RYEDALE DISTRICT COUNCIL DOCUMENTS**

- E1 Ryedale Local Plan 2002 (Saved Policies)
- E2 latest version Ryedale draft Core Strategy, 2010
- E3 Ryedale Saved Policies Direction dated 17 September 2007

#### **SECTION F RELEVANT PLANNING HISTORY**

- F1 NYM/2007/0901 application documents
- F2 Decision letter NYM/2007/0901
- F3 Decision letter NYM/2010/0871/FL
- F4 Secretary of State's (SoS') decision letter on 5 wellsites 29 March 1993
- F5 Inspector's Report on above 5 wellsites
- F6 SoS' decision letter on East Knapton 25 March 1993
- F7 SoS' decision letter on variation of East Knapton 29 October 1993

#### **SECTION G PRE-APPLICATION DOCUMENTS**

- G1 Screening opinion NYCC – (Appendix 2.1 of Environmental Statement (ES))
- G2 Screening opinion NYMNP – (Appendix 2.2 of ES)
- G3 Scoping opinion NYCC
- G4 Scoping Opinion NYMNP
- G5 Screening request by Viking UK Gas Ltd regarding facilities at Knapton and Ebberston Moor

## **SECTION H APPLICATION DOCUMENTS**

- H1 Environmental Statement - Volume 1
- H2 Tables
- H3 Technical Appendices - Environmental Statement - Volume 2
- H4 Figures Environmental Statement - Volume 3
- H5 Design & Access Statement (March 2010)
- H6 Environmental Statement – Non-Technical Summary (March 2010)
- H7 Outline Safety Report (March 2010)
- H8 Planning, Sustainability & Need Statement (March 2010)
- H9 Statement of Community Involvement (March 2010)
- H10 Addendum to Chapter 5 Environmental Statement
- H11 Submission to NYMNP A December 2010 on Alternative Wellsites
- H12 Response to Mike Convery, May 2011
- H13 Odour Management Plan, June 2011 (URS)
- H14 Exterior Lighting Report, 20 May 2011 (WSP)
- H15 Tourism and Economic Impact Assessment, 22 June 2010
- H16 Energy Contract Company Report “The Importance of the Ryedale Gas Project”, 5 July 2010
- H17 Estimate of Gas Production, 11 January 2011
- H18 Alternative Sites Revised Plan P72 rev D
- H19 Archaeology/Geophysical Survey Statement of Potential, Significance and Development Impact enclosed with Peter Cardwell letter of 25 October 2010
- H20 Species Survey and Monitoring Issue 2, August 2010
- H21 Cannon Consulting Technical Note + Revised Access Plan E471/010 Rev B
- H22 Response to Natural England
- H23 Response to Objector Comments and Alternative Wellsite locations
- H24 Response to Ryedale DC
- H25 Response to Technical Objectors
- H26 1 Supplemental SCI (October 2010) and  
2 Geophysical Survey (September 2010) by Archaeological Services WYAS Report No 2127
- H27 Zone of Visual Influence Study Plans
- H28 Figure 1.1 Site Location Plan
- H29 Figure 1.2 Site Boundary Plan
- H30 Application Planning Drawings (Listed as Schedule I to this Report)
- H31 PEDL Overlay Plan A0
- H32 PEDL Overlay Plan A3



- H33 Updated Non-Technical Summary (September 2011)
- H34 Revised Landscape Strategy Drawing No L10 Rev B dated 02.09.2010
- H35 Methodology to accompany H27: Methodology for computer generated zone of visual influence (ZVI) study
- H36 Planning Application form as submitted to NYCC
- H37 Planning Application form as submitted to NYMNPA

## **SECTION I CONSULTATION RESPONSES AND REPRESENTATIONS**

- I1 NYCC Consultee Responses HLSC1 – HLSC43  
Representations HLR1 – HLR212
- I2 NYMNPA Consultee Responses
- I3-8 NYMNPA Third Party Correspondence on application (Parts 1-6)

## **SECTION J INTER-PARTY CORRESPONDENCE**

- J1 Mike Convery to Paul Foster, 28 March 2011
- J2 Paul Foster letter to Mike Convery, 6 May 2011 (enclosing CD/H12)
- J3 Paul Foster to Mike Convery, 8 June 2011
- J4 Laura Renaudon to Glenn Sharpe, 16 August 2011
- J5 NYMNPA letter of Validation, 9 April 2010
- J6 NYCC letter of Validation, 20 May 2010
- J7 Paul Foster to Mike Convery, 7 September 2010 requesting extension of period for determination
- J8 Mike Convery to Paul Foster, 9 September 2010 confirming extension of period for determination
- J9 Paul Foster to Mark Hill, 9 September 2010, requesting extension of period for determination
- J10 Mark Hill to Paul Foster, 24 September 2010 confirming extension of period for determination
- J11 Laura Renaudon to Glenn Sharpe letter of 18 October 2011

