

Fieldfisher LLP ("Fieldfisher") continue to act for The British Pipeline Agency Limited ("BPA") as agents for Prax Downstream UK Limited ("PDUK") and Prax Lindsey Oil Refinery Limited (in liquidation) ("PLOR") (PDUK and PLOR together being herein referred to as "Prax").

This submission is further to:

- (i) Prax's relevant representations [RR-038](#) and [RR-039](#);
- (ii) The issues outlined in Prax's request to participate in compulsory acquisition hearing 1 (CAH1) and issue specific hearing 2 (ISH2) ([PDA-004](#)); and
- (iii) The oral submissions made by Fieldfisher on behalf of Prax at both CAH1 and ISH2 on 8 January 2026.

## 1. **Summary of Oral Representation at ISH2**

### Agenda Item 3.1

- 1.1 BPA, as agents for and on behalf of Prax, were invited by the Planning Inspectorate, to attend ISH2.
- 1.2 As submitted by Fieldfisher on behalf of Prax at CAH1, there is potential for the Project to cause damage to Prax's pipeline (being an offence under the Pipeline Safety Regulations 1996) and to cause harm to land, persons, and the environment if adequate mitigation is not put in place and retained, repaired, and replaced for the life of the pipeline. This may, necessarily, require short term and long term installation, retention, repair and maintenance rights for the benefit of the owner of the pipeline.
- 1.3 The Health and Safety Executive is looking at the issue of AC interference across the pipeline industry at present.
- 1.4 Currently, no site-specific risk assessment has been taken to establish the claim by the Applicant that no mitigation will be required over the lifetime of the pipeline. Paragraph 6.7 of the UKOPA guidance submitted by Prax with [PDA-004](#) includes the factors which are required to be included in any risk assessment in respect of AC interference with the pipeline. Any delay in this risk assessment being provided will prevent Prax and the Applicant agreeing the necessary mitigation required.

2. If mitigation works are required in order to ensure the safety and integrity of the Pipeline, the following issues in respect of the draft Order arise:

- (a) The Order may not be sufficient to deliver the necessary mitigation over third party land, noting that Prax will require both short term installation and long-term monitoring rights with attendant land rights to benefit the pipeline owner.
- (b) The draft Order would need to include: appropriate provisions to share the benefit of the Order with the pipeline owner, itemised provisions of what the pipeline protection works are, provisions to disapply legislation (including for example, disapplication of the Town and Country Planning Act to ensure that the pipeline protection works are not to be construed as development).

- 2.2 In the current draft Order, there are no specific references to pipeline protection works in respect of works 5A, 8A and 8B which are relevant to the Prax plots listed [APP-020](#) and [APP-022](#) save for the overarching provisions relating to "*associated development*". It is submitted that the current provisions *may* cover de minimis works but are unlikely to sufficiently include significant mitigation works, which may be required in order to protect the pipeline.
- 2.3 In relation to long term rights, such as the installation of monitoring equipment in accordance with the UKOPA guidance provided with [PDA-004](#), the current draft Order does not include provision for permanent rights to be acquired by the Applicant, and thereafter shared with Prax.
- 2.4 If the Examining Authority is minded to submit the Project for approval, we would urge that this is only done if satisfactory protective provisions are provided and that these issues (and those addressed at CAH1) have been adequately addressed and the cable is not energised until the necessary mitigation is in place.

### 3. **Plan**

- 3.1 At ISH 2, The Examining Authority requested that Fieldfisher, on behalf of BPA and Prax, provide the Applicant and the Examining Authority with the plan showing the location of the Pipeline vis a vis the draft Order limits.
- 3.2 Fieldfisher referred to such plan having been included at Schedule 2 of [RR-038](#). However, the Examining Authority noted that the version of RR-038 in the project library did not include any schedules.
- 3.3 We therefore attach to this submission, the missing information being:
  - 3.3.1 A list of missing incorrect plot references in the Book of Reference and Statement of Reasons. This should have been included as Schedule 1 of RR-038 and is now included at Schedule 1 of this Representation. (NB this list is currently being slightly updated as between the parties and can be supplied if needed); and
  - 3.3.2 A plan showing the interaction between the Prax Pipeline and the Order limits. This plan should have been included as Schedule 2 of RR-038 and is now included at Schedule 2 of this Representation.

