KEADBY 3
CARBON CAPTURE
POWER STATION

A collaboration between SSE Thermal and Equinor

Document Ref: 9.18

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

Applicant's Response to Deadline 5 Submissions

The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Applicant: Keadby Generation Limited

Date: April 2022

DOCUMENT HISTORY

Document Ref	9.18		
Revision	1.0		
Author	DWD, AECOM, Dentons, Ardent, SSE		
Signed	CT	**Date**	April 2022
Approved By	CT		
Signed	CT	**Date**	April 2022
Document Owner	DWD		

GLOSSARY

Abbreviation	Description
ADMS	Atmospheric Dispersion Modelling System
AGI	Above ground installation
AIL	Additional Abnormal Indivisible Load
AQMAU	Air Quality Modelling and Assessment Unit
AS	Additional Submissions
BAT	Best available techniques
CCGT	Combined Cycle Gas Turbine
CCP	Carbon dioxide capture plant
CEMP	Construction Environmental Management Plan
CHP	Combined heat and power
DCO	Development Consent Order
EIA	Environmental Impact Assessment
ES	Environmental Statement
FFL	Finished floor level
FRA	Flood Risk Assessment
HP	High pressure
HRSG	Heat Recovery Steam Generator
MW	Megawatts
MWe	Megawatts electrical
NLC	North Lincolnshire Council
NSIP	Nationally Significant Infrastructure Project
PCC	Proposed Power and Carbon Capture
PINS	Planning Inspectorate

RR	Relevant Representation
SoS	Secretary of State
WFD	Water Framework Directive
ZCH	Zero Carbon Humber

CONTENTS

1.0 Introduction 1
1.1 Overview 1
1.2 The Proposed Development 1
1.3 The Proposed Development Site 3
1.4 The Proposed Development Changes 5
1.5 The Development Consent Process 5
1.6 The Purpose and Structure of this Document 6
2.0 Applicant's Response to Deadline 5 Submissions 7

TABLES

Table 2.1: Applicant's Response to Deadline 5 Submission by Client Earth
Table 2.2: Applicant's Response to Deadline 5 Submission by Denise Steel
Table 2.3: Applicant's Response to Deadline 5 Submission by Marine Management Organisation
Table 2.4: Applicant's Response to Deadline 5 Submission by Pollock Associates Ltd on behalf of Mssrs Strawson and Severn

1.0 INTRODUCTION

1.1 Overview

1.1 This 'Applicant's Response to Deadline 5 Submissions' document (**Application Document Ref. 9.18**) has been prepared on behalf of Keadby Generation Limited ('the Applicant') which is a wholly owned subsidiary of SSE plc. It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under Section 37 of 'The Planning Act 2008' (the '2008 Act').

1.1 The Applicant is seeking development consent for the construction, operation and maintenance of a new low carbon Combined Cycle Gas Turbine (CCGT) Generating Station ('the Proposed Development') on land at, and in the vicinity of, the existing Keadby Power Station, Trentside, Keadby, Scunthorpe, DN17 3EF (the 'Proposed Development Site').

1.1 The Proposed Development is a new electricity generating station of up to 910 megawatts (MW) gross electrical output, equipped with carbon capture and compression plant and fuelled by natural gas, on land to the west of Keadby 1 Power Station and the (under commissioning) Keadby 2 Power Station, including connections for cooling water, electrical, gas and utilities, construction laydown areas and other associated development. It is described in Chapter 4: The Proposed Development of the Environmental Statement (ES) (ES Volume I – [**APP-047**]).

1.1 The Proposed Development falls within the definition of a 'Nationally Significant Infrastructure Project' (NSIP) under Section 14(1)(a) and Sections 15(1) and (2) of the 2008 Act, as it is an onshore generating station in England that would have a generating capacity greater than 50MW electrical output (50MWe). As such, a DCO application is required to authorise the Proposed Development in accordance with Section 31 of the 2008 Act.

1.1 The DCO, if made by the SoS, would be known as 'The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order' ('the Order').

1.2 The Proposed Development

1.2 The Proposed Development will work by capturing carbon dioxide emissions from the gas-fired power station and connecting into the Humber Low Carbon Pipelines project pipeline network, being promoted by NGCL, for onward transportation to the Endurance storage site under the North Sea.

1.2 The Proposed Development would comprise a low carbon gas fired power station with a gross electrical output capacity of up to 910MWe and associated buildings, structures and plant and other associated development defined in Schedule 1 of the draft DCO [**APP-005**] as Work No. 1 – 11 and shown on the Works Plans [**APP-012**].

