

KEADBY 3 CARBON CAPTURE POWER STATION

A collaboration between **SSE Thermal** and **Equinor**

Document Ref: 9.15

Planning Inspectorate Ref: EN010114

The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order

**Land at and in the vicinity of the Keadby Power Station site,
Trentside, Keadby, North Lincolnshire**

**Written summaries of oral submissions
made at hearings**

The Planning Act 2008

Applicant: Keadby Generation Limited

Date: April 2022

DOCUMENT HISTORY

Author	Dentons
Document Ref	9.15
Revision	VP1.0

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Keadby 3 DCO - IS2 Hearing, Environmental Matters 15 March 2022

1 Introduction and parties

- 1.1 The Issue Specific Hearing (**ISH**) on Environmental Matters was held virtually on 15 March 2022. The ISH concerns the application made by Keadby Generation Limited (the **Applicant**) for an order granting development consent for the construction, operation and maintenance on a new gas fired electricity generating station with a gross output of 910 megawatts (**MW**) and associated works together with powers for the compulsory acquisition of land and new rights and temporary possession of land (the Proposed Development) at Keadby, North Lincolnshire.
- 1.2 The ISH took the form of running through the Examining Authority's (**ExA**) agenda as published on the NSIP website.

2 Participation

- 2.1 The ExA, Mr Christopher Butler.
- 2.2 The Applicant:
- (a) Mark Westmoreland Smith, Barrister at Francis Taylor Building;
 - (b) Richard Lowe, Director, AECOM Energy Sector Lead;
 - (c) Colin Turnbull, Partner, DWD;
 - (d) David Broughton, AECOM;
 - (e) Jennifer Wilson, Senior Heritage Consultant, AECOM; and
 - (f) Michele Vas, Counsel, Dentons.
- 2.3 The following parties participated in the ISH:
- (a) Andrew Law, Annie Ward and Louisa Simpson on behalf of North Lincolnshire Council; and
 - (b) Simon Tucker, Darren Letley and Scott Lo on behalf of the Canal and River Trust.
- 2.4 The ExA confirmed that Network Rail Infrastructure Limited, Client Earth, National Grid Ventures and the Environment Agency had confirmed they would not attending this ISH.

3 Items for issue specific hearings

- 3.1 The ExA confirmed the purpose of the ISH was to examine the information submitted by Applicant, other parties and other affected persons. Where further information was needed or where particular areas would benefit from oral examination.

Climate Change

- 3.2 The Applicant provided an explanation of the carbon capture compression plant (CCP), related technology and how it relates to the Humber Low Carbon Pipeline (HLCP), together with an overview on how the proposal complies with current and emerging National Policy Statements. A series of powerpoint slides were presented to the hearing by the Applicant.

- 3.3 In terms of policy compliance the Applicant explained that the Proposed Development goes further than current NPS EN1 which states any combustion plant greater than 300 MW should be demonstrated to be carbon capture ready. The Proposed Development goes beyond the policy requirement is that it incorporates CCP as part of the Proposed development.
- 3.4 The Applicant confirmed that the wider operation of the Proposed Development including CCP would be the subject of an environmental permit granted by Environment Agency.
- 3.5 The ExA noted that responsibility for pipeline ceases with DCO boundary and would be the responsibility of someone else but asked how the effect of greenhouse gas from scheme compare with others on a national geographical scale
- 3.6 The Applicant explained the Proposed Development would be one of the most efficient power stations compared to currently operating gas fired generating stations. By including CCP this will allow at least 90% of carbon emissions to be captured, which is a significant reduction. The Applicant confirmed that Chapter 17 of Environmental Statement (ES) sets that out.
- 3.7 The Applicant explained that the Proposed Development is designed to provide dispatchable power that can be called upon when renewable generating stations are not generation is not available. It is designed therefore to support renewable technologies and provide security and reliability of power. This means that the plant will not be operating all the time but only when called upon.
- 3.8 The Applicant explained that the assessment of GHG emissions in Chapter 17 of the ES presented a conservative assessment of carbon emissions and (a) year round operation and (b) assumed 90% carbon capture rate (where as the Applicant will be incentivised to operate at greater levels of efficiency).
- 3.9 The Applicant confirmed that discussions are on-going with BEIS over mechanisms for management and operation for carbon capture enabled power station. The expectation is that the agreement reached will only allow the Proposed Development to be operated in accordance with contracts where the carbon capture plant is operating. Detailed work is ongoing in relation to optimising capture efficiency rates.
- 3.10 The ExA confirmed it would be helpful to have an understanding of the BEIS mechanism controlling carbon capture in order to understand who is responsible for meeting what requirements where and when.
- 3.11 The Applicant confirmed a note on the approach BEIS take regarding financial mechanisms proposed can be provided at deadline 5.
- 3.12 The ExA confirmed that the Hornsea 4 DCO submission, currently under consideration has also provided information which sets out the respective responsibilities and how BEIS contract will work.
- 3.13 In relation to the recycling of amine solutions the ExA asked how much is lost through the process and how much is recycled – on a percentage basis?
- 3.14 The Applicant explained that the design of the plant is optimised to minimise loss of the solvent and the intention is to reuse and retain solvent on site. The amine waste stream that cannot be reused will be retained on site and then sent for off-site disposal. The Applicant confirmed that the loss of amines through the stack when the rest of abated flue gas is discharged to atmosphere has been assessed in the ES and will be a trace amount.

- 3.15 The ExA questioned if this was monitored through the environmental permit.
- 3.16 The Applicant confirmed that the environmental permit application has been submitted to the Environment Agency and is being evaluated. The permit will include emissions monitoring protocols and quantification of waste disposal. The process being developed, in terms of the scale of CCP is first of a kind, so the Environment Agency will expect compliance with the use of best available technique (BAT).

Cumulative effects

- 3.17 The ExA asked the Applicant to explain its approach and compliance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs).
- 3.18 The Application identified the requirements of the EIA and confirmed that Regulation 14 requires the application to be accompanied by an Environmental Statement. Regulation 14(2) identifies what should be included in an Environmental Statement and Regulation 14(3)(b) identifies the information required to reach a conclusion on likely significant effects, taking into account knowledge and method of assessment.
- 3.19 Schedule 4 of the EIA Regs sets out the information that needs to be included in Environmental Statements. Para 5(e) and 5(f) require the assessment of cumulative effects and of impacts on the climate.
- 3.20 Guidance on how to approach the assessment of GHG emissions on the climate is set out in the Institute of Environmental Management and Assessment 2017 (EMA guidance)). The important points to note are (1) all GHG emissions are significant and contribute to climate change and (2) the receptor is the global climate, as such the nature of GHG emission impacts is cumulative (3) in order to provide *context* the emissions for a given project can be compared to appropriate carbon budgets.
- 3.21 The Applicant explained that therefore greenhouse gas emissions are, by their nature, cumulative; and that the receptor is the global climate. What matters is the extent of emissions in totality as opposed to emissions from particular projects. This is the context that sits behind the advice in section 5.2 of NPS EN01 that there is no need to assess applications against carbon budgets. The Applicant however has gone on to do that so has gone further in its assessment than required. The approach taken is to assess emissions from the Proposed Development and contextualise them against the carbon budget. This is consistent with the approach taken on other DCOs; (e.g. South Humber Bank Energy Centre) which has been endorsed by Secretary of State. Chapter 19 of ES (Cumulative effects), para 19.4.9 summarises the approach taken to considering climate change.
- 3.22 The Applicant explained that the Proposed Development has been designed to factor in climate change resilience. The GHG assessment, looks at the overall assessment of construction and operation based on conservative assumptions, as set out above, to present a conservative assessment.
- 3.23 The ExA asked for confirmation there were "no foreseeable barriers" to the installation of the chosen CCP and whether the Applicant or Interest Parties had anything to add on matter?
- 3.24 The Applicant and IP's confirmed they had nothing further to add.

4 Assessment of Alternatives

- 4.1 The ExA asked the Applicant to confirm what alternatives sites were considered and why they were discounted. Document APP049, para 6.3.1 states "as opposed to other potentially available sites" – but the ExA could not clearly identify what alternative sites considered and why discounted.
- 4.2 The Applicant confirmed that Regulation 14(2)(d) of the EIA Regs requires the ES to include a description of the reasonable and relevant alternatives studied. Chapter 6 of the ES Volume 1 complies with that regulation in that it sets out the alternatives sites, technologies and fuels, design options, and layouts studied.
- 4.3 Behind the phrase "other potentially available sites" – the Applicant (and SSE in wider context) has other sites in the UK available for development which are being considered for other schemes. The sites considered were Keadby, Medway and Ferrybridge and Peterhead. Peterhead is also being progressed for a carbon capture enabled generating station. Early steps are being taken in relation to Medway. Medway is following behind the development of Keadby and Peterhead. Ferrybridge at this stage does not form part of the Humber Low Carbon Pipeline (HCLP) Project or other carbon transport networks, although one could be developed in the future.
- 4.4 The Applicant explained that none of these are true alternatives because any one of them could be taken forward in the relatively near future in light of the substantial quantitative need for flexible generation and for carbon capture, usage and storage projects.
- 4.5 The Applicant explained that Keadby has the advantage of being in close proximity to the HLCP and can be connected directly into it – hence Keadby has been progressed ahead of these other sites. This sits within the overarching context that when the Applicant progressed this site, key policy was the Energy White Paper which refers to at least one power CCUS project being developed. This project sits comfortably within that context and there is scope to bring forward other sites at another juncture.
- 4.6 In relation to the law on alternatives the first point of principle is that land may be developed in any way acceptable for planning purposes and that alternatives are only relevant in exceptional circumstances where the development in question causes material planning harms. Those circumstances do not arise here. The short answer is Medway and Ferrybridge were not considered as alternatives as they are sites available for development in their own right. They are not, in any event, preferable at this stage as Keadby has the advantage of being able to connect directly into a Track 1 CCUS cluster.
- 4.7 The ExA requested there be an action point to explain the consideration of alternatives to be submitted as part of deadline 5 submission.
- 4.8 The Applicant went on to confirm that there has been no change in circumstances to warrant revisiting this selection of this site. Indeed there have been changes in circumstances that affirms the Applicant's position in selecting this site. Track 1 cluster status has been announced for East Coast Cluster, of which Keadby 3 and HLCP are part. It is therefore considered that the choice of site remains appropriate and robust.
- 4.9 The emitters identified by BEIS as preferred (Phase 1) emitters will be announced in May 2022. The ExA asked for clarification that Keadby 3 is an "emitter". The Applicant confirmed this is correct.

