



For the attention of Secretary of State for Energy
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Our ref: 39251.70

17 October 2024

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Dear Secretary of State

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

Letter of Objection on behalf of Phillips 66 Limited

1 SCOPE OF THIS OBJECTION

- 1.1 We act for Phillips 66 Limited ("**P66**") and we are instructed to submit this objection to the proposed VPI (Land at Rosper Road) Compulsory Purchase Order 2024 ("**the Order**") on its behalf.
- 1.2 P66 received notice of the making of the Order in a letter from VPI Immingham LLP ("**VPI**") dated 17 September 2024 ("**Notice**") which enclosed the Order and a statement of reasons for the Order (along with its included appendices) ("**the Statement of Reasons**"). This confirmed that VPI made the Order for the purpose of carrying out the activities authorised by its generation licence under the Electricity Act 1989 ("**Electricity Act**") and more particularly for purposes relating to the capturing of carbon dioxide emissions from the combined heat and power plant and ancillary or associated works and activities.
- 1.3 The land and rights to be purchased compulsorily under the Order relate to four areas of land which are described in Table 1 of the Schedule to the Order and shown in the map referred to in the Order ("**the Order Map**").
- 1.4 P66 is a qualifying person, in relation to land comprised in an order, under section 12(2) of the Acquisition of Land Act 1981 as the freehold owner of all four areas of land which together comprise "**the Order Land**".
- 1.5 The Order Map is produced below for ease of reference.

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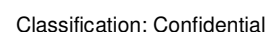
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(2) Where any provision of either of the Schedules mentioned in subsection (1) above is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

2.7 Paragraph 1 of Schedule 3 to the Electricity Act enables the Secretary of State to:

“authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on”.

2.8 Paragraph 5 then applies the Acquisition of Land Act 1981 to compulsory purchase orders promoted by a licence holder of land or rights in England and Wales.

2.9 The CPO Guidance

2.10 The CPO Guidance provides detailed guidance on the compulsory purchase process and compensation rules in England. This includes guidance on where acquiring authorities should use compulsory purchase powers and the confirming authority will need to be satisfied of to confirm the order.

2.11 At section 11.1 the CPO Guidance provides that acquiring authorities should look to use the most specific power available for the purpose in mind and have regard to any guidance relating to the use of the power and adhere to any legislative requirements relating to it.

2.12 Section 2.1 provides that acquiring authorities should use compulsory purchase powers where it is expedient to do so and where there is a compelling case in the public interest to make a compulsory purchase order and section 12.3 adds that reasonable efforts should be made by the acquiring authority to negotiate the purchase of land by agreement.

2.13 Under section 2.2 the confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to:

- (a) understand the impact of the exercise of the compulsory purchase powers included in the compulsory purchase order on those with an interest in the land, for example affected owners and occupiers, through direct engagement with those parties; and
- (b) attempt the acquisition of all of the land and rights included in the compulsory purchase order by agreement.

2.14 Section 2.8 notes that compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects.

2.15 Section 13.3 sets out that the confirming authority will expect the statement of reasons accompanying the submission of the compulsory purchase order to include a summary of the planning framework for the land concerned in sufficient detail to give reassurance of the use of the land following acquisition and the justification for the timing of the acquisition.

2.16 Section 14.1(a) provides that the acquiring authority should address the sources of funding, providing substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and

- the basis on which the contributions or underwriting is to be made

2.17 Section 15.1 requires that the acquiring authority will also need to be able to show that the implementation of the scheme following the confirmation decision being made is unlikely to be blocked by any physical or legal impediments, including any need for planning permission or other consent or licence. Section 15.2 then adds that the acquiring authority should demonstrate to the confirming authority that there are no obvious reasons why any required planning permission might be withheld.

3 RELEVANT BACKGROUND

3.1 The Order

3.2 The Statement of Reasons splits the Order Land into two distinct areas described at paragraph 5.1 as the “**P66 Land**” and the “**VPI Immingham CHP Plant**”. It is assumed that the P66 Land refers to the land described in Schedule to the Order, and shown on the Order Map, numbered 02, 03 and 04, and that the VPI Immingham CHP Plant refers to the land numbered 01.