## **SECTION K APPEAL QUESTIONNAIRES, COMMITTEE REPORTS & PINS CORRESPONDENCE**

- K1 Moorland Energy Limited Appeal Form (NYCC) dated 20 June 2011
- K2 Moorland Energy Limited Appeal Form (NYMNPA) dated 20 June 2011
- K3 NYCC Appeal Questionnaire dated 3 August 2011
- K4 NYMNPA Appeal Questionnaire dated 2 August 2011
- K5 Inspector's Pre-Inquiry Meeting Minutes dated 22 August 2011

- K6 NYMNPA committee report dated 21 July 2011 (consultation to NYCC)
- K7 Minutes of K6 dated 18 August 2011
- K8 Ryedale District Council committee report of 27 July 2011 (consultation response)
- K9 Minutes of K8
- K10 NYCC committee report & addendum of 30 August 2011
- K11 NYMNPA committee report of 15 September 2011
- K12 PINS letter dated 12 September 2011 and enclosed correspondence with A McIntosh MP
- K13 PINS letter 6.9.2011 and 3rd party representations
- K14 PINS letter 18.10.2011 and Thornton-le-Dale letter dated 16.9.2011
- K15 PINS letters of 5.10.2011 re 3<sup>rd</sup> party representations (T Kirkhope, JCN Weston and J&B Burdett)
- K16 PINS letter of 1.11.2011 & Ellis letter of 10.10.2011

#### **SECTION L STATEMENTS OF CASE**

- L1 NYCC Statement of Case 6 Sept 2011
- ~~L2~~ Replaced by L5
- L3 Moorland Energy Statement of Case 6 Sept 2011
- L4 AGHAST Statement of Case 6 Sept 2011
- L5 NYMNPA Statement of Case 6 Sep 2011 Amended

#### **SECTION M STATEMENTS OF COMMON GROUND**

- M1 Statement of Common Ground
- M2 Statement of Agreement on Noise Issues

#### **SECTION N SECTION 106 AGREEMENTS**

- N1 Section 106 Agreement re. Knapton 22 April 1992 (including plans)

#### **SECTION O DOCUMENTS SUBMITTED DURING THE INQUIRY – MEL**

- O1 Opening Submission – MEL
- O2 UK Energy Supply – Security or Independence (pgs.1-48)
- O3 Drawing No. L114 – Vegetation Proposal & Loss at Access with A170
- O4 Extracts: Landscape of Northern Ryedale
- O5 Schedule of Anticipated Corporation Tax-Vat-NI.
- O6 Notes of Meeting with Planning Officer 8.12.2010

**SECTION P DOCUMENTS SUBMITTED DURING THE INQUIRY – AGHAST**

- P1 Sample of Petition delivered 1.11.2011
- P2 MEL Natural Screening in Practice
- P3 MEL Project Description
- P4 Closing submissions

**SECTION Q DOCUMENTS SUBMITTED DURING THE INQUIRY – NYMNPA**

- Q1 Opening submissions
- Q2.1 Forestry Commission/Forest Enterprise North York Moors District Dalby Forest Design Plan 7 Statement
- Q2.1 Forest Enterprise – NYM Forest District - Dalby Forest Design Plan 7 Plans
- Q3 Closing submissions.

**SECTION R DOCUMENTS SUBMITTED DURING THE INQUIRY – NYCC**

- R1 Opening submissions
- R2 Statement re Safety Risks
- R3 Letter from A McIntosh MP and e-mail from R Wright
- R4 Closing submissions

**SECTION S DOCUMENTS SUBMITTED DURING THE INQUIRY - OTHERS**

- S1 E-mail from C Webb
- S2 Statements from Thornton-le-Dale evening session of the inquiry

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### Schedule I - List of Planning Application/Appeal Drawings