### 4. **Further drafting to be inserted within the draft Order if significant mitigation work were required**

- 4.1 At ISH2, the Examining Authority requested that Fieldfisher, on behalf of BPA and Prax, provide the Applicant and the Examining Authority with a proposal of what further drafting might be required to be inserted into the draft Order in order to provide Prax with further comfort in response to the issues raised at ISH2 and in [RR-038](#) and [RR-039](#). This was in response to Fieldfisher referring to wording that was to be included pursuant to another Development Consent Order promoted by NGET.
- 4.2 Fieldfisher confirmed they would need to check to what extent this wording was still confidential.
- 4.3 Fieldfisher can confirm that the relevant Development Consent Order is the Norwich to Tilbury DCO (EN020027) [Norwich to Tilbury - Project information](#). That DCO includes wording to benefit United Kingdom Oil Pipelines Limited as pipeline owner in relation to the installation and retention of significant mitigation works. The draft DCO for project EN020027 is included with the project library at reference [APP-056](#).

4.4 Fieldfisher are of the opinion that the principles set out in the Norwich to Tilbury DCO (EN020027) could be applied in this case to cover mitigation works on the assumptions that:

- (a) At minimum the broad scope and extent of the mitigation works required is ascertained and certain enough in sufficient time so as to be included within the Order drafting; and
- (b) Any relevant mitigation work can be undertaken within the Order limits; and
- (c) The rights (temporary and permanent) to be acquired by the Applicant can be shared with Prax and its agents and are sufficient to install retain repair and replace any such mitigation works as are required to keep the Prax Pipeline safe' and
- (d) All rights and benefits granted to Prax pursuant to the Order need also to be able to benefit its successors in title agents and assigns and (if different) any owners of the Prax Pipeline as it looks likely these assets may be shortly sold.

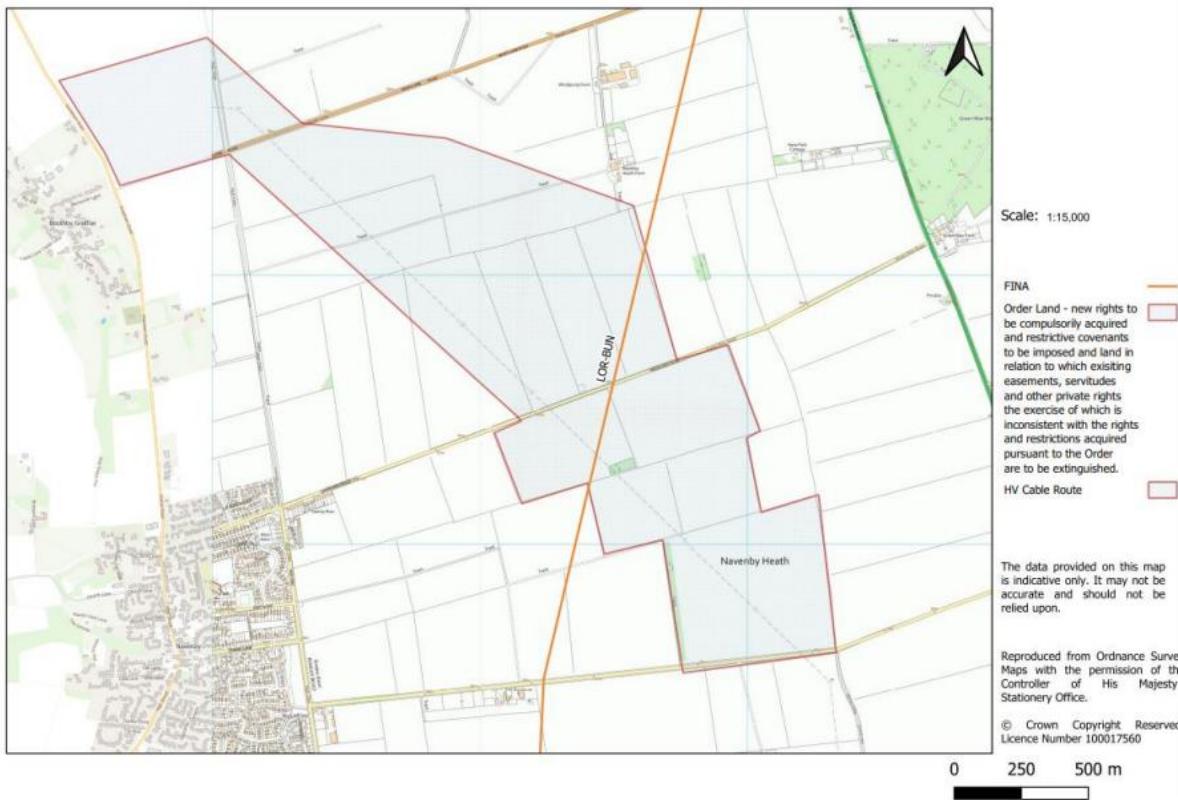
4.5 An example of what this wording might look like (based on the Norwich to Tilbury DCO format, is included at Schedule 3 hereto.

5. BPA and Prax continue to reserve the right to make further representations during the examination process.

**Schedule 1**

| Plots Listed in Statement of Reasons as relevant to Prax | Applicable? (Y/N) | Prax Plots missing from Statement of Reasons |
|--|-------------------|--|
| 14/9   | N                 |  |
| 15/4   | N                 |  |
| 15/6   | N                 |  |
| 15/8   | N                 |  |
|  | Y                 | 15/9   |
|  | Y                 | 15/10  |
| 15/11  | Y                 |  |
|  | Y – (access)      | 15/12  |
| 15/13  | Y                 |  |
|  | Y – (access)      | 15/14  |
|  | (adopted road)    | 15/15  |
| 15/16  | N                 |  |
| 16/2   | Y                 |  |
| 16/3   | Y                 |  |
| 16/5   | Y                 |  |
|  | Y                 | 16/6   |
| 16/7   | Y                 |  |
| 16/8   | Y                 |  |
| 16/9   | Y                 |  |
| 16/10  | Y                 |  |
| 16/11  | Y                 |  |
| 16/12  | Y                 |  |
|  | Y                 | 16/13  |
| 16/14  | N                 |  |
| 16/15  | N                 |  |
| 16/17  | N                 |  |

## Schedule 2



### **Schedule 3**

Set out below are extracts which are the basis of the suggested drafting to be included in the dDCO concerning the provision of mitigation works for the effects of the Project on the Pipeline. The proposed drafting was requested by the Applicant at issue specific hearing 2 ("ISH2") on 8 January 2026 and is largely based on the wording included in the Norwich to Tilbury DCO Project (EN020027). The Examining Authority, at ISH2, requested that this document be submitted as an examination document for reasons of visibility.

Fieldfisher are of the opinion that the principles set out in the Norwich to Tilbury DCO (EN020027) can be applied to this Project on the following assumptions:

- (a) At a minimum, the broad scope and extent of the mitigation works required is ascertained and certain enough in sufficient time so as to be included in the Order drafting;
- (b) Any relevant works can be undertaken within the Order limits;
- (c) The rights (both temporary and permanent) to be acquired by the Applicant can be shared with Prax and its agents and are sufficient to install, retain, repair and replace any such mitigation works as are required to keep the Prax apparatus safe; and
- (d) All rights and benefits granted to Prax pursuant to the Order also benefit its successors in title, agents and assigns and (if different) any owners of the Prax apparatus in order to protect said apparatus in the event that it is sold.

### **Article 2 – Interpretation**

"BPA" means British Pipeline Agency Limited (company number 01228157) whose registered address is 5-7 Alexandra Road, Hemel Hempstead, Hertfordshire, HP2 5BS

"PLOR" means Prax Lindsey Oil Refinery Limited (company number 00564599) whose registered address is Harvest House Horizon Business Village, 1 Brooklands Road, Weybridge, Surrey, United Kingdom, KT13 0TJ

"PDUK" means Prax Downstream UK Limited (company number 00223114) whose registered address is Harvest House Horizon Business Village, 1 Brooklands Road, Weybridge, Surrey, United Kingdom, KT13 0TJ

"Prax" means together PLOR and PDUK together with its successors in title, agents and assigns and (if different) any owners of the Prax apparatus as described at Schedule [X]

### **Article 34 – Benefit of the Order**

Subject to article 35 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for:

- (a) Work No. 5b in relation to which the provisions of this Order have effect for the benefit of the undertaker and National Grid Electricity Transmission plc; and
- (b) the works specified in Schedule [X] (works for the protection of the Prax apparatus) to which the provisions of this Order have effect for the benefit of the undertaker and Prax and/or BPA

### **Paragraph 4.6 of the Explanatory Memorandum**

4.6.1 permitted by section 156(2) of the PA 2008) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. This is with the exception of:

- (a) Work No. 5B where the provisions have effect for the benefit of the undertaker and National Grid Electricity Transmission Plc (NGET). This gives NGET the power to undertake Work No. 5B themselves should they prefer to do so as Work No. 5B is undertaken entirely on NGET land; and
- (b) the works specified in Schedule [X] (works for the protection of the Prax apparatus) where the provisions have effect for the benefit of the undertaker and Prax and/or BPA. Prax is not a statutory undertaker and these works are necessary to allow Prax and/or BPA to access the land and carry out works to protect the critical infrastructure for the delivery of (inter alia) airline fuel to international airports. It is therefore essential to give the benefit of necessary powers to Prax. The works specified in Schedule [X] are to have effect for the successors in title, agents and assigns and (if different) any owners of the Prax apparatus as described in Schedule [X] (as well as for the benefit of PLOR, PDUK and BPA) in order to ensure that said apparatus remains protected under this Order in the event that the apparatus is sold in the near future.

Given the nature of the Proposed Development and the fact that powers of compulsory acquisition are sought, it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision. Overriding section 156(1) is common in DCOs that have been made, including the Cleve Hill Solar Park Order 2020, the Longfield Solar Farm Order 2023, The Mallard Pass Solar Farm Order 2024 and Heckington Fen Solar Farm Order 202

#### **Article 37 –Operation of the 1990 Act**

- (a) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as not being operational land) of the 1990 Act
- (b) For the purposes of the 1990 Act, the works specified in Schedule [X] (*works for the protection of Prax apparatus*) do not constitute the development of land requiring consent under section 55.

#### **Paragraph 4.6.8 of the Explanatory Memorandum**

Article 37(a) is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land, such as permitted development rights, have effect as they would do if planning permission had been granted for the authorised development. Article 37 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018 and Article 42 of the A30 to Chiverton to Carland Cross Development Consent Order 2020 followed the same approach.

Article 37(b) clarifies that the works specified in Schedule [X] (*works for the protection of Prax apparatus*) do not constitute the development of land requiring planning permission under the 1990 Act. This is consistent with section 5(2) of the Pipe-Lines Act 1962.

#### **Part 4 – Supplemental Powers**

#### **Article [X] - Protective Works**

- (1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any land, building, structure, apparatus or equipment, lying within the Order limits or which may be affected by the authorised development including the Prax protective works, as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the land, building, structure, apparatus or equipment, of any part of the authorised development or works ancillary to it; or

(b) after the completion of any part of the authorised development in the vicinity of the land, building, structure, apparatus or equipment, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first brought into operational use.

(3) For the purpose of determining how the functions under this article are to be exercised, the undertaker may enter and/or survey—

(a) any land, building, structure, apparatus or equipment, falling within paragraph 1 and any land within its curtilage; and

(b) where reasonably necessary, any land which is adjacent to the land, building, structure, apparatus or equipment, whether or not within the Order limits,

and place on, leave on and remove from the building, structure, apparatus or equipment any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to any land, building, structure, apparatus or equipment, the undertaker may (subject to paragraphs 0 and 0)—

(a) enter the land, building or structure and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the land, building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Subject to paragraphs 0 and 0, in respect of the Prax protective works, the undertaker is entitled to retain such works in place and access those works for the purpose of maintaining, monitoring and inspecting them in perpetuity.

Before exercising—

(a) a right under paragraph 1 to carry out protective works to any land, building, structure, apparatus or equipment;

(b) a right under paragraph 0 to enter and/or survey any land, building, structure, apparatus or equipment, and land within its curtilage or any adjacent land;

(c) a right under paragraph 0 to enter the land, building or structure and land within its curtilage;

(d) a right under paragraph 0 to enter land;

(e) a right under paragraph 0 to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph 0 or 0, specify the protective works proposed to be carried out.

(7) Where a notice is served under paragraph 0, 0, 0 or 0, the owner or occupier of the land, building, structure, apparatus or equipment concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is

necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

- (8) The undertaker must compensate the owners and occupiers of any land, building, structure, apparatus or equipment, in relation to which rights under this article have been exercised, for any loss or damage arising to them by reason of the exercise of those rights.
- (9) Where—
  - (a) protective works are carried out under this article to any land, building, structure, apparatus or equipment; and
  - (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the land, building, structure, apparatus or equipment is first brought into operational use it appears that the protective works are inadequate to protect the land, building, structure, apparatus or equipment against damage caused by the carrying out or use of that part of the authorised development,
    - the undertaker must compensate the owners and occupiers of the land, building, structure, apparatus or equipment for any loss or damage sustained by them.
- (10) Subject to article 42 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).
- (11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (12) Any compensation payable under paragraph 0 or 0 must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).
- (13) In this article “protective works” in relation to any land, building, structure, apparatus, equipment or the authorised development means—
  - (a) underpinning, strengthening, ground strengthening, earthing and any other works the purpose of which is to prevent damage which may be caused to the land, building, structure, apparatus, equipment or the authorised development by the carrying out, maintenance or use of the authorised development; and
  - (b) any works the purpose of which is to remedy any damage which has been caused to the land, building, structure, apparatus or equipment by the carrying out, maintenance or use of the authorised development.
- (14) In this article “Prax protective works” mean the works specified in Schedule [X] (works for the protection of Prax apparatus).

#### **Paragraph 4.4 of the Explanatory Memorandum**

- (1) Article [X] sets out the circumstances in which protective works can be carried out to land, buildings, structures, apparatus or equipment, within the Order limits or which may be affected by the authorised development. This includes the Prax protective works, which are defined as the works specified in Schedule [X] (works for the protection of Prax apparatus) and in respect of which Prax (together with its successors in title, agents and assigns and (if different) any owners of the Prax apparatus) and/or BPA and/or the undertaker will benefit from the powers contained in this article.

The power afforded in respect of the Prax protective works includes the right to retain the works in place and access them for the purpose of maintaining, monitoring and inspecting them in perpetuity. As noted above, Prax is not a statutory undertaker and so does not have the benefit of its own statutory powers. This means it is essential that the benefit of this article extends to the protective works to their apparatus. It is also essential to ensure that benefit of this article extends to protect the apparatus in the event that the Prax apparatus is sold in the near future.

- (2) Except in an emergency, 14 days' notice must be given to the owner to exercise the powers under this article, and the owner can seek arbitration to determine whether it is necessary or expedient to carry out the protective works, or to enter the identified building or land, by serving a counter-notice. The power lasts until five years after the relevant part of the Project comes into operation. There is an entitlement to compensation, both in relation to loss or damage caused by the undertaker in carrying out the protective works and where, within a specified period, the protective works are shown not to be sufficient.
- (3) The article is based on article 15 of the general model provisions.
- (4) The Order extends the power to carry out protective works from just buildings to land, buildings, structures, apparatus or equipment within the Order Limits or which may be affected by the authorised development. Article [X](3) allows the undertaker access to land adjacent to the relevant land, building, structure, apparatus or equipment within or outside of the Order limits to exercise this power (where reasonably necessary). This is necessary given the linear nature of the authorised development and also given the range of potential items that might necessitate protective works and, in particular, the inclusion of this provision will help to mitigate the risk of unforeseen circumstances prejudicing the delivery of this nationally significant infrastructure project.
- (5) Paragraph (11) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.

#### **Schedule [X] – Works for the protection of Prax apparatus**

Works for the provision of alternating current mitigation in accordance with British Standard EN ISO 18086 in respect of Prax Fina line high pressure Lindsey Oil Refinery to Buncefield multi-fuel pipeline between OS grid reference [●] and OS grid reference [●].

#### **Schedule [X] – Extract for the Explanatory Memorandum**

Schedule [X] describes the extent of the works that may be carried out by Prax (including, for the avoidance of doubt its successors in title, agents and assigns and (if different) any owners of the Prax apparatus described in Schedule [X]) and/or the undertaker under the powers contained in article [X] (protective works).