3.3 The Order proposes to permanently acquire the freehold ownership of the P66 Land and to acquire rights over the VPI Immingham CHP Plant.

3.4 The Order has been made in order carry out development defined in the Statement of Reasons as the construction and operation of a post-combustion carbon capture plant, including carbon dioxide compressor and metering, cooling equipment, stacks, substations, internal roads, partial ditch realignment, new and modified services, connections, accesses, maintenance and laydown areas (“**the Proposed Development**”).

3.5 Humber Zero

3.6 The Proposed Development forms part of the Humber Zero Project, a collaboration between VPI and P66 to deliver a key carbon capture project in the Humber industrial cluster. The Proposed Development is said to be “adjacent to and serving” the existing generating station known as the VPI Immingham CHP Plant at 4.1 of the Statement of Reasons.

3.7 The first phase of Humber Zero will see the installation of two post-combustion carbon capture plants at the VPI Immingham CHP Plant and at the Phillips 66 Limited Humber Refinery – promoted under separate planning applications. The captured CO₂ from these plants is then intended to be transported and stored by the Viking Carbon Capture Storage CO₂ transportation and storage network (promoted by Harbour Energy plc) (“**Viking CCS Network**”).

3.8 P66 is the owner of the Humber Refinery and is pursuing projects, technologies and collaborations that support decarbonisation and the U.K. Government’s 2050 net-zero ambitions through its Ten Point Plan for a Green Industrial Revolution. This includes acquiring feedstocks and upgrading waste to lower-carbon fuels and products at the Humber Refinery.

3.9 P66 Affected Interests

3.10 P66 is the freehold owner of both the P66 Land and the VPI Immingham CHP Plant. The Order land is also currently subject to the following land interests:

- (a) P66 lease the VPI Immingham CHP Plant land to VPI under a lease expiring in February 2047.
- (b) P66 lease the VPI Immingham CHP Plant parking land to VPI Immingham B Limited under a lease expiring in February 2027, with options to extend that lease in 5-year increments to February 2047.

- (c) P66 have agreed to several leases for parts of the P66 Land to Chrysaor Production (U.K) Limited (a subsidiary of Harbour Energy PLC) under an Agreement for Leases dated 16 August 2024 to enable delivery of the Viking CCS Network.

3.11 An option agreement between P66 and VPI for the Proposed Development had also been progressed and, until notification of the Order was received, had been expected to conclude imminently.

3.12 Electricity Generation Licence

3.13 VPI was granted an electricity generation licence (“**the Licence**”) on 7 June 2002 which is included as Appendix 2 to the Statement of Reasons.

3.14 The Licence authorises VPI to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given, subject to:

- (a) the standard conditions of electricity generation licences referred to in paragraph 1 of Part II of the Licence, which shall have effect in the Licence; and
- (b) paragraph 2 of Part II of the Licence which shall only have effect in the licence if brought into effect in accordance with the provisions of the standard conditions.

3.15 Paragraph 2 of Part II of the Licence provides a table of standard licence conditions not included in the Licence. Under Section B of this table, Standard Condition 14 is not in effect in the Licence.

3.16 A note at Part II of the Licence provides that the authoritative up-to-date version of this licence is available for public inspection at the principal office of the Authority. This is now published on OFGEM's Electronic Public Register¹ and is the same document as is provided at Appendix 2 to the Statement of Reasons.

4 OBJECTION TO THE ORDER

4.1 P66 objects to the making and confirmation of the Order on a number of grounds. The Order is not justified, does not benefit from the powers relied on, and should not be confirmed.