	Drawing	Title	Date
1	P69 Rev A Sheet 1	Red Line Boundary plan Sheet 1	23.03.2010
2	P69 Rev A Sheet 2	Red Line Boundary plan Sheet 2	23.03.2010
3	P69 Rev A Sheet 3	Red Line Boundary plan Sheet 3	23.03.2010
4	P69 Rev A Sheet 4	Red Line Boundary plan Sheet 4	23.03.2010
5	P69 Rev A Sheet 5	Red Line Boundary plan Sheet 5	23.03.2010
6	P69 Rev A Sheet 6	Red Line Boundary plan Sheet 6	23.03.2010
7	PP-02 Rev D	Site Location Plan	26.11.2009
8	PP-03 Rev D	Proposed Site Plan	26.11.2009
9	PP-04 Rev B	Proposed Elevations	26.11.2009
10	53/03/MF/10 Issue E	Planning Strip maps Sheet 1 of 9	26.11.2009
11	53/03/MF/11 Issue E	Planning Strip maps Sheet 2 of 9	26.11.2009
12	53/03/MF/12 Issue E	Planning Strip maps Sheet 3 of 9	26.11.2009
13	53/03/MF/13 Issue E	Planning Strip maps Sheet 4 of 9	26.11.2009
14	53/03/MF/14 Issue E	Planning Strip maps Sheet 5 of 9	26.11.2009
15	53/03/MF/15 Issue E	Planning Strip maps Sheet 6 of 9	26.11.2009
16	53/03/MF/16 Issue E	Planning Strip maps Sheet 7 of 9	26.11.2009
17	53/03/MF/17 Issue E	Planning Strip maps Sheet 8 of 9	26.11.2009
18	53/03/MF/18 Issue E	Planning Strip maps Sheet 9 of 9	26.11.2009
19	18761902 Rev 2	Administration/Control Building GA	12.02.2010
20	18761903 Rev 2	Switchgear Room/Transformer GA	12.02.2010
21	18761904 Rev 2	Flash Gas Recycle Compressor House GA	12.02.2010
22	18761905 Rev 2	Nitrogen Package GA	12.02.2010
23	18761906 Rev 2	Instrument Air Package GA	12.02.2010
24	18761907 Rev 2	Fuel Gas Package GA	12.02.2010
25	18761908 Rev 2	Custody Transfer Metering GA	12.02.2010
26	18761909 Rev 2	Compressor House GA	12.02.2010
27	18761910 Rev 2	Compressor Intercooler GA	12.02.2010
28	18761911 Rev 2	Compressor Aftercooler GA	12.02.2010
29	18761912 Rev 2	Compressor Suction KO Drum GA	12.02.2010
30	18761913 Rev 2	Compressor Interstage KO Drum GA	12.02.2010
31	18761914 Rev 2	Compressor Discharge KO Drum GA	12.02.2010
32	18761915 Rev 2	Ground Flare GA	12.02.2010
33	18761916 Rev 2	Ground Flare KO Drum GA	12.02.2010
34	18761917 Rev 2	Regen Gas Heater GA	12.02.2010
35	18761918 Rev 2	Boiler House GA	12.02.2010
36	18761919 Rev.2	Dew Point Adsorbers GA	12.02.2010
37	18761920 Rev 2	Coalescer Filter GA	12.02.2010
38	18761921 Rev 2	Adsorber Outlet Filters GA	12.02.2010
39	18761922 Rev 2	Gas/Gas Exchanger GA	12.02.2010
40	18761923 Rev 2	Regen Gas Separator GA	12.02.2010
41	18761924 Rev 2	Regen Gas Air Cooler GA	12.02.2010
42	18761925 Rev 2	Slug Catcher GA	12.02.2010
43	18761926 Rev 2	Pressure Reduction Skid GA	12.02.2010
44	18761927 Rev 2	3 Phase Separator GA	12.02.2010
45	18761928 Rev 2	Condensate Hold-Up Vessel GA	12.02.2010
46	18761929 Rev 2	Condensate Flash Drum GA	12.02.2010
47	18761930 Rev 2	Produced Water Storage Tank GA	12.02.2010
48	18761931 Rev 2	Condensate Storage Tank GA	12.02.2010
49	18761932 Rev 2	Regenerator Vessel GA	12.02.2010
50	18761933 Rev 2	Contacting Vessel GA	12.02.2010