1.2 At this stage, the final technology selection cannot yet be made as it will be determined by various technical and economic considerations and will be influenced by future UK Government policy and regulation. The design of the Proposed Development therefore incorporates a necessary degree of flexibility to allow for the future selection of the

preferred technology in light of prevailing policy, regulatory and market conditions once a DCO is made.

1.2 The Proposed Development will include:

- a carbon capture equipped electricity generating station including a CCGT plant (**Work No. 1A**) with integrated cooling infrastructure (**Work No. 1B**), and carbon dioxide capture plant (CCP) including conditioning and compression equipment, carbon dioxide absorption unit(s) and stack(s) (**Work No. 1C**), natural gas receiving facility (**Work No. 1D**), supporting uses including control room, workshops, stores, raw and demineralised water tanks and permanent laydown area (**Work No. 1E**), and associated utilities, various pipework, water treatment plant, wastewater treatment, firefighting equipment, emergency diesel generator, gatehouse, chemical storage facilities, other minor infrastructure and auxiliaries/ services (all located in the area referred to as the 'Proposed Power and Carbon Capture (PCC) Site' and which together form **Work No. 1**);
- natural gas pipeline from the existing National Grid Gas high pressure (HP) gas pipeline within the Proposed Development Site to supply the Proposed PCC Site including an above ground installation (AGI) for National Grid Gas's apparatus (**Work No. 2A**) and the Applicant's apparatus (**Work No. 2B**) (the 'Gas Connection Corridor');
- electrical connection works to and from the existing National Grid (National Grid Electricity Transmission) 400kV Substation for the export of electricity (**Work No. 3A**) (the 'Electrical Connection Area to National Grid 400kV Substation');
- electrical connection works to and from the existing Northern Powergrid 132kV Substation for the supply of electricity at up to 132kV to the Proposed PCC Site, and associated plant and equipment (**Work No. 3B**) (the 'Potential Electrical Connection to Northern Powergrid 132kV Substation');
- Water Connection Corridors to provide cooling and make-up water including:
  - underground and/or overground water supply pipeline(s) and intake structures within the Stainforth and Keadby Canal, including temporary cofferdam (**Work No. 4A**) (the 'Canal Water Abstraction Option');
  - in the event that the Canal Water Abstraction Option is not available, works to the existing Keadby 1 power station cooling water supply pipelines and intake structures within the River Trent, including temporary cofferdam (**Work No. 4B**) (the 'River Water Abstraction Option'); and
  - works to and use of an existing outfall and associated pipework for the discharge of return cooling water and treated wastewater to the River Trent (**Work No. 5**) (the 'Water Discharge Corridor');
- towns water connection pipeline from existing water supply within the Keadby Power Station for potable water (**Work No. 6**);
- above ground carbon dioxide compression and export infrastructure comprising an above ground installation (AGI) for the undertaker's apparatus including deoxygenation, dehydration, staged compression facilities, outlet metering, and electrical connection (**Work No. 7A**) and an AGI for NGCL apparatus (**Work No. 7B**);

- new permanent access from the A18, comprising the maintenance and improvement of an existing private access road from the junction with the A18 including the western private bridge crossing of the Hatfield Waste Drain (**Work No. 8A**) and installation of a layby and gatehouse (**Work No. 8B**), and an emergency vehicle and pedestrian access road comprising the maintenance and improvement of an existing private track running between the Proposed PCC Site and Chapel Lane, Keadby and including new private bridge (**Work No. 8C**);
- temporary construction and laydown areas including contractor facilities and parking (**Work No. 9A**), and access to these using the existing private roads from the A18 and the existing private bridge crossings, including the replacement of the western existing private bridge crossing known as 'Mabey Bridge') over Hatfield Waste Drain (**Work No. 9B**) and a temporary construction laydown area associated with that bridge replacement (**Work No. 9C**);
- temporary retention, improvement and subsequent removal of an existing Additional Abnormal Indivisible Load Haulage Route (**Work No. 10A**) and temporary use, maintenance, and placement of mobile crane(s) at the existing Railway Wharf jetty for a Waterborne Transport Offloading Area (**Work No. 10B**);
- landscaping and biodiversity enhancement measures (**Work No. 11A**) and security fencing and boundary treatments (**Work No. 11B**); and
- minor associated development.

1.2 The Proposed Development includes the equipment required for the capture and compression of carbon dioxide emissions from the generating station so that it is capable of being transported off-site. NGCL will be responsible for the development of the carbon dioxide pipeline network linking onshore power and industrial facilities, including the Proposed Development, in the Humber Region. The carbon dioxide export pipeline does not, therefore, form part of the Proposed