4.2 P66's grounds of objection at this point in time, which are subject to ongoing review, are:

- (a) **Ultra Vires CPO Powers:** The Proposed Development comprises activities which fall outside those authorised by the enabling powers of the Order.
- (b) **Measure of last resort:** Negotiation to acquire adequate interests in the land privately is ongoing and close to completion. The Order is premature and reasonable attempts to acquire the land by agreement have not been made.
- (c) **Lack of enabling powers:** There are no enabling powers for the Order to be promoted under VPI's Electricity Generation Licence or the Electricity Act 1989.
- (d) **The Order is inconsistent with existing Agreements:** The Order would be inconsistent with several land agreements between P66 and VPI and affiliated companies.
- (e) **Alternatives:** VPI has failed to consider and evidence that all reasonable alternatives to compulsory acquisition have been considered.
- (f) **Funding:** The Acquiring Authority, as a limited liability partnership, has failed to evidence funds necessary to deliver the scheme.

¹ OFGEM, Electronic Public Register <<https://epr.ofgem.gov.uk/Document>> [accessed 7 October 2024].

- 4.3 In light of these issues, this objection is made as a relevant objection under section 13(6) of the Acquisition of Land Act 1981 and we respectfully submit that the Order should not be confirmed by the Secretary of State.

5 ULTRA VIRES CPO POWERS

- 5.1 The Order is promoted under section 10 of and paragraph 1 of Schedule 3 to the Electricity Act 1989 and pursuant to Standard Condition 14(b) of the Licence to enable the Acquiring Authority to carry on the activities authorised by its generation licence and which relate to the operation of a generating station.²
- 5.2 The enabling powers under the Electricity Act 1989 are limited in respect of electricity generation licence holders by section 10 to apply only to the extent that the relevant licence so provides. Schedule 3 then enables the licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of activities which they are authorised by the licence to carry on.
- 5.3 Standard Condition 14 of OFGEM's Electricity Generation Standard Licence Conditions³ provides that *"the powers and rights conferred by or under the provisions of Schedule 3 to the Electricity Act 1989 shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by that licence and which relate to specified activities, including the operation of a generating station"*.
- 5.4 The activity which VPI is authorised by the Licence to carry out is to generate electricity in Great Britain for the purpose of giving a supply to any premises or enabling a supply to be so given. VPI has failed to show a satisfactory connection between the Proposed Development and the authorised activities to assert that the development enables those activities.
- 5.5 Paragraph 5.10 of the Statement of Reasons states that the existing VPI Immingham CHP Plant land is included in the Order Land to allow for pipeline and cable connections between the VPI Immingham CHP Plant and the Proposed Development. The Schedule of the Order then details the rights sought in relation to the land used for the VPI Immingham CHP Plant which includes Access and Connection Rights to support the Carbon Capture Plant.
- 5.6 VPI provides a summary of a two-stage carbon capture and storage process at paragraph 4.1 of the Statement of Reasons; an initial carbon capture stage and then an onward transport and storage stage. The Proposed Development is then confirmed to comprise the first stage of the process – the carbon capture element.
- 5.7 The Proposed Development is a post-combustion carbon capture facility which removes carbon dioxide emissions produced by the VPI Immingham CHP Plant, after electricity has been generated, to be compressed and transported by the Viking CCS Network.
- 5.8 The Planning Statement included as Appendix 5 to the Statement of Reasons also confirms that there is no effect on the generation of electricity by the VPI Immingham CHP Plant, providing at paragraph 6.12.11 that *"the overall outputs of [the VPI Immingham CHP Plant] remain unchanged after the construction of the PCC plant (the Proposed Development)"*.
- 5.9 The justification for the use of compulsory purchase powers at section 7 of the Statement of Reasons only provides for the capture of carbon emissions from the VPI Immingham CHP Plant and makes no connection between the Proposed Development and the generation of electricity by that plant. The Order provides for pipeline connections between the flue stacks of the plant and the Proposed Development to capture its byproduct emissions, but there is otherwise no connection.

² Statement of Reasons, at 3.9.

³ OFGEM, Electricity Generation Licence: Standard Conditions - Consolidated to 01 October 2024.

- 5.10 The Proposed Development and the rights sought by the Order have no impact on operation of the VPI Immingham CHP Plant and does not enable, or otherwise relate to, the generation of electricity by that station. The use of enabling powers under the Electricity Act is therefore ultra vires.