51	18761934 Rev 2	Gas/Liquid Separator GA	12.02.2010
52	18761935 Rev 2	Surge Vessel GA	12.02.2010
53	18761936 Rev 2	Solvent Inventory Tank GA	12.02.2010
54	18761937 Rev 2	Degasser GA	12.02.2010
55	18761938 Rev 2	Firewater Tanks/Pumps GA	12.02.2010
56	18761939 Rev 2	Diesel Storage Tank GA	12.02.2010
57	18761940 Rev 2	Emergency Generator GA	12.02.2010
58	18761941 Rev 2	Analyser House GA	12.02.2010
59	18761942 Rev 2	Hydrate Inhibitor & Recovery Package GA	12.02.2010
60	18761943 Rev 1	Flash Gas Aftercooler GA	12.02.2010
61	18761944 Rev 1	Cooling Water Package GA	12.02.2010
62	18761945 Rev 1	Regen Vessel Air Blower GA	12.02.2010
63	18761946 Rev 1	Separator Coalescer GA	12.02.2010
64	18761947 Rev 1	Wellhead Separator	12.02.2010
65	18761948 Rev 1	Hydrate Inhibitor Injection Package	12.02.2010
66	18761949 Rev 1	Corrosion Inhibitor Injection Package	12.02.2010
67	18761950 Rev 1	Wellsite Local Equipment Room	12.02.2010
68	18761900-1 Rev 3	Ebberston Well Site Plot Plan	01.02.2010
69	18761900-2 Rev 3	Ebberston Well Site Elevations	01.02.2010
70	18761900-5 Rev 2	Ebberston Well Site Ordnance Layout	02.02.2010
71	18761900-6 Rev 1	Ebberston Well Site Construction Areas	05.02.2010
72	18761900-7 Rev 1	Ebberston Well Site Elevations – No Fence	05.02.2010
73	18761900-8 Rev 1	Ebberston Well Site Construction Elevations	05.02.2010
74	18761900-09 Rev 1	Ebberston Well Site Construction Elevations - No Fence	05.02.2010
75	18761900-10 Rev 1	Ebberston Well Site Existing Layout	05.02.2010
76	18761961-1 Rev 1	Hurrell Lane Gas Facility Pipeline Construction - Plot Plan	12.02.2010
77	18761961-2 Rev 1	Hurrell Lane Gas Facility Pipeline Construction – Elevations	12.02.2010
78	18761961-3 Rev 1	Hurrell Lane Gas Facility Pipeline Construction – Elevation – No Fence	12.02.2010
79	18761901-1 Rev 4	Hurrell Lane Gas Facility - Plot Plan	09.03.2010
80	18761901-2 Rev 4	Hurrell Lane Gas Facility – Elevations	09.03.2010
81	18761901-5 Rev 3	Hurrell Lane Gas Facility – Ordnance layout	09.03.2010
82	18761901-6 Rev 3	Hurrell Lane Gas Facility Construction Areas	09.03.2010
83	18761901-7 Rev 1	Hurrell Lane Gas Facility Plant Elevations (no fences)	05.02.2010
84	18761901-8 Rev 1	Hurrell Lane Gas Facility Construction Elevations	05.02.2010
85	18761901-9 Rev 1	Hurrell Lane Gas Facility Construction Elevations (no fences)	05.02.2010
86	18761960-1 Rev 1	Above Ground Installation Plot Plan	05.02.2010
87	18761960-2 Rev 1	Above Ground Installation Elevations	05.02.2010
88	18761960-3 Rev 1	Above Ground Installation Ordnance Layout	05.02.2010
89	18761960-4 Rev 1	Above Ground Installation Elevations (without fences)	05.02.2010
90	53/03/MF/019 Rev A	Planning Strip Maps	11.03.2010
91	L118	Restoration Proposals for Hurrell Lane GPF, AGI and Access Road	07.11.2011
92	E471/010 Rev B	Revised Access Plan	31.08.2010

## **Schedule II – Conditions**

In discharging, monitoring and enforcing these conditions, the Mineral Planning Authority and the National Park Authority will be responsible only for those parts of the development which fall within their respective areas of administration.

### **Duration of Permission**

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

### **Approved Details**

2. Except as may be modified on application to the Mineral Planning Authority or National Park Authority or as may be required by the operation of other conditions to this permission (which shall take precedence) the development hereby permitted shall be carried out strictly in accordance with the approved planning application forms, Planning, Sustainability and Need Statement, Design and Access Statement, Environmental Statement and Drawings set out in Schedule I

### **Duration and Commencement**

3. The development hereby granted is for a period of 20 years following the commissioning of the development (being for the purposes of this permission the date upon which gas is first exported to the NTS) and for a period of not more than 25 years following the commencement of the development whichever is the sooner.

### **Ground Levels**

4. No development shall begin until a plan showing existing and proposed ground levels and any plant and building heights relating to ordnance datum has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The development shall not be undertaken except in accordance with the approved details.

### **Approved Details**

5. No development of any of the five elements of the development as defined in paragraph 4.2 of the Environmental Statement shall begin until full details of all external materials of that element of the development have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The development shall not be undertaken except in accordance with the approved details.