5 Air Quality

- 5.1 The ExA referenced the use of monitoring data from Doncaster Airport as raised by the Environment Agency. The ExA noted the Applicant's response to this is set out in REP 3-020 – noted and confirmed this adequately addresses the question. The ExA sought further clarification on how average wind speeds and direction were calculated in light of Environment Agency response.
- 5.2 The Applicant confirmed that it has not calculated average wind speed or wind direction in any of the actual assessments. The air quality assessment uses sets of meteorological data which contains hourly data across a whole year, and used 5 years of that data. Consequently the assessment does not use a single average wind speed or direction, it is based on the whole data set. The Applicant noted that it may have reported the average somewhere for context but that it does not rely on that average for the assessments.
- 5.3 ExA noted REP3-025 from the Environment Agency at Deadline 3 where it stated that it does not issue environmental permits in principle and also drew attention to REP4 – 010. In light of these responses and other information submitted, the ExA asked the Applicant explain its approach to amine and N-amine emissions and how these would be controlled, especially where an environmental permit would not in place at point of DCO being made.
- 5.4 The Applicant responded that reference was made in its early application documents to a two-stage permitting approach and permitting in-principle. This was based on wording specifically given to the Applicant by the Environment Agency when early discussions on permitting were taking place. The Applicant is comfortable no such thing as "permit in principle" exists and does not seek to rely on this.
- 5.5 The Applicant confirmed that an application has been made for an environmental permit for the Proposed Development; discussions with the Environment Agency have also been to consider whether the permit will be a standalone permit or variation of the existing environmental permit. It has been agreed with the Environment Agency to progress the application as a variation to the existing Keadby power station permit – since the Proposed Development would be operated by same entity, on the same site and sharing some common infrastructure with the Keadby 1 and Keadby 2 generating stations already covered by that permit. A variation application has been made and it is currently being appraised by the Environment Agency – the process has been ongoing for some time and there is regular dialogue between the Applicant and the Environment Agency.
- 5.6 The Applicant explained that in relation to amine and N-amines, this was covered by a protocol agreed with the Environment Agency, as set out in the agreed Statement of Common Ground. This informs the air quality chapter in the ES and the environmental permit application submission. The overall methodology is therefore consistent between the DCO and environmental permit applications, albeit with a slightly different way of reporting those effects in each case. Emissions will be controlled through the environmental permit which will set the emission limit values and monitoring requirements based on BAT. The Applicant will continue to liaise with the Environment Agency on the determination process of the environmental permit.
- 5.7 ExA sought clarification that this would not be controlled via DCO and not duplicate between the two regulatory regimes.
- 5.8 The Applicant confirmed it was not appropriate to duplicate regulatory controls. The DCO process allowed for assessment and confirmation of how the effects would be controlled which in this case would be via the environmental permit.

- 5.9 The ExA identified that Natural England had raised an outstanding issue regarding diffusion tube data and an update of the air quality chapter in the Environmental Statement.
- 5.10 The Applicant confirmed this has been discussed with Natural England and that the diffusion tube monitoring data was available. The Applicant had updated the HRA report submitted at Deadline 1 to take account of that diffusion tube data in the updated assessment. This data did not change any findings or conclusions already made in the air quality assessment and for this reason had proposed to not update the air quality chapter itself. Also the proposed design changes will covers air quality effects within the ES Addendum and reference to the diffusion tube data will be made in that Addendum.
- 5.11 The ExA agreed with that approach or the alternative was to confirm amendments would be made to the air quality chapter. The ExA confirmed this was for the Applicant to take a view on. The ExA asked whether the scheme changes had any implications for the HRA report.
- 5.12 The Applicant confirmed that the proposed changes do not affect the HRA; the ES addendum will set out where the scheme changes potentially have any effects.

6 Geology, Hydrology and Land Contamination

- 6.1 The ExA asked for an update on Keadby water cooling options.
- 6.2 The Applicant confirmed that the draft DCO preserves two options for water supply under Works No. 4, with Work 4A which is the canal option and Work 4B which is the River Trent option. They are alternatives. The preferred supply is the canal from Applicant's perspective. In order to draw from the Canal there are some steps to be taken. The Canal is fed from the River Don. The Canal and River Trust (the **Trust**) has abstraction licences from the Environment Agency to abstract water from the river to feed the Canal. SSE has an agreement with the Trust to take water from Canal for use in the Keadby 1 and 2 generating stations. The Trust will need to revise its abstraction licence with the EA as well as the commercial arrangements with the Applicant. On 3 December 2021, the Trust made an application to revise its licence with the Environment Agency; that application considers the possible environmental effects of works needed to facilitate that abstraction. Those works include works to the Keadby Lock to raise the gate bar to retain water that currently overflows the gate bar. Keadby Lock is a scheduled ancient monument.
- 6.3 The Applicant confirmed that the nature of the works consists of placing a wooden plank across the aperture in the lock gate to control flow of water. That part of the lock gate is not a designated feature in its Scheduled Ancient Monument (SAM) status, but an application will be needed for a SAM consent and a pre-application screening request has been submitted to Historic England by the Trust.
- 6.4 In terms of assessment of effects there won't be any impacts on the River Don because there is sufficient water available in the Canal to supply the demand of the Proposed Development based on current water volumes provided that the work on the Keadby Lock gates is undertaken. The Applicant does not anticipate any significant effects associated with those works as they do not directly affect the SAM designation. The Applicant recognises that the works required for the abstraction licence could be regarded as part of the project as a whole. The Applicant proposes to cover these impacts in a separate ES addendum intend to submit at next deadline.
- 6.5 The Applicant said that (1) the ExA can be content on the basis of the information the Applicant will submit at the next deadline that there is no impediment to the scheme, as the ExA can conclude there is a likelihood that the SAM consent will be granted, and (2) we will be submitting the ES addendum

- on this issue in order to ensure that the ExA has an assessment of the effects of the project as a whole.
- 6.6 The Applicant confirmed that works to be carried out to the lock gates are works which will fall to the Trust – it is their application for SAM consent. So we are not seeking that consent through the DCO, but seeking to give comfort likelihood that consent will be forthcoming and to provide an assessment of the effects.
- 6.7 The Trust confirmed it would be looking to vary the existing abstraction licence and that that application has been submitted to the Environment Agency. The Trust confirmed these arrangements would be secured by a commercial agreement, noting that there is one in place for Keadby 2 but likely require a new agreement for Keadby 3. The Trust confirmed it has been working positively with applicant for 18 months to reach agreement to allow abstraction by Applicant from the canal.
- 6.8 The ExA asked that progress be made on commercial agreement in order for this to be covered in his report. The ExA asked on the likelihood of reaching commercial agreement prior to close of examination.
- 6.9 The Applicant requested it revert on this point at deadline 5.
- 6.10 The ExA agreed and also noted it would request the Trust to provide a response on this at Deadline 6.
- 6.11 The ExA referred to representations made by North Lincolnshire Council (**NLC**) REP 2-015 and UK Health Security Agency (**HSA**) Rep 3-027; to explore why any further assessment of contaminative risk of ground gases and risk assessment would not be carried out until detailed design stage.
- 6.12 The Applicant confirmed that further discussions have since taken place with NLC and the HSA, with SoCGs being in place with both entities which sets out the position. In terms of the issue on ground gas concerns, the Applicant considered this had been raised as a consequence of the use of the term "landfill". The Applicant explained that parts of the site were in close proximity to ash deposited from when the coal fired power station was operated. This ash is low risk in terms of the formation of ground gas. The ash deposits were not comparable to a municipal waste landfill where ground gas generation would be a significant concern. The Applicant was comfortable, based on its knowledge of existing conditions of site, that risk from ground gas is low. This is the position reported back to HSA and reflected in SoCG.
- 6.13 The Applicant confirmed it has proposed a Requirement to undertake contaminated land assessment prior to construction to provide further reassurance on this point.
- 6.14 The ExA asked NLC if it had anything to add.
- 6.15 NLC confirmed that subject to sufficient ground investigation works and gas monitoring prior to commencement of any works it had nothing further to add at this time.
- 6.16 The ExA referred to the SoCG with Severn Trent Water (REP-020) and requested an update on the foul water pipeline.
- 6.17 The Applicant confirmed that it has provided a plan/drawing to Severn Trent and will submit this at deadline 5.