6 MEASURE OF LAST RESORT

- 6.1 Under Section 2 of the CPO Guidance, acquiring authorities should use compulsory purchase powers where it is expedient to do so and should take reasonable steps to attempt the acquisition of all of the land and rights included in the compulsory purchase order by agreement. Use of those powers is intended as a last resort to secure the assembly of all the land needed for the implementation of projects.
- 6.2 Section 12.3 of the CPO Guidance reiterates that an order should only be made where there is a compelling case in the public interest and reasonable efforts have been made by the acquiring authority to negotiate the purchase of land by agreement.
- 6.3 Voluntary negotiations on the land agreements to acquire the land and rights needed for the Proposed Development have been ongoing between P66 and VPI which would avoid the need for the Order, be consistent with the existing land agreements and allow the development of well-progressed future planned projects. Whilst the Statement of Reasons sets out a summary timeline of engagement between VPI and P66 at paragraph 8.2, this fails to capture the issues behind the various delays in these negotiations and the claim that negotiations have stalled on the agreement is inaccurate.
- 6.4 Several stalemate disagreements on key provisions of the agreements were due to VPI's inflexibility and there were also extensive technical discussions taking place during this period between P66, VPI and Harbour Energy PLC such that the land documents were not in a position to be finalised until these discussions were complete.
- 6.5 The proposed land agreement with VPI for the Proposed Development is considerably well progressed with only one significant point outstanding (regarding the level of security to be provided by the lessee). In an effort to progress this point, upon completion of the associated Harbour Energy Land Agreements, which were completed in a significantly shorter time period than the ongoing discussions between P66 and VPI, P66 obtained approval to share the security language from that agreement with VPI to support reaching agreement on both sets of land agreements on the same terms. This was shared 13 August 2024 and VPI indicated it would likely be acceptable subject to some checking. P66 was waiting for confirmation on this when notice was served regarding the making of the Order.
- 6.6 Considerable time and effort has been made by P66 to negotiate and conclude voluntary land agreements for the Proposed Development. VPI appears to be making a CPO to overcome a single point of negotiation between parties on commercial terms which was resolved in the Harbour Energy Land Agreements by both parties acting reasonably. Reasonable efforts have not been made to secure the rights required for the Proposed Development, and the Order is not being used as a measure of last resort. The Order should not be confirmed.

7 ABSENCE OF ENABLING POWERS

- 7.1 The enabling powers the Order is promoted under (section 10 of and paragraph 1 of Schedule 3 to the Electricity Act 1989) rely on Standard Condition 14 of OFGEM's Electricity Generation Standard Licence Conditions.⁴
- 7.2 The authoritative up-to-date version of the Licence is published on OFGEM's Electronic Public Register⁵ and is the same document as is provided at Appendix 2 to the Statement of Reasons. The

⁴ OFGEM, Electricity Generation Licence: Standard Conditions - Consolidated to 01 October 2024.

⁵ OFGEM, Electronic Public Register <<https://epr.ofgem.gov.uk/Document>> [accessed 7 October 2024].

Licence authorises VPI to generate electricity subject to the standard conditions of electricity generation licences referred to in Part II of the Licence.

- 7.3 Under Paragraph 2 of Part II of the Licence, Standard Condition 14 is listed as one of those Standard Conditions that is not in effect in the Licence.
- 7.4 The Statement of Reasons provides at paragraph 3.6 that Standard Condition 14 was applied to all electricity generation licence holders as a result of amendments to the standard licence conditions on or about 1 May 2007 by OFGEM.
- 7.5 However, no such amendment has been provided and no amendment or modification is recorded on OFGEM's Electronic Public Register. Unless there is an authorised modification VPI cannot rely on Standard Condition 14 to compulsorily acquire land under its electricity generation licence.
- 7.6 The scope of the enabling powers under section 10 of and paragraph 1 of Schedule 3 to the Electricity Act 1989 and under Standard Condition 14 are all limited in respect of electricity generation licence holders to the activities authorised by that licence. Section 10(2) of the Electricity Act 1989 confirms that the compulsory purchase powers included therein shall only have effect subject to such restrictions, exceptions and conditions as may be included in the Licence.
- 7.7 The version of VPI's electricity generation licence provided in support of the Order does not provide for compulsory purchase powers and therefore the Licence and its associated enabling powers cannot be relied upon to enable the Order. The Secretary of State should not confirm the Order.