### **Construction Environmental Management Plan**

6. No development shall begin until a Construction Environmental Management Plan has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The Construction Environmental Management Plan shall set out best practicable means to minimise the impact

of construction activities and shall include the following: Working methods and programme, Construction site layout including temporary buildings, temporary structures, temporary lighting, temporary means of enclosure, Construction traffic routes, details of the precautions to be taken to prevent the deposit of grit, mud and dirt on the public highway arising from the development, Equipment selection, Equipment siting, Expected noise levels and mitigation measures, Expected vibration levels and mitigation measures, Expected dust emissions and mitigation measures, and Employ best practice in accordance with BS5228 (1997) – Noise and Vibration Control on Construction and Open Sites. The development shall not be carried out except in accordance with the approved Construction Environmental Management Plan.

- 7 The Construction Environmental Management Plan shall include a programme for the monitoring of noise during the construction of the development to be submitted to and agreed in writing by the Mineral Planning Authority and National Park Authority. The programme shall specify the locations from which noise will be monitored, the method of noise measurement (which shall be in accordance with BS4142: 1997) and the maximum permissible levels of noise at each such monitoring location in order to ensure noise levels do not exceed a value of LAeq (1 hour) of 55dB when measured 1.2 metres above ground within 4 metres from the façade of any existing residence.

### **Soil Handling and Storage**

- 8 No development shall begin until, details of site preparation work, including the handling and storage of soils, have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The development shall not be carried out except in accordance with the approved details.

### **Temporary Construction and Decommissioning Access to the GPF and AGI**

- 9 No development of the gas processing facility or the above ground installation shall begin until details of any temporary construction and decommissioning access have been submitted to and approved in writing by the Mineral Planning Authority and thereafter constructed in accordance with the approved details. No construction vehicles shall enter the application site (south of the A170) except by this access.

### **Boundary Treatment**

- 10 No development shall begin until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the Mineral Planning Authority or the National Park Authority (as appropriate). The boundary treatment shall be completed prior to the commissioning of the development. Development shall be carried out in accordance with the approved details and maintained as approved.

### **Storage of Oils, Fuels and Chemicals**

- 11 Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the

bunded compound should be at least equivalent to the capacity of the tank plus 20%. If there is more than one tank, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 20%. All filling points, associated pipework, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.

### **Notification of Commencement of Development**

- 12 Not less than seven working days' notice in writing shall be given to the Mineral Planning Authority and National Park Authority prior to the commencement of development.

### **Notification of Commissioning**

- 13 Not less than seven working days' notice in writing shall be given to the Mineral Planning Authority and the National Park Authority following the commissioning of the development.

### **Cessation of Operations and Restoration of the GPF**

- 14 No later than 24 months following the period of 20 years from the commissioning of the gas processing facility or the period of 25 years from the commencement of the development (whichever shall first occur), all above ground structures, including roads and hardstandings, shall be removed from the site and the site restored and reclaimed in accordance with drawing number 17809/L118.

### **Cessation of Commercial Operations and Restoration of the wellsite**

- 15 No later than 24 months following the period of 20 years from the commissioning of the wellsite, or the period of 25 years following the commencement of the development (whichever shall first occur), all above ground structures, including roads and hardstandings, shall be removed from the site and the site restored and reclaimed in accordance with the scheme approved under condition 7A.

### **Disposal of Surface Water Run-off**

- 16 The development hereby approved shall not be carried out except in accordance with the approved Flood Risk Assessment (FRA) set out in Appendix 12.1 of the Environmental Statement and the following mitigation measure detailed within the FRA:
- Limiting the surface water run-off generated by the development to the greenfield run-off rate of 1.4l/s/ha so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site. The scheme should be able to contain the 1 in 30yr storm and not flood any



buildings during the 1 in 100yr storm. An allowance for climate change must be included in the drainage design.

### **Surface Water Drainage Works**

- 17 No development shall begin until a scheme for the provision of surface water drainage works at the application site (south of the A170) has been submitted to and approved in writing by the Mineral Planning Authority. The details shall incorporate oil and petrol interceptors or trapped gullies, and demonstrate how fire water will be managed. Thereafter the development will not be carried out except in accordance with the approved scheme.

### **Foul Water Drainage Works**

- 18 No development shall begin until a scheme to dispose of foul water at the application site (south of the A170) has been submitted to and approved in writing by the Mineral Planning Authority. Thereafter, the proposed development shall be undertaken in accordance with the approved scheme.