- 6.18 The ExA noted the selective catalytic reduction of flue gases and the need to ensure this meets with BAT, however the ExA asked how he could be confident (if the environmental permit is not in place) that the required mitigation can be delivered.
- 6.19 The Applicant confirmed the HRA took that into account. The Applicant explained that it has to meet legislative limits for the emissions of nitrogen oxides from the generating station as a Large Combustion Plant and that SCR may be required to achieve this; in addition the use of SCR reduces the concentration of nitrogen oxide entering into the carbon capture absorber which is desirable since that reduces degradation of the amine solvent and consequently improves capture efficiency and reduces waste formation. Natural England raised the question as to whether we have additional controls of ammonia releases designed and to be installed specifically for protection of habitats, or whether these are for the protection of human health or something else. The use of SCR to control emissions of nitrogen oxides will be managed through the environmental permit, but is underpinned by the Large Combustion Plant legislation. Therefore the use of SCR can be considered to be an embedded mitigation measure for the purposes of the HRA, rather than a habitat-specific mitigation measure, although use of any additional abatement measure to control ammonia releases from the use of SCR for example could not.
- 6.20 This has been considered in the supplementary information provided in the updated HRA – where any additional control on ammonia releases that is not needed for other purposes has been treated as a mitigation measure for the protection of habitat sites and therefore not taken into account in the HRA screening, but instead considered in the second stage of assessment to inform the HRA.
- 6.21 The ExA asked why no receptors have been identified for dust monitoring.
- 6.22 The Applicant confirmed the CEMP is currently a framework CEMP so these are not prescribed yet but will be agreed with local planning authority. At the moment is it unknown what works will be undertaken when and in what order – so these will be agreed at the appropriate time with local authority.
- 6.23 The ExA requested that at deadline 5 the Applicant identify how it will agree those locations with the local planning authority and cross reference in the CEMP.
- 6.24 The Applicant confirmed it will clarify where that will be agreed.
- 6.25 The ExA notes the Applicant's response to the ExA question 1.2.3 and that part 2 of that question discussed monitoring but not mitigation. The ExA asked for confirmation as to how it could be confident the mitigation could be delivered if secured via a different regime.
- 6.26 The applicant explained that in confirming the approach to the mitigation of amines releases to the atmosphere, assurances can be provided at this stage, that the Applicant has assessed conservative levels of amines and that these conservative levels have been used in determining the appropriate stack height. In terms of Environmental Statement, no significant effects are identified in the ES. The setting of limits is for the Environment Agency to prescribe. The Applicant suggested it continue to engage with Environment Agency on the permit determination and provide any updates to the ExA.
- 6.27 The ExA agreed the Applicant continue to liaise with EA on progress, noting that it was unlikely they will be in a position to respond on permit prior to close of the examination but that any update would be of assistance.
- 6.28 The ExA asked whether the scheme change application would affect the abnormal indivisible load route.

- 6.29 The Applicant confirmed this would be covered in the ES addendum to be submitted at deadline 5 – it was not considered this would alter previous assessment.

7 Noise and Vibration

- 7.1 ExA asked how noise complaints would be handled, processed, monitored and controlled.
- 7.2 The Applicant referred the ExA to the draft DCO requirements relating to noise R28 and R29 – and noted that they do not specifically address noise complaints. The Applicant explained that the CEMP framework, which is a document which will lead to the discharge of Requirement 17 which deals with CEMP – includes a scheme to advise local residents of noisy works and monitoring of noise and complaints. Similar requirements are included in the construction traffic management plan secured by R25. There is also the liaison committee required by R26. Further, the environmental permit usually includes as a standard feature conditions relating to the management of complaints and prevention of nuisance. There will exist therefore a number of mechanisms for managing public complaints.
- 7.3 The ExA asked the Applicant to explain the approach to assessment of effects of underwater sound effects on fish in River Trent and adjoining watercourses and how effects would be mitigated.
- 7.4 The Applicant confirmed that it had provided additional information in its response to Natural England representation. Document App083 is where such effects are assessed. The Applicant had identified the potential species to be present and the most relevant sound thresholds, then considered worse case. These included the effects of activities undertaken and piling which was the greatest concern. There is a seasonal restriction on use of piling works in river and depending on type of piling use. The Applicant confirmed the effects on fish species can be controlled and mitigated such that no significant environmental effects.
- 7.5 The ExA asked if that assessment had any implications for the HRA.
- 7.6 The Applicant confirmed there was no need to update it.
- 7.7 The ExA asked for an update, in the absence of the MMO, on potential scale of underwater impacts.
- 7.8 The Applicant confirmed further discussions with MMO had been undertaken with regards to issues raised in their representation and a SOCG was being put in place with them. The Applicant considers it can demonstrate this issue has been addressed to their satisfaction.

8 Biodiversity, ecology and the nature environment

- 8.1 The ExA noted the Environment Agency comments on grey water and asked the Applicant explain why R13 provides adequate control.
- 8.2 The Applicant explained that further design work was needed and expected the same approach to managing foul water would be taken. At this stage, whilst construction works are on-going, the intention is to tie into existing infrastructure. It was agreed R13 could be discussed further at the DCO issues hearing.
- 8.3 The ExA asked if anything was proposed to amend the draft DCO to deal with water pollution prevention in the Humber estuary, minimise loss of bank habitat and replenishment of silt.

- 8.4 The Applicant explained that based on assessment work undertaken and clarifications to Natural England, it was considered that the effect on bank habitat is minimal based on extent of habitat being disturbed; the Applicant had reached agreement with Natural England and this was reflected in SoCG. No further additional measures or controls for bank habitat based on works proposed were considered necessary.
- 8.5 The ExA asked for any update on habitat baseline and BNG.
- 8.6 The Applicant confirmed this was not yet submitted, primarily because the proposed scheme changes will have slight change to habitats potentially impacted and the very slight changes to order limit in places. Therefore the Applicant proposed to submit single update once change application submitted. Submit at deadline 5.
- 8.7 The ExA requested the Applicant keep the HRA document under review and confirm at each deadline either identify changes to the submitted HRA report or confirm no changes made.
- 8.8 The Applicant confirmed it would do this.

9 Cultural heritage

- 9.1 The ExA sought an update to the concerns raised by NLC in its local impact report, particularly on the progress of surveys/timescales and submission of evidence regarding archaeology.
- 9.2 The Applicant considered that the level of detail in the assessment provided was proportionate to the assets, however NLC wanted additional intrusive assessment to be undertaken to inform the DCO application. At deadline 2 Historic England said it supported the works NLC had asked for. The timetable to do the those works remains on track and in accordance with that timetable was due to commence work on site on 14 March; those works have commenced (today). The works are expected to last 4-6 weeks. The proposed timetable said it would be 26 April (which aligns with deadline 6) by when we expected to be able to submit an interim report and findings to the local authority. The Applicant expected to submit the final report and findings in mid-May.
- 9.3 The Applicant confirmed it will keep the ExA informed of programme and any delays. The trial trenching would be completed prior to construction and in accordance with Written Scheme of Investigation agreed with the NLC. NLC is involved with this; results of trial trenching will be shared with and understood by the Council as they emerge, and receiving weekly progress reports during trial trenching, this will inform any mitigation required and an updated WSI can be submitted prior to close of examination. The Applicant confirmed that there was no evidence to suggest there were any assets of higher value or importance than those assessed. Further the land in question was being used for construction laydown so there is scope for avoiding any particularly sensitive area.
- 9.4 The ExA noted that it was important to work actively with the Council and to keep Historic England fully informed.

10 Landscape

- 10.1 The ExA asked if there was any impact on LVIA in light of the change request.
- 10.2 The Applicant confirmed that there was no change to viewpoints but that it would be submitting an ES addendum. This will assess from viewpoints and check assessment noting any differences. The overall judgement is that there is no change in the overall nature of the views and no increase in level of impact on receptors and therefore no change to level of significant on landscape or visual receptors.

- 10.3 The ExA noted to Schedule 11 had made changes to the height of gatehouse so now clear it is a single storey structure.
- 10.4 The Applicant confirmed this was an error around representation of mAOD in the parameters table.
- 10.5 NLC confirmed it was content the reduced height of the building had been addressed.