8 INCONSISTENCY WITH EXISTING AGREEMENTS AND INTERESTS IN LAND

- 8.1 The CPO Guidance provides at 13.4 that the confirming authority will need to be satisfied that the interests of those affected by the exercise of the compulsory purchase powers have been considered.
- 8.2 There are several existing land agreements which would conflict with the Order. The use of blunt compulsory purchase powers in this context is not expedient against that context, which undermines any compelling case in the public interest by virtue of the Order's potential chilling effect on other proposals.
- 8.3 **Relationship with the Viking CCS Network**
- 8.4 All three elements of the Humber Zero Project (both post-combustion carbon capture plants at the VPI Immingham CHP Plant and at the Phillips 66 Limited Humber Refinery along with the Viking CCS Network) are interdependent. This is accepted by VPI at paragraph 9.5 of the Statement of Reasons which states that the viability of the Proposed Development depends upon its connection to a transport and storage pipeline, to move the sequestered carbon to an offshore storage site.
- 8.5 Failure of one affects the others and the Order presents significant risks to Harbour Energy's Viking CCS Network which identifies the VPI and P66 carbon capture plants as "anchor projects".
- 8.6 The Humber Zero Project also relies on funding as a Track-2 cluster from the Carbon Capture and Storage Infrastructure Fund which relies on the project being a 'cluster' – having all three carbon capture, transport and storage elements of the Humber Zero Project.
- 8.7 The impact of the Order on Harbour Energy's ability to deliver the Viking CCS Network critically undermines any justification for the Order. The Proposed Development is reliant on the Viking CCS Network to obtain the benefits it would secure. There can be no compelling case in the public interest which relies on the Viking network where that is in turn impeded by the terms of the proposed Order.
- 8.8 The inconsistency of the Order with these existing agreements, and the reliance on those other agreements for the Proposed Development, has not been adequately addressed by VPI and the Secretary of State should not confirm the Order.

8.9 Impacts on other planned projects

- 8.10 In relation to the P66 Land, P66 and Chrysaor Production (U.K) Limited (a subsidiary of Harbour Energy PLC) have signed a negotiated land option agreement (dated 16 August 2024) to develop a portion of this land required for the Viking CCS Network.
- 8.11 The agreement also specifies and safeguards a corridor of land within the 'P66 Land' section of the Order Land which is to be used for other projects, including a hydrogen pipeline, to allow connection between the Humber Refinery and P66 owned land to the north of the Order Land.
- 8.12 The Order seeks freehold rights over this land which would prevent any future projects which rely on that pipeline corridor and cut off the Humber Refinery from other P66 owned land and deprive P66 of a key commercial benefit derived from that other owned land.

8.13 Inconsistent time spans

- 8.14 The existing VPI Immingham CHP Plant, to which the Proposed Development will be connected, is located on land leased to VPI under a lease expiring in February 2047. The car parking area within the Order Land is also leased by P66 to VPI Immingham B Limited and will also expire in February 2047 at the latest.
- 8.15 Those existing interests relating to the VPI Immingham CHP Plant therefore expire in less than 23 years. The Order does not seek to extend or otherwise affect VPI's interest in the VPI Immingham CHP Plant land, save for the acquisition of rights to facilitate the connection of the Proposed Development and various ancillary activities.
- 8.16 In contrast, the Order would authorise the freehold acquisition of the P66 Land, in fee simple without any time limitation. The limited period left on VPI's lease for the VPI Immingham CHP Plant is inconsistent with that freehold acquisition.
- 8.17 In addition, VPI acknowledges that part of the Order land is only required temporarily for construction purposes. It has not therefore demonstrated a compelling interest in the acquisition of the freehold interest in that part of the Order land.
- 8.18 These inconsistencies would further undermine any compelling case in the public interest for the acquisition of land in the form promoted by VPI.