### **Dewatering Scheme**

- 19 No development shall begin until a scheme to deal with dewatering during construction works at the application site (south of the A170) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be implemented as approved.

### **Treatment and Removal of Suspended Solids**

- 20 No development shall begin until a scheme to treat and remove suspended solids from surface water run-off during construction works at the application site (south of the A170) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall then be implemented as approved.

### **External Lighting**

- 21 No development shall begin until full details of all external lighting to be used in the operation of the development, including an assessment of light spill, have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. No permanent fixed external lighting shall be installed at the well-site. Thereafter the development shall not be carried out except in accordance with the approved scheme.

### **Public Rights of Way**

- 22 No pipeline construction shall begin until a scheme detailing the arrangements for the safety of users of the public rights of way crossed by the route of the pipeline has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority and thereafter it shall be implemented as approved.

- 23 No pipeline construction shall begin until details of how the pipeline will cross any Public Rights of Way, roads, watercourses and drains have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority, save by auger boring. Thereafter the development shall not be carried out except in accordance with the approved scheme.

### **Archaeology**

- 24 No development shall begin until a scheme has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority which details the implementation of a programme of archaeological work in accordance with the written scheme of investigation (Peter Cardwell Report 23/3 dated February 2011). The results of the archaeological work will be submitted to the Mineral Planning Authority and National Park Authority within twelve months of the completion of the archaeological work.

### **Tree and Hedgerow Protection**

- 25 No development shall begin until details of tree and hedgerow protection measures to be employed during the construction of the development have been submitted to and agreed in writing by the Mineral Planning Authority and National Park Authority. Thereafter the development shall not be carried out except in accordance with the approved details.

### **Road Survey**

- 26 Prior to the commencement of each of the five elements of the development as defined in paragraph 4.2 of the Environmental Statement, a survey of existing roads as affected by that element (other than 'A' roads) to be used during construction shall be undertaken and submitted to and agreed in writing by the Mineral Planning Authority and National Park Authority. The roads to be surveyed are to be agreed in writing by the Mineral Planning Authority and National Park Authority before the survey is undertaken.
- 27 Within 3 months of the commissioning of the development, a further survey of the roads agreed as part of Condition 26, including any necessary remedial works, shall be submitted to and agreed in writing by the Mineral Planning Authority and National Park Authority. Should any remedial works be required, they shall be undertaken within 6 months of the remedial works being agreed by the Mineral Planning Authority and National Park Authority.

### **Construction Working Hours**

- 28 No work associated with the construction of the development, except work undertaken in an emergency, shall take place at any time on a Sunday or Public Holiday nor at any other time except between the following hours:

- Monday to Friday 07.00 – 19.00; and
- Saturday 07.00 – 19.00

29 During construction works there shall be no Goods Vehicles permitted to arrive, depart, be loaded or unloaded, except in an emergency, outside the following hours:

- Monday to Friday 08:30 – 17:30; and
- Saturday 08:30 – 12:30

**Operational Hours**

30 During operation, no service deliveries, except in an emergency, shall be undertaken outside of the following hours:

- Monday to Friday 07.00 – 18.00; and
- Saturday 07.00 – 13.00

**Land Contamination**

31 If, during construction, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Mineral Planning Authority and National Park Authority) shall be carried out until the applicant, or their agents or successors in title, has submitted, and obtained written approval from the Mineral Planning Authority and/or National Park Authority, for a remediation strategy detailing how the contamination will be remediated. The remediation strategy shall be carried out in accordance with the approved details.

**Noise**

32.1 The levels of noise emitted from the operational site shall not exceed the values in the table below, measured at the locations indicated on the attached plan [Ref, CD/M2]. These four locations to be known as the "specified noise monitoring locations".

Ref	Description	Easting	Northing	07:00-19:00 Mon-Fri	At All Other Times
(A)	NW corner of site	484677	481966	50dB <i>L<sub>Aeq,1h</sub></i>	50dB <i>L<sub>Aeq,5min</sub></i>
(B)	SW corner of site	484702	481799	49dB <i>L<sub>Aeq,1h</sub></i>	49dB <i>L<sub>Aeq,5min</sub></i>
(C)	NE corner of site	485011	481995	52dB <i>L<sub>Aeq,1h</sub></i>	52dB <i>L<sub>Aeq,5min</sub></i>
(D)	SE corner of site	485029	481864	52dB <i>L<sub>Aeq,1h</sub></i>	52dB <i>L<sub>Aeq,5min</sub></i>

32.2 Before the gas processing facility is commissioned a noise attenuation scheme shall be submitted to and approved in writing by the Mineral Planning Authority detailing the methods by which noise from the plant is to be controlled in order to meet the operational noise limits. The operation of the gas processing facility shall not be undertaken except in accordance with the approved scheme.