11 Transport and Traffic

- 11.1 The ExA asked for confirmation that the base line data (as raised in first round of questions) remains best representative data still available and therefore the Applicant is confident it is robust and measures accurate.
- 11.2 The Applicant explained that the challenges to gathering additional data is set out in the relevant ES chapter response. The same approach has been the applied approach on other projects including DCO and other planning applications. The assessment allows for increase in traffic year on year so do recast traffic to future baseline which is a standard approach for projecting traffic increases on network. Growth is therefore calculated/factored into assessment. The Applicant confirmed that it engaged with the local authority on approach and agreed that position with them.
- 11.3 The ExA noted that the Applicant was confident its assumptions were robust and appropriate.
- 11.4 The Applicant confirmed that is its position. Traffic volumes are still not back to pre-pandemic levels so the data used is still the most robust data source, a degree of conservative assessment/assumptions had been incorporated as to the number of HGVs and vehicles for construction/operational staff accessing the site. The ES chapter, construction effects therefore presents very much the worst case. Have introduced a number of additional requirements relating to construction management vehicle and worker plans with the approach following what has been adopted on other DCO's e.g. Ferrybridge Multifuel 2. The Applicant has consulted with NLC to ensure their concerns are reflected in those management plans and NLC will be responsible for discharging those requirements.
- 11.5 The ExA asked if there was any evidence that traffic is not at pre-pandemic levels.
- 11.6 The Applicant noted it was anecdotal evidence and noted further consideration can be given to this and provides some perspective for the ExA.
- 11.7 The ExA asked the same question same of NLC as to whether the data remains the best available and if it was satisfied that the TA was robust re transport management and that the proposed measures were adequate and appropriate.
- 11.8 NLC confirmed it agreed with the Applicant's response. At the time the most appropriate approach was to use latest historical data as more normal data of traffic levels and add growth and this was an industry standard approach. Any traffic counts undertaken at time of application would not have reflected traffic flows during the pandemic. NLC confirmed the approach was the most pragmatic and robust approach to assessing traffic flow data. In relation to HGV and construction worker movements – this was based on the construction of a similar nature, including Keadby 2 which is adjacent site to this and NLC was comfortable with that approach. The majority of traffic will access Site from the A18, this was capable of accommodating the temporary increase in traffic as demonstrated by Keadby windfarm Keadby 2 and adjoining development sites. This also minimised impact on residential communities. Minimal mitigation measures were required and these are being secured through a

- Framework Construction Workers Travel Plan and Construction Environmental Management Plan, this would ensure construction traffic adheres to main network as agreed and routes for abnormal loads.
- 11.9 ExA asked for NLC's views on the Applicant's anecdotal view that flows were not back to pre-pandemic levels.
- 11.10 NLC confirmed its views were anecdotal also, there is a significant fluctuation in traffic flows generally. NLC is to review if it has any data along A18 primarily relating to speed monitoring which may indicate more recent traffic flows.
- 11.11 ExA noted this as an action point and noted it would helpful to know if same as pre pandemic, lower or influenced by pandemic.
- 11.12 The ExA asked for any update on the A18 improvements and departure from Design Manual for Roads and Bridges.
- 11.13 The Applicant provided an overview as to its use of the A18, noting it has plenty of experience to draw on from the Keadby 2 project which used the A18 access for construction purposes. Keadby 3 consulted on A18 as preferred option statutory pre-consultation. Sought to do this providing resilience for the construction schedule. It also reduces traffic within the village of Keadby, also providing background to why it was selected.
- 11.14 The Applicant confirmed in relation to the junction improvements, because this will be an access for construction traffic it wanted to make turning lane – it was considered this was an appropriate measure for access of A18.
- 11.15 On the issue of compliance with design manual for roads and bridge (DMRB) the Applicant explained that the road is bounded on each side by existing drains and rivers, this restricts road widening. The Applicant has undertaken swept path analysis to ensure it is suitable for HGV and cars and has engaged with NLC on the proposed approach and to ensure it meets with requirements. The Application confirmed it has provided a technical note to LA and will continued to have a dialogue with NLC in order to reach agreement in SoCG.
- 11.16 The intention is to reduce the speed limit during the construction phase to 40mph as this is considered safer and that is the approach set out in our application.
- 11.17 ExA clarified that the assessment is based on the current road speed of 60mph whereas reduced would be 40mph and asked if that would that bring it into the prescribed requirement of DMRB.
- 11.18 The Applicant confirmed that was its understanding.
- 11.19 NLC confirmed the Applicant had sent through additional information and this was with the highway design team for review. NLC would follow this up.
- 11.20 In relation to the speed limit NLC confirmed it is currently a temporary 40mph speed limit within vicinity of site access for Keadby 2 power station and that it expects that to continue or be reinstated for Keadby 3. NLC stated it was reluctant to see the speed reduced as permanent arrangement due to nature of the road – straight long road. NLC acknowledged it was one to continue to dialogue with Applicant.
- 11.21 The ExA asked that if the speed limit reverts back to 60mph following completion of construction – would the access still not fully comply with the DMRB.

- 11.22 NLC confirmed this would be a minor relaxation of the standard and would follow up with design colleagues need to come back on that.
- 11.23 The Applicant confirmed that was its understanding. If the speed limit reverts to 60 mph then it will need a minor relaxation approved by highway authority.
- 11.24 The ExA asked whether the change application still required Bonnyhale Road for abnormal indivisible loads (AIL).
- 11.25 The Applicant identified the three main routes for AIL and confirmed that Bonnyhale Road access allows access where the weight restriction on Pilfrey bridge prevents use. The Applicant confirmed it depends where the loads originate from. The identified AIL routes allows a combination of access depending on load, size and weight and position of origin.
- 11.26 NLC confirmed that its preference is that majority of construction vehicles access via A18 and via railway wharf with Bonnyhale Road as last option, but that it accepted Bonnyhale Road is a suitable alternative for a minimal number of movements to facilitate development.
- 11.27 The Applicant agreed and confirmed it was an alternative option, not a preferred one in order to minimise disruption to residents.
- 11.28 The ExA asked if the potential change request has any implications re navigational safety.
- 11.29 The Applicant confirmed the proposed change allows the application to be consistent with the current navigational risk assessment – so no further changes are needed.
- 11.30 The Trust confirmed it was happy with Applicants description.

12 Waste

- 12.1 The ExA referred to the waste technical note [OD-003] and asked if there was any evidence that the types of percentage of waste anticipated will (a) capable of being disposed of locally (hazardous and non-hazardous (b) and where relying on national disposal routes, does national infrastructure have capacity alongside current and predicted waste streams.
- 12.2 The Applicant confirmed that this was the first of a kind project so the estimated volumes of hazardous and non-hazardous waste to be disposed of were indicative levels. As detailed design progresses this will optimise waste streams. A conservative assessment was therefore presented in the waste technical note and had assessed hazardous and non-hazardous disposal capacities regionally and locally.
- 12.3 The Applicant explained that as this was the first of a kind nature of development, waste treatment availability was still in its infancy and will adapt as other carbon capture plants come forward. Waste treatment capacity will change as the industry changes and develops.
- 12.4 As carbon capture develops there will be engagement with the wider supply chain including waste treatment to ensure it is available for carbon capture projects.
- 12.5 The ExA asked whether the HGV traffic movements assessed in terms of main operational transport assessment which arise from waste disposal.

- 12.6 The Applicant confirmed that the assessment does assume HGV movements associated with operational traffic including conservative number of movements for removal of waste by road. Construction traffic is significantly higher than operational traffic – so no further controls are required on operational traffic.
- 12.7 The Transport Assessment is not particularly sensitive to the locations of where waste treatment facilities are located. The expectation is that waste treatment facilities will be developed to support industry as moves forward. Assumed travel miles have been included as part of greenhouse gas calculations. Greenhouse gases associated with traffic have been assessed but are not on same scale as operational emissions from the generating station.
- 12.8 The ExA requested if there is evidence there are no technical barriers. Any evidence submitted to examination that capacity for treatment of 9.1% liquid waste in current system. Like to see some sort of evidence that suggests there is headroom for the 9.1% and 2.9% to be accommodated.
- 12.9 The Applicant confirmed it can provide some additional clarity on that point at Deadline 6.

13 Any other Matters

- 13.1 No other matters.

14 Actions

- 14.1 The ExA summarised the main actions arising and closed the session.

Keadby 3 DCO - Compulsory Acquisition Hearing - 16 March 2022

1 Introduction

- 1.1 The Compulsory Purchase Hearing (CPH) was held virtually on 16 March 2022. The hearing concerns the application made by Keadby Generation Limited (the Applicant) for an order granting development consent for the construction, operation and maintenance on a new gas fired electricity generating station with a gross output of 910 megawatts (MW) and associated works together with powers for the compulsory acquisition of land and new rights and temporary possession of land (the Proposed Development) at Keadby, North Lincolnshire.
- 1.2 The CPH took the form of running through the Examining Authority's (ExA) agenda as published on the NSIP website.
- 1.3 The following parties participated in the CPH
- 1.3.1 The ExA, Mr Christopher Butler.
- 1.4 For the Applicant:
- (a) Mark Westmoreland-Smith, Barrister at Francis Taylor Building;
 - (b) Richard Lowe, Director - AECOM Energy Sector Lead;
 - (c) Colin Turnbull, Partner – DWD;
 - (d) Peter Roberts, Partner – DWD;
 - (e) Adam Schofield, Senior Associate – DWD;
 - (f) Michele Vas, Counsel – Dentons.
- 1.5 The ExA confirmed that the Canal and River Trust, Network Rail Infrastructure and the Environment Agency had confirmed non-attendance. National Grid Venture confirmed it will watch via live stream/digital recording.
- 1.6 The ExA set out the purpose of the hearing was to examine the case for compulsory acquisition, to test and advise the Secretary of State (SoS) whether land/rights sought were required for the proposed development, whether there was a compelling case in public interest and that what is sought is reasonable and proportionate. The ExA would have regard to the relevant guidance, Human Rights legislation including Article 6, 8, 14 and first protocol of Article 1 of the European Convention of Human Rights. It was for the Applicant to justify compulsory acquisition within the legislative framework that reasonable funds were available and there was a reasonable prospect of being secured within timings of DCO.
- 1.7 The ExA confirmed that any written submissions should be based on discussions today.

2 Applicant's Case for Compulsory Acquisition and Temporary possession

- 2.1 The ExA invited the Applicant's overview.
- 2.2 The Applicant confirmed that the starting point was the relevant powers in the Planning Act 2008. Section 120 Planning Act 2008 provides that "*an order granting development consent may make provision relating to, or matters ancillary to, the development for which consent is granted.*" The

- ancillary matters referred to in Section 120 are listed in Schedule 5 and include the acquisition of land, compulsorily or by agreement, and the creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.
- 2.3 Section 122 sets out tests for consideration by the ExA/SoS; a DCO may include compulsory acquisition only if satisfied the following conditions are met: (i) land is required for development to which the development consent relates (ii) is required to facilitate or incidental to that development (iii) is replacement land (which does not apply here).
- 2.4 Two principal tests arising from the legislation:
- 2.4.1 (1) is the land “required”?
- 2.4.2 Guidance related to procedure for the compulsory acquisition of land (DCLG September 2013) states:
- “the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.”* (paragraph 11)
- 2.4.3 No specific legal guidance but in the context of the PA 2008 but the Court of Appeal has considered its meaning in the context of a power of compulsory purchase - section 226(1)(a) of the Town and Country Planning Act 1990 (“TCPA 1990”) (prior to its amendment by the Planning and Compulsory Purchase Act 2004 when it section 226(1)(a) read *“suitable for and required in order to secure the carrying out of development, re-development or improvement”*) in Sharkey v Secretary of State for the Environment and South Buckinghamshire District Council (1992) 63 P. & C.R. 332.
- 2.4.4 McGowan LJ giving the leading judgment endorsed the approach taken by the judge below stated:
- “I agree with Roch J. that the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word “desirable” satisfactory, because it could be mistaken for “convenient,” which clearly, in my judgment, is not sufficient. I believe the word “required” here means “necessary in the circumstances of the case.”*
- 2.4.5 The Applicant, Colin Turnbull, later explains the approach to land take and why we have taken the minimum amount of land necessary (agenda item (5)).
- 2.4.6 But suffice to say for now – that when you look at the Works Plans and the two key plans which overlay all of the works numbers you can see that the land is tightly drawn around the works areas and it is of course concentrated around SSE works and land.
- 2.4.7 The next statutory test (2) is whether there is a compelling case in the public interest.
- 2.4.8 Paragraph 13 of the Guidance states:
- “For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always*

taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss."

2.4.9 The Guidance supplements this by setting out a number of general considerations (paragraphs 8-10) which require the following to be taken into account:

- (a) Alternatives: paragraph 8 states: "*The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored*".
- (b) The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire.
- (c) They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.
- (d) Human Rights: The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

Powers sought

- 2.5 Article 18: General powers of compulsory acquisition where other powers (such as, inter alia, the acquisition of new rights, overriding of rights, acquisition of subsoil only or temporary occupation) would not be sufficient or appropriate to enable the construction, operation and/or maintenance of the Proposed Development.
- 2.5.1 Article 19: The Applicant relies upon Articles 19 to override easements and other rights to facilitate the construction, operation and/or maintenance of the Proposed Development.
- 2.6 Article 21: The Applicant relies upon Article 22 for the creation of new rights as well as the acquisition of existing rights to enable the construction, operation and/or maintenance of the Proposed Development.
- 2.7 Article 25 allows the Applicant to acquire interests in the subsoil and/or airspace where this is considered sufficient to enable the construction, operation and/or maintenance of the Proposed Development without needing to acquire the entirety of the freehold interest.
- 2.8 Temporary possession (articles 28 and 29): Article 28 is relied upon by the Applicant to take temporary possession of land for the carrying out of the Proposed Development and Article 29 is relied upon for the taking of temporary possession for the purposes of maintenance.

Justification

- 2.9 Compulsory purchase powers are required in order to provide certainty that the Applicant is able to construct, operate and maintain the Proposed Development and thereby release the resultant public benefits which are considered to be significant.
- 2.10 The Applicant has considered alternatives to the exercise of compulsory purchase powers but, in the absence of such powers, there would be no certainty that the Proposed Development would be deliverable.

- 2.11 The Applicant has also considered alternative solutions in the Alternatives chapter of the ES [APP-049] during the evolution of the Proposed Development and design process. However, none of these alternatives would provide comparative compelling benefits in the public interest to the Proposed Development and were less desirable having regard to environmental and technical issues including contiguous space availability and the presence of existing infrastructure.
- 2.12 We have been actively engaging with landowners with the aim of securing voluntary agreements in place of the need for compulsory purchase powers. The Applicant, Mr Roberts, will explain what has been done during the course of the morning. This approach is in accordance with paragraph 26 of the Guidance. Whilst some progress has been made, compulsory purchase powers remain necessary.
- 2.13 The principal justification for the use of powers of compulsory acquisition arises from the following, that the Proposed Development:
- meets an established urgent need for new energy infrastructure;
 - is equipped with carbon capture plant on its full generating capacity from the outset;
 - will be a key enabler of a wider carbon capture, usage and storage network, the development of such networks being supported by recent government policy;
 - is a form of economic development that is suitable in its local context;
 - minimises or mitigates adverse impacts to an acceptable degree;
 - is compliant with the National Policy Statements (NPS) EN-1, NPS EN-2, NPS EN-4 and NPS EN-5 and in accordance with other decision-making factors specified in Section 104 of the 2008 Act.
- 2.14 EN-1 confirms the need that exists for all types of nationally significant energy infrastructure, including new fossil fuel generating stations that are carbon capture ready (CCR). EN-1 makes it clear that the SoS should assess applications on the basis that this need, and its scale and urgency, has been proven.
- 2.15 The Applicant considers that the Proposed Development will make a major contribution toward addressing the need that exists for new electricity generating capacity in the UK and it will contribute significantly to the security, diversity, decarbonisation, and resilience of UK electricity supplies.
- 2.16 In addition, the Proposed Development goes beyond the carbon capture readiness requirements of EN-1 and EN-2 by incorporating carbon capture plant from the outset, to provide a significant amount (910MW) of reliable and dispatchable low carbon electricity generation, capable of capturing around 2Mt CO₂e per year from the mid to late 2020s (one fifth of the national target in the Energy White Paper), facilitating and connecting into a wider Carbon Capture Utilisation and Storage (CCUS) network, and thereby enabling the significant regional and national economic benefits of the Zero Carbon Humber cluster to be realised while contributing substantially to the national need to decarbonise power and industry and achieve statutory Net Zero targets.
- 2.17 There is therefore a clear and compelling national need for the development of a new carbon capture equipped gas-fired electricity generating station and its associated development, and the Applicant has selected an acceptable Site on which to develop this type of infrastructure for appropriate reasons.

- 2.18 Principle supporting documents for compulsory acquisition are the Statement of Reasons, the Funding Statement and the Book of Reference, the Applicant referred to the relevant sections of each document.
- 2.19 The ExA asked the Applicant to set out to the Examination the relevant Human Rights considerations particularly Article 1 of the First Protocol, Article 6 and Article 8.
- 2.20 The Applicant confirmed that Article 6 is the right to a fair trial. The structure of the Planning Act 2008 regime allows for full participation for those affected by compulsory acquisition, including attendance at the CPH, which ensures a fair process for the purpose of Article 6 rights.
- 2.21 Article 8 is the right to private life. A1P1 protects property. These are both qualified rights and interference can be justified so long as it accords with the law and is proportionate and necessary.
- 2.22 The Applicant confirmed that (a) any interference would necessarily accord with the law as the development consent is a legal instrument, (b) very significant public benefits would be delivered and (c) those who are affected will be compensated which is an important factor to weigh in the balance when considering human rights issues. The Applicant noted that the main interests affected were commercial interests and compensation aligns well with commercial interests. Taking all this together, the interference is legal, proportionate and justified.
- 2.23 The Applicant also later confirmed that it was not subject to the Public Sector Equality Duty.

3 Individual objections, issues and voluntary agreements

- 3.1 The ExA confirmed that as no third parties were appearing he requested the Applicant provide update with progress made on these parties.

4 Book of Reference, Statement of Reasons, Land Plans, Diligent Enquiries and Updates

- 4.1 The ExA noted an update has been provided with affected persons in Rep4-008 submitted at deadline 4. The ExA asked for a further summary on progress made.
- 4.2 The Applicant confirmed that all parties identified in the Book of Reference have been consulted. The Applicant confirmed it had sought to progress voluntary terms, the current position is:
- (a) that 8 parties positioned along northern outfall pipe have been provided with proposed deeds and have instructed solicitors;
 - (b) in 2 cases, the Applicant has issued proposed deeds and is waiting for affected parties' solicitors;
 - (c) heads of terms had been issued but not finalised with Severn Trent, Mr Strawson and Network Rail;
 - (d) heads of terms have been agreed with Belton Wright;
 - (e) broad principles have been agreed with 8 parties but compensation remains unresolved;
 - (f) there are 3 parties where DCO plots only include parties with apparatus – BT, National Grid and Severn Trent;

- (g) there are 6 parties who have no compensatable interest but take access via Chapel Lane an adopted road, their land interests are located south of the level crossing at Chapel land which is then private road. Whilst the DCO does not include this land the parties have been engaged with as they take access over Chapel Lane; and
- (h) there are 4 parties who do not have any interest in the affected land – Mammoet, Metrobank, RES Development and O. Roe.
- 4.3 The Applicant confirmed that principally there are two issues which have hindered reaching final agreement, namely (a) failure of landowners to respond to the Applicant's engagement or (b) a ransom position for compensation payments which the Applicant considers are not in accordance with the compensation code. ADR could be used to resolve or the Upper Tribunal can determine compensation, but until agreement is reached the Applicant needs to retain the ability to exercise compulsory acquisition powers.
- 4.4 The ExA confirmed the summary was helpful and asked if there is a realistic possibility of reaching agreement with those seeking ransom position by end of examination.
- 4.5 The Applicant explained that the alternative is to enter into an option agreement with compensation to be agreed and the ability for the parties to go to an arbitrator/independent expert/Upper Tribunal on value.
- 4.6 The ExA asked about the Network Rail interest and asked for clarification that SSE own the bridge but that the Applicant was seeking rights over it.
- 4.7 The Applicant confirmed the bridge was not operational land and not used by NR. The lease is in the name of SSE not Keadby Generation Limited and therefore the Applicant needs rights to go over the bridge including to install possible protection screens if required, and telecoms cable.
- 4.8 The ExA noted the response to Qu 1.6.4 set out the Applicant's approach as to unknown ownerships and requested if any update.
- 4.9 The Applicant explained that in the legal context "diligent enquiries" did not require exhaustive enquiry (*Crown v SoS for Transport ex parte Blakett*) and exercising reasonable diligence was appropriate.
- 4.10 The Applicant confirmed the following had been undertaken:
- (a) Ardent had undertaken site inspections, land registry, pre-consultation notices and made requests for information in relation to all parties possibly having an interest in Order land.
- (b) DWD engaged with all known parties and undertook their own site inspections where it had noted actual occupiers. Further engagement took place and information was requested which led to identification of other parties.
- (c) Dentons undertook a further review of title info and the Book of Reference was updated.
- Accordingly, the Applicant was confident all interests had been identified.
- 4.11 The ExA asked what was meant by "reputed" in the Book of Reference

4.12 The Applicant confirmed that the use of "reputed" relates to parties who have been observed as being in occupation of land or claim an interest in land but where there was no evidence of ownership. The term was also used in relation to unregistered land where assumptions were made regarding ownership.

4.13 The Applicant confirmed it will continue to engage and review evidence when made available. However if there was any doubt, it will be for the landowner to demonstrate to the satisfaction of the Upper Tribunal it has the requisite land interest or to make application to land registry for registration of title.

5 How it is intended to Use the Land, whether reasonable alternatives have been explored and rights sought are legitimate, proportionate and necessary

5.1 The ExA asked whether there was any further scope to reduce the land take.

5.2 The Applicant confirmed the Statement of Reasons, Design and Access Statement and Chapter 6 of ES are key documents. Material changes had been made at each stage including reductions in land take. The Land Plans do not include spare or laydown areas. The Applicant also has experience constructing CGGT so has constrained the site to what is needed. There has been a 21% reduction to the order limits since the early stages of the project.

5.3 The Applicant confirmed it had used SSE owned space where possible and used its experience from the construction of Keadby 2; accordingly it is confident the DCO secures the minimum required to construct the scheme and that the land take is justified. Furthermore, part of the Human Rights equation is the fact that there will be payment of compensation for any land take which acts as a motivator for the acquiring authority or developer to minimise land take. That leaves a landowner where its rights in relation to that land not interfered with, any reduction in land take leaves the owner in a better position.

5.4 The Applicant noted that this issue has arisen on other projects but they tend to be highway schemes at preliminary design stage and quite often at that stage the designers of highway schemes may, for example, have construction compounds in a number of places with the intent on making a final decision on the numbers and locations at a later stage of the design – so in that context there is clearly a need to reduce land take. Those circumstances do not apply here save for water abstraction points for Works 4 but this is catered for in the DCO as it prohibits the Applicant from going down both routes.

5.5 ExA requested confirmation that use of temporary powers was also proportionate.

5.6 The Applicant explained that the reason to include temporary possession powers is because it is a lesser interference with the landowners' rights. This gives us the option of lesser interference so additional element to factor in but overall case for CA remains the same.

6 Crown Interests, Statutory Undertakers, Special Category Land, Compensation, Funding and other matters

6.1 The ExA asked for an update on Crown Interests.

6.2 The Applicant confirmed that a new easement was required for the outfall pipe but no works were to be carried out to this and as this was required for the river abstraction option it would not be needed if the canal option proceeds. The Applicant also confirmed the position in relation to plot 136 and that the extent of the interests in relation to this plot was still being investigated.

- 6.3 The Applicant confirmed it would need a separate arrangement with the Crown to use quay and that from discussions with the Crown, it was content with the principle but with consideration to still be discussed.
- 6.4 The ExA asked for any comments/observations relating to questions raised of National Grid.
- 6.5 The Applicant updated the position relating to discussions with National Grid and confirmed a meeting was arranged. The Applicant's intention is to locate and avoid interference with National Grid equipment, it was anticipated that compulsory acquisition was only needed if unknown apparatus cannot be avoided or not needed.
- 6.6 The Applicant then provided a summary of the current position with Network Rail and Northern Powergrid.
- 6.7 The ExA requested any further update on those discussions be provided for Deadline 5.
- 6.8 The ExA confirmed there was no special category land required.
- 6.9 The Applicant provided an update on compulsory purchase in light of the scheme change requests and confirmed that negotiations were being progressed with affected parties. The main parties affected were the Crown, Railway Wharf Keadby Ltd, the Environment Agency and National Grid. The changes to the haul road affected land already within the ownership of SSE.
- 6.10 The Applicant confirmed that overall no new parties were affected and the effects of the scheme change were simply being rolled into existing discussions.

7 Any other business

- 7.1 The Action points were summarised and the hearing was closed.

Keadby 3 – Issue Specific draft DCO Hearing - 17 March 2022

1 Introduction and Participation

- 1.1 The Issue Specific Hearing (ISH) on the draft Development Consent Order was held virtually on 17 March 2022. The ISH concerns the application made by Keadby Generation Limited (the Applicant) for an order granting development consent for the construction, operation and maintenance on a new gas fired electricity generating station with a gross output of 910 megawatts (MW) and associated works together with powers for the compulsory acquisition of land and new rights and temporary possession of land (the Proposed Development) at Keadby, North Lincolnshire.
- 1.2 The ISH took the form of running through the Examining Authority's (ExA) agenda as published on the NSIP website.
- 1.3 The following parties participated at the ISH:
- 1.3.1 The Examining Authority represented by Mr Christopher Butler.
- 1.3.2 For the Applicant:
- (a) Mark Westmoreland-Smith, Barrister at Francis Taylor Building;
 - (b) Kyle Murchie, Senior Grid Services Engineer, SSE plc;
 - (c) Richard Lowe, Director, AECOM Energy Sector Lead;
 - (d) Colin Turnbull, Partner, DWD;
 - (e) Michele Vas, Counsel, Dentons
- 1.4 The following parties participated in the ISH:
- 1.4.1 North Lincolnshire Council (NLC) represented by Andrew Law, planning officer.
- 1.4.2 National Grid Carbon plc represented by Sarah Clark, partner, BDB Pitmans.
- 1.4.3 Client Earth represented by Sam Hunter Jones.
- 1.5 The ExA introduced the purposes of the ISH and noted that there was no representation by the Canal and River Trust, Network Rail or the Environment Agency.

2 Articles and Schedules of the draft DCO

- 2.1 The ExA asked for a high level review of the DCO.
- 2.2 The Applicant provided an overview of the DCO as follows:
- (a) As a starting point, the DCO is based on the model provisions order notwithstanding that this no longer formally exists. The Explanatory Memorandum [APP006] submitted as part of the application is a requirement under regulation 5(2)(c) the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (IPC Regs). This explains the provisions of the draft DCO and notes where there is precedent for the approach in common with other DCOs. It draws on recent confirmed DCOs which deal with

the same type of energy generating infrastructure, for example West Burton C and Eggborough, amongst others are given as examples used.

- (b) The DCO seeks authority for the construction and operation of a gas fired equipped generating station; it meets the threshold for a NSIP as laid down in S14(1)(a) and 15(2) of Planning Act 2008. The thresholds being that it is on shore, in England and above 50 megawatts. Under S31 of the Planning Act 2008 a development consent is therefore required.
- (c) The DCO contains 46 operative provisions and 13 schedules.
- (d) Part 1 of the DCO contains preliminary matters. Part 2 contains the operative part being the principal powers. Articles 3 to 5 provide consent to allow the proposed development to be constructed, maintained and operated. Articles 6 and 7 identify who has the benefit of powers and how they may be transferred. Article 8 contains which statutory provisions are modified by the Order which is permitted by S120(5) of the 2008 Act.
- (e) Part 3 deals with Streets. Articles 9 to 13 provides for the undertaker to carry out street works, improve access/alter layout of streets. These provisions are to be found in virtually all DCOs.
- (f) Part 4 comprises the supplemental powers; in this case Article 14 relates to the discharge of water, Article 15 confers authority to enter land for survey/investigation, allowing preliminary works and investigations to be undertaken before works commence. Article 16 is important because of its interaction with the canal and river, and enables interference on temporary basis. Article 17 deals with the use of private roads for construction. Article 16 interrelates with Requirement 25 which secures the construction traffic management plan. One of the details for that Requirement is a wharf management plan to be consulted on with the Canal and River Trust.
- (g) Part 5 comprises powers relating to compulsory acquisition within Articles 18 to 32. They provide for the undertaker to compulsorily acquire the order land, necessary rights over it and to use temporarily part of order land for construction and maintenance (Articles 27 and 28).
- (h) The Applicant highlighted Article 21 which contains bespoke wording for the proposed development. Article 21(3) ensures once the cooling water option (i.e. river or canal abstraction) has been selected, the undertaker is obligated to inform the relevant landowners not affected by the chosen option, that their land is not required and cannot then be compulsorily acquired. The same approach is adopted relating to the routing of the 132v cable connection.
- (i) Part 6 covers operations. Article 32 prevents Crown rights being affected by CPO. Article 33 provides for the power to fell/lop trees and Article 34 allows protective works to buildings within the order limits.
- (j) Part 7 contains miscellaneous provisions. Article 35 activates protective provisions and Article 36 deals with restoration works; again this contains bespoke provisions relating to the restoration of works required as part of the Keadby 2 consent. Keadby 3 proposes to use the haul road currently used for constructing Keadby 2. Under the DCO this route would be maintained as a haul road and used and restored following completion of Keadby 3. So this article is designed with the unlikely scenario that if Keadby 3 works are not started by the

expiry of this DCO and the haul road is not restored under the Keadby 2 consent, then Article 36 requires the undertaker to nonetheless to restore that haul road.

- (k) Article 39 gives effect to Schedule 13 which contains deemed marine licence. Article 41 relates to certification of plans and the remaining articles are standard. Article 45 guarantees payment for compensation – it provides the ExA and Secretary of State with confidence the undertaker can pay for the land and rights required.
 - (l) There are a series of Schedules – Schedule 1 sets out the authorised developments via the described Works and links to Article 3, which grants consent for the authorised development.
 - (m) Schedule 2 contains the Requirements. Schedules 3 to 5 address matters relating to streets, highways and access alterations. Schedule 6 identifies land over which new rights can be acquired. Schedule 7 contains consequential amendments to the compensation code. Schedule 8 identifies land to be used temporarily for the purposes of Article 27. Schedule 9 contains the procedure for discharging requirements. Schedule 10 contains protective provisions. Schedule 11 contains the design parameters and limits size of components of larger pieces of infrastructure, this is linked to Requirement 5. Schedule 12 identifies the certified documents. Schedule 13 includes the deemed MMO licence which is linked to Article 39.
- 2.3 ExA noted point of reference the contents page goes awry at Article 32, to be picked up in future revision. Question over the title of the Order, bearing in mind name request change does the Order name need to be amended
- 2.4 The ExA asked if Article 3 needed to contain any limits of deviation. The Applicant confirmed it is content that the works plans contain sufficient scope for detailed design and that the proposed development can be built out within the confines of the Order Limits.
- 2.5 The ExA noted that NGC identified in the SoCG it is seeking amended wording to Article 6.
- 2.6 The Applicant (Colin Turnbull) summarised the amendments being sought and confirmed these could be incorporated within the draft DCO.
- 2.7 NGC confirmed wording had been suggested and the preference for this to be included.
- 2.8 The ExA noted the scope of Article 12 seems to be a catch all. The Applicant confirmed that is the intention but it includes a limitation on that power as it is subject to approval and consultation with the relevant Local Planning Authority and Highway Authority.
- 2.9 The ExA asked for any update on archaeology in the context of Article 15.
- 2.10 The Applicant confirmed that while some works were being carried out, it is conceivable further works may be required in relation to archaeology and therefore it would be convenient to have that power, so that the Applicant is not reliant on having to reach agreement with the landowner each time.
- 2.11 NLC confirmed its agreement with that.
- 2.12 The ExA requested the Applicant review the extent of Article 16.

- 2.13 The Applicant confirmed that the protective provisions with the Canal and River Trust prevented the Applicant from activating that power without its consent.
- 2.14 The ExA questioned whether Article 21(3)(a) should refer to Works 3A.
- 2.15 The Applicant confirmed the drafting was correct as drafted as the optionality relates to works 3B. Works 3A is the 400kv connection. Works 3B is the 132v connection, which contains the option of two arms which go north and south for the 400kv.
- 2.16 The ExA raised whether the scope of Article 33 was required.
- 2.17 The Applicant confirmed that the provision was included in the event an AIL route might need works to facilitate access via highway, it was consistent with similar provision on other DCOs.
- 2.18 The ExA requested consideration be given to narrowing the scope of Article 33 if required only for AIL routes.
- 2.19 NLC agreed with this approach.
- 2.20 The ExA raised in relation to Article 36(2) why there was no obligation to maintain.
- 2.21 The Applicant confirmed that the starting point is that the article is seeking to restore land to its state prior to building out of temporary haul road and laydown area. Implementation of that scheme therefore achieves that end. There was no obligation to maintain as the effect of the provision is that the land is put back to the position it was in.
- 2.22 The ExA questioned the need for Article 40 (defence to proceedings in respect of statutory nuisance).
- 2.23 The Applicant explained that these provisions are frequently included, not just in DCOs but also CPO TWAOs in order to provide a defence to nuisance arising from works, this was specifically provided for by Parliament through legislation. Whilst the probability of nuisance occurring is low, it cannot be eradicated. The Applicant confirmed that its statutory nuisance statement APP038 provides the case for these powers and incorporates relevant commitments from the ES.
- 2.24 NLC confirmed it would review any further response provided but noted in principle it had no concerns following clarification given.
- 2.25 The ExA asked for an update on the protective provisions in Schedule 10.
- 2.26 The Applicant confirmed:
- (a) Part 1 contained general provisions for National Grid as electricity and gas undertaker. These were based on protective provisions contained in other DCO's in favour of National Grid. To date no amendments have been proposed by National Grid although it had confirmed these were being reviewed.
 - (b) Part 2 contained protective provisions in favour of the Canal and River Trust. The current draft had been updated through an iterative process with the Trust and it was considered represented and included and amendments and comments made by the Trust, the form was at an advanced stage.

- (c) Part 3 were generic protective provisions in favour of electricity, gas, water and sewerage undertakers; these were based on standard protective provisions found in other DCOs. The Applicant was in discussions with Northern Powergrid to include tailored protective provisions for them. The Applicant has provided standalone provisions to Northern Powergrid, who are to respond on the draft provided.
 - (d) Part 4 contained generic provisions in favour of electronic communications code networks. The Applicant has not received any request to amend these provisions from any affected party.
- 2.27 The ExA asked for confirmation of the position with Network Rail and National Grid Carbon.
- 2.28 The Applicant confirmed in relation to Network Rail, as highlighted in the compulsory purchase hearing, it was not considered the proposals affected Network Rail operational land and clarification was being sought from Network Rail why protective provisions were therefore considered necessary.
- 2.29 In relation to National Grid Carbon (NGC), the Applicant confirmed that proposed protective provisions had recently been provided by NGC and that these had yet to be discussed and reviewed between the parties.
- 2.30 NGC confirmed that it had prepared a draft set of protective provisions and shared a copy of those with the Applicant fairly recently.
- 2.31 The ExA asked how navigational safety will be secured.
- 2.32 The Applicant confirmed that the protective provisions do require that it has to have the consent of the Trust before any interference with navigation on the canal can occur. There is a Requirement which also secures a wharf management plan.

3 Schedule 2 of the draft DCO – Requirements

- 3.1 The Applicant provided an overview of the Requirements and noted the following:
- (a) Requirement 2 provided for development to be commenced within 7 years. Whilst the standard is probably 5 years, the Act does allow an alternative period to be set. The reason for the extended period is that it is a first of kind scheme which brings some complexities relating to financing (competition for funding and procurement). Further, Requirement 33 reflects that the proposed development needs to integrate with the proposed pipeline to ensure which in consenting terms is slightly behind the Keadby 3 DCO.
 - (b) Requirements 3 and 4 relate to providing notice of commencement and completion of commissioning, then the start of commercial use of the development.
 - (c) Requirement 5 secures provisions for detailed design. This is structured around works packages. In the case of Works 2, 3, 4, 5 and 7, the required details include the route and method of underground connections. Importantly for Work No 4, Requirement 5(4) includes the optionality relating to the cooling option. The Requirement confirms Work 4 can commence once written confirmation is provided whether Works 4A or 4B is to be developed. If the canal option is chosen there is the additional requirement for the Applicant to consult with the Canal and River Trust on details to be submitted relating to Work 4A. There is a similar requirement relating to Work 3B. Both of these tie back to Article 21(3) which ensures compulsory purchase of land for the option not selected cannot be

undertaken. Requirement 5(7) is above ground carbon dioxide compression infrastructure. Requirement 5(11) links to Works 1 and 8 which ties to the parameters set out in Schedule 11. Requirement 5(13) requires works to be carried out as per the approved details.

- (d) Requirement 6 deals with the landscaping and biodiversity enhancement and management delivered as part of Works 11A. The wording has been updated to ensure that where biodiversity net gain is to be provided on land not within the Applicant's control then it needs to explain how biodiversity measures will be secured/implemented.
- (e) Requirement 7 (external lighting) was to be updated to include the differentiation for lighting schemes during construction and operation.
- (f) Requirement 16 (archaeology), there are ongoing archaeological works on site. The Applicant considers that can be accommodated within the Requirement in that the results of the current works will reflect details submitted as per this requirement.
- (g) Requirement 17, the plan needs to be submitted and approved and in accordance with the framework plan.
- (h) Requirements 18 to 24 mainly relate to access and protection of highway surfaces, traffic management and laydown.
- (i) Requirement 25 has been updated at the request of the Canal and River Trust to include them as a body to be consulted but only insofar as need to be consulted to the wharf management plan. The Applicant outlined the additional amendments proposed to Requirement 25(2)(c) to address Keadby 2 issues with abnormal indivisible loads turning up outside of usual hours.
- (j) Requirement 26 secured a construction worker travel plan, to secure sustainable modes of travel. Requirement 27 restricted construction hours for the protection of the local amenity.
- (k) Requirements 28 and 29 sought to minimise noise during construction and operation. The Applicant explained the new amendments proposed to include a new element at Requirement 29(5) which included details for a noise complaint and investigation process. If there was a breach of the threshold then this would be referred to LPA, who has enforcement powers.
- (l) Requirement 32 is to ensure the development was CHP ready and to undertake reviews of the ability to sell heat from the facility.
- (m) Requirement 33 prevents commencing development save preliminary works until certain details are in place or have been submitted as set out in Requirement 33(1). The Applicant noted there was a difference in interpretation between the Applicant and Client Earth on this Requirement. The Applicant confirmed that it has been amended to include the ability to carry out Works 9B and 9C.
- (n) Requirement 38, the Applicant confirmed that Requirement 38(3) relates only to noise and vibration and has since been amended to be replaced with "significant environmental effects" so that it includes the broader suite of effects from decommissioning.

3.2 The ExA then raised questions on the Requirements as follows:

- (a) In relation to Requirement 5(4), the ExA requested the Applicant consider clarifying the Requirement so it was clear that the Canal and River Trust would be consulted for Works No. 4A if selected as an option.
- (b) Whether Requirement 5(4)-(10) should have timescales to agree for works to be undertaken. The Applicant noted that Requirement 5(13) requires works to be carried out in accordance with approved details and would confirm the position.
- (c) In relation to Requirement 6 whether the survey works should be no later than 3 years old at commencement of the proposal. The Applicant confirmed it would review.
- (d) In relation to Requirement 6(6) whether any replacement trees should be of similar size. The Applicant confirmed it would review. The Applicant also clarified the proposed amendments to Requirement 6(5) relating to biodiversity provision. Noting the position at present, biodiversity net gain is not yet part of the law but the Applicant is seeking to include enhancement measures.
- (e) Requirement 9 to review whether the requirement needs to include provisions for means of enclosure to be maintained thereafter for duration of development.
- (f) Requirement 12 and 13, to review whether timetable for delivery required.
- (g) Requirement 14(1), Applicant to consider if this requires consultation with the Environment Agency, Canal and River Trust, inland drainage board and the same point arise in Requirement 13(4) & 13(7) relating to the Environment Agency.
- (h) Requirement 16, Applicant to consider if it needs further updating in light of the works currently being carried out.
- (i) Requirement 17(2), the ExA requested that the CEMP include the ground contamination scheme.
- (j) Requirement 25(3), to include monitoring provisions for the construction traffic management plan.
- (k) Requirement 27, the ExA requested that NLC confirm its position on the proposed wording.
- (l) Requirement 28, NLC confirmed it was content with the wording.
- (m) Requirement 32, the ExA queried the meaning of the wording "material additional cost" (Requirement 32(4)(b)). The Applicant confirmed it could remove that wording as the main point of the Requirement is to ensure the Applicant undertakes regular appraisals. The ExA questioned if an offsite provider is identified what mechanism is there within the DCO to install CHP up to the boundary. The Applicant confirmed that the intention is not to seek to include planning powers for that as it is not possible to identify at this stage what is needed for the DCO.
- (n) The ExA noted that it is common practice to only reserve the land, and to commit pipework up to site boundary ready for CHP user to connect directly into. The Applicant acknowledged that that approach has been used on other DCOs. However it is not known where to direct pipework to at this stage. The Applicant confirmed it is seeking to develop the carbon capture plan as integrated development as a whole, looking to optimise the

steam provision on the basis this would provide useful heat for third party users. The Applicant needs to take a similar approach to the carbon capture guidance in terms of retaining the land, and if in a position to identify a third party off site then develop infrastructure.

- (o) Requirement 33, the ExA questioned whether any consent under the Energy Act 2008 will be required and if so should that be listed in Requirement 33(1). The Applicant confirmed it will review, at the moment it was confident and comfortable that the 4 stages in sub paragraphs (a) to (d) prevent the authorised development being commenced prior to the establishment of the network being delivered. The Applicant also explained the link between Works 1C and 7A.
- (p) In relation to the point raised by Client Earth, the ExA confirmed it had read the representation made and the response from the Applicant. Accordingly unless anything further to add then there was no further need to repeat the representations already made. Client Earth confirmed it would put anything further in writing but noted that the Applicant seemed to suggest that carbon capture plant is to be brought into operation at some point in time, not that it has to continue to be operated.
- (q) The Applicant confirmed that the wording relies on Works 1C and 7A being brought into commercial use, but control of operations is controlled by the environmental permit and by despatchable power agreement for which the Government is currently seeking minimum of 90% carbon capture. All of these elements combine to effectively constrain the Applicant from operative the plant without carbon capture. Under the despatchable power agreement, the Applicant is incentivised to capture more than 90. So the commercial arrangements, regulatory arrangements and UKTS will ensure the need to be linked to carbon capture network.
- (r) The ExA noted this was reflective of the Applicant's comments made at deadline 3 and noted that Client Earth made no comments at deadline 4. The ExA suggested Client Earth look to comment at deadline 5 relating to any points made by the Applicant.
- (s) Requirement 36, the ExA questioned the powers and responsibility of the local liaison committee. The Applicant confirmed the purpose of the Requirement was to strike a balance here and provide this as an option to the community. Similar committee arrangements work in other locations, for example the Ferrybridge site keeps local people up to date with construction and operational activities. The Applicant confirmed it has not received any representations on this. The Applicant takes its responsibility seriously in liaising with the community, use of the committee at Ferrybridge is well attended and received well by local community. There are already touch points with the community via the operation of the existing power station; this requirement allows further interaction with community as the site continues to evolve. The Applicant noted that the construction traffic management plan framework in the examination library, includes consultation and planned liaison which refers to the local liaison committee and provides a route for complaints. So there is the beginning of teeth within the CTMP framework.
- (t) Requirement 37, the ExA questioned how will this be measured and monitored regarding success or failure. The Applicant confirmed those sort of metrics and measurements have not yet been developed as they require consultation with the local planning authority and intent was that the plan detailing the arrangements would include that sort of metric. The Applicant is to review the wording.

4 Article 41 of the draft DCO – Certification of Documents

- 4.1 The ExA confirmed and checked that the following documents will be the required certified documents:
- (a) Access and ROW
 - (b) Application guide
 - (c) DAS appendix 1
 - (d) Environmental Statement
 - (e) Combined heat and power assessment
 - (f) Framework CEMP
 - (g) Framework CTMP
 - (h) Framework construction workers travel plan
 - (i) Haul road plan
 - (j) Indicative lighting strategy
 - (k) Drainage plan
 - (l) Land plans
 - (m) Outlined WSI
 - (n) Palfery plans
 - (o) Works plans.
- 4.2 The Applicant confirmed there will be an updated combined heat and power assessment but did not consider this needed to be included for certification

5 Consents, Licences and other agreements

- 5.1 The ExA requested the Applicant provide an update on these.
- 5.2 The Applicant confirmed it is in the process of updating the consent and licences documents. Key updates include:
- (a) Environmental permit – the application to vary the existing permit was received July 21.
 - (b) Canal and River Trust water abstraction – this was discussed at the Issue Specific Environmental Hearing.
 - (c) National grid exit agreement, this is being progressed and the Applicant expects to see an offer shortly.

- (d) MMO licence – updates on this have been discussed.
 - (e) MODA – the application was being considered by National Grid Electricity Transmission.
 - (f) Commercial agreement for 132v cable connection – a formal offer is expected in Spring 2022.
- 5.3 The ExA asked NLC if it was pursuing a S106 Agreement.
- 5.4 NLC confirmed it was not pursuing any legal agreement. The response from the Applicant is noted regarding the benefits from the scheme. The point related to a voluntary fund for the local community which was raised in NLC preparing its local impact report, but was not something NLC was requesting.
- 5.5 The Applicant confirmed this was consistent with the discussion it had had with NLC. The Applicant's position is that we do not consider it to be necessary in this case. The application assessed the environmental effects and seeks to mitigate them together with wider benefits in that economic development brings jobs, wider carbon cluster and continued community liaison.
- 6 Action points**
- 6.1 The ExA confirmed the action points will be provided in a separate note and closed the hearing.