9 ALTERNATIVES

- 9.1 P66 acknowledges that there are benefits to the Proposed Development being located on the Order Land. It is for that reason that it has entered into extensive commercial negotiations with VPI to grant VPI the necessary interests to deliver the Proposed Development on a voluntary basis.
- 9.2 However, the evidence advanced by VPI that it has sufficiently considered and evidenced consideration of alternative sites for the proposal is fleeting and inadequate.
- 9.3 In particular, the consideration of using land to the east of the Order Land has not been properly explored and claims of engineering difficulties are not substantiated. Gas pipelines regularly cross public highways and land is already available to VPI under existing option agreements.
- 9.4 Whilst there may be additional costs in locating the Proposed Development in an alternative location, those additional costs do not of themselves rule out those alternative sites if they can be secured without the exercise of compulsory acquisition powers. VPI has failed to demonstrate that there are no alternative sites capable of sustaining the Proposed Development.

10 ADEQUACY OF FUNDING

- 10.1 The CPO Guidance requires substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required.

10.2 Land Acquisition and Implementation of Scheme

- 10.3 The Statement of Reasons summarises the proposed funding arrangements for the scheme at section 11, opening with a statement that the Acquiring Authority is “*part of the VPI Group*” and that this Group made considerable profits in 2022. VPI then assert that sufficient funding has been “approved and committed” or that it has access to significant sources of financing arrangements.
- 10.4 VPI is reliant on the funding from the VPI Group the Acquiring Authority has not shown that it holds sufficient funding in itself to deliver the scheme. However, no mechanism has been established which would allow VPI Immingham LLP to withdraw this funding from the wider VPI Group.

10.5 Section 106 Agreement

- 10.6 The Statement of Reasons also refers at section 9 (Impediments) to a Section 106 Agreement which is required as part of VPI’s Planning Application and VPI cannot facilitate the grant of the Planning Application until the completion of that agreement. P66 is required to be a party to the agreement as the freehold landowner and has raised concerns regarding security over the obligations binding its land.
- 10.7 The Section 106 Agreement includes Biodiversity Net Gain obligations which expose P66 to liability that may require P66 to provide long term biodiversity works on that land (or on other land it owns) or to purchase credits. VPI is yet to resolve how it will deliver that Biodiversity Net Gain, whether onsite, offsite or through the purchase of credits. If land is required for onsite or offsite provision there are serious practical implications associated with that provision. If credits are required these could result in a very significant, but yet to be defined, liability attaching to those provisions. This is a broad exposure that goes further than financial implications and cannot be accepted by P66 without an appropriate and reliable indemnity being evidenced.
- 10.8 At paragraph 9.2 the Statement of Reasons sets out that VPI intend to indemnify P66 in respect of obligations under that agreement. However, P66’s concerns remain as there has been no evidence that VPI hold sufficient funds to cover the security required for those obligations. While the Statement of Reasons at section 11 sets out that VPI will rely on the wider VPI Group to fund the scheme, no such security has been offered in respect of the Section 106 Agreement.
- 10.9 Given the financial implications of the obligations binding P66’s land, concerns remain that prevent completion of the Section 106 Agreement until adequate funding can be shown or other security can be agreed from the wider VPI Group. These mirror those concerns in respect of VPI’s funding of the CPO and the lack of any evidence of the funding available to the Acquiring Authority.

11 CONCLUSION

- 11.1 For the reasons outline above P66 objects to the Order. The making of the Order is outside of the enabling powers relied upon, is contrary to the relevant Government Guidance, and there is no compelling case in the public interest to seek that the Order be confirmed. VPI has failed to take sufficient steps to acquire the Order Land by agreement or pursue alternatives to the Order and sufficient funding has not been evidenced.
- 11.2 P66 therefore requests that the Secretary of State does not confirm the Order and urges VPI to turn its focus to completing the negotiated agreements which would avoid the need for the Order and be consistent with the existing land agreements.

Yours faithfully

BURGES SALMON LLP