- 32.3 Before the gas processing facility or the wellhead site are commissioned a programme of noise monitoring shall be submitted to and agreed in writing with the Mineral Planning Authority and the National Park Authority. The programme shall specify the locations at which noise is to be measured, the method of assessment (which will be in accordance with the relevant sections of BS.4142:1997) and the maximum permissible noise level at each such noise monitoring location. It shall include a requirement that the spectral equivalent continuous noise levels in third-octave bands are measured. A noise survey shall be conducted during site commissioning and before the commencement of full commercial operations and the results submitted to the Mineral Planning Authority and the National Park Authority for approval in writing. The programme shall include the provision that once the facility is brought into operation, noise measurements shall be conducted on behalf of the operating company as soon as possible on receipt of a written request from the Mineral Planning Authority and the National Park Authority. The results of such measurements are to be submitted to the Mineral Planning Authority and the National Park Authority within three (3) working days of completion of the survey. In the event that the predicted noise levels at the specified noise monitoring locations are exceeded, additional attenuation measures shall be taken and further noise survey or surveys conducted until the predicted noise levels are achieved to the written satisfaction of the Mineral Planning Authority and the National Park Authority.
- 32.4 Tonal noise from the gas processing facility shall not be audible outside any residential property in existence at the date of this planning permission. Tonal noise shall be considered to be audible where the level in any third-octave band is 5dB or more in excess of the levels in the two adjacent bands and tonal components are clearly audible.

### **Public Sewers**

- 33 No building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of any public sewer.

### **Gas Extraction and Processing Reporting**

- 34 Following commissioning of the development, a report shall be submitted to the Mineral Planning Authority and National Park Authority every twelve months which details the volume of gas extracted or processed over the previous twelve months.
- 35 Based on the reports submitted pursuant to Condition 34, should two consecutive reports state that no gas has been extracted and processed over a continuous 24 month period then the restoration and reclamation schemes approved under Conditions 38 and 39 below shall be implemented and completed within 12 months of a written request to do so by the Mineral Planning Authority and the National Park Authority.

### **Landscaping**

- 36 Notwithstanding the submitted drawings, no development shall take place until details of all landscape planting associated with the development have been

submitted to, and approved in writing by, the Mineral Planning Authority and the National Park Authority. The submitted details shall include a timetable for implementation and a 1/200 scale plan indicating all trees or hedgerows to be removed, planting to be protected during the development and the proposed new planting including a planting schedule providing details of species, numbers of each species and planting sizes.

- 37 The approved scheme of landscaping shall be fully implemented as approved. In the event of any plant material dying or becoming seriously diseased or damaged within a 5 year period of planting, it shall be replaced with similar species to a specification that shall be first agreed in writing with the Mineral Planning Authority and the National Park Authority unless the Mineral Planning Authority or the National Park Authority as the case may be give written consent to any variation.

### **Decommissioning of the Well-site**

- 38 No development shall be undertaken at the well-site until a detailed scheme for the restoration and aftercare of the well-site has been submitted to and approved in writing by the National Park Authority. Thereafter the restoration and aftercare of the site shall be carried out in strict accordance with the approved scheme.

### **Restoration**

- 39.1 No development shall be undertaken until a detailed scheme for the restoration and aftercare of the application site south of the A170 and north of New Ings Lane has been submitted to, and approved in writing by, the Mineral Planning Authority. Such a scheme shall include:
- Details of the proposed restoration specification for planting, seeding and surface finishes (including proposed species, numbers of each species and planting sizes for trees and shrubs to be used and seed mix for grassland areas;
  - Removal of plant, buildings and machinery;
  - Details of the removal of stone, hard surfacing and any other imported materials from the site and access;
  - Details of the proposed maintenance of the planting and land including associated drainage work;
  - Details of the proposed aftercare for a duration of no less than five years; and
  - Timescales for the commencement, completion and phasing of each element of the restoration and aftercare scheme.
- 39.2 Thereafter the restoration and aftercare of the site (as defined above) shall be carried out in strict accordance with the approved scheme.
- 39.3 The details required by Condition 39.1 above shall include for the application site to be restored to a condition capable of agricultural production to the Agricultural Land Classifications shown on Figures 16.1 – 16.6 of the Environmental Statement.

- 39.4 The details required by Condition 39.1 above shall include for the proper storage of topsoil and the re-use of topsoil and subsoil from the access track and the application site and shall specify their handling only when they are in a dry and friable condition. The details shall also show replacement of soils to their original contours and in the correct sequence and shall include a suitable scheme for the aftercare of the site to ensure the proper rehabilitation of disturbed soils.

## **Ecology**

- 40 No development shall commence until a scheme to implement the measures set out at paragraphs 7.151 to 7.169 of the Environmental Statement and Appendix 7.2 and the recommendations set out in Species Surveys and Monitoring 2010, dated August 2010, and Report Reference DBRP0002 dated March 2010, has been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The scheme shall thereafter be implemented as approved and in accordance with the details and timescales set out therein.

## **Highway Access and Works**

- 41 There shall be no access and egress between the highway and the application site south of the A170 by any vehicles other than via the newly formed access with the public highway on A170 County Road. The access shall be maintained in a safe manner which shall include the repair of any damage to the existing adopted highway occurring during construction.
- 42 There shall be no access or egress by any vehicles between the highway and the application site south of the A170 until further details of any measures required to prevent surface water from non-highway areas discharging on to the existing highway together with a programme for their implementation have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. The works shall be implemented in accordance with the approved details and programme.
- 43 There shall be no access or egress by any vehicles between the highway and the application site (south of the A170) (except for the purposes of constructing the initial site access) until splays are provided giving clear visibility of 215m measured 4.5 m down the centre line of the access road. The eye height will be 1.05m and the object height shall be 0.6m. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- 44 There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works until:
- (i) The details of the required highway improvement works, (iv below), have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority;
  - (ii) An independent Stage 2 Safety Audit has been carried out in accordance with HD19/03 – Road Safety Audit or any superseding regulations;

- (iii) A programme for completion of the proposed works has been submitted; and,
  - (iv) The required highway improvements include the provision of an improved access as shown on Drawing Number e471/010. The improvement is to include a right turning facility for vehicles entering the site.
- 45 There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site until the all highway works have been constructed in accordance with the details approved in writing by the Mineral Planning Authority and National Park Authority under Condition 44 above.
- 46 There shall be no excavation or other groundworks (except for investigative works), or the depositing of material on the site in connection with the construction of the access road or building(s) or other works hereby permitted, until full details of the following have been submitted to and approved in writing by the Mineral Planning Authority:
- i) Vehicular turning arrangements;
  - ii) Manoeuvring arrangements; and
  - iii) Loading and unloading arrangements.
- 47 There shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until details of the routes to be used by HGV construction traffic have been submitted to and approved in writing by the Mineral Planning Authority and National Park Authority. Thereafter the approved routes shall be used by all vehicles connected with construction on the site.
- 48 Details of the precautions to be taken to prevent the deposit of mud on public highways by vehicles travelling from the site shall be submitted to and approved in writing by the Minerals Planning Authority and National Park Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Minerals Planning Authority or National Park Authority. These precautions shall be made available before the development commences on site and be kept available and in full working order until such time as the Minerals Planning Authority and National Park Authority agrees to their withdrawal.

### **Workover and Tubing Replacement**

- 49.1 No major workover or tubing replacement operation shall take place on the well without the prior written approval of the National Park Authority of a scheme of works detailing the operations involved. Such a scheme shall identify the dates and times of such operations and shall make provision for notifying the National Park Authority and neighbouring residents 7 days in advance of the operations. It shall specify a programme of noise monitoring as soon as drilling or the workover or tubing replacement commences, including details of noise measurement locations, the method of noise measurement and the maximum permissible levels of noise at each measurement location. The maximum permissible noise levels under neutral weather conditions shall be designed to ensure that a level of 45 dBA Leq 1 hour (freefield) between 0700

and 1900 hours and 42 dBA Laeq 5 minutes (freefield) between 1900 and 0700 hours is not exceeded at any noise-sensitive dwellings.

- 49.2 In the event that the noise levels specified in this condition are exceeded, those operations at the site causing excessive noise shall cease immediately and steps be taken to attenuate the noise levels so as to be in compliance with the requirements of this condition before the recommencement of works.

### **Odour Management Plan**

- 50 All operations on the well site shall be undertaken in accordance with the Odour Management Plan (Report Ref: LERP0002) dated August 2011.

### **Permitted Development Rights**

- 51 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other Order revoking or re-enacting that Order), no plant or buildings shall be erected on the site, except for the development hereby permitted, without the prior grant of planning permission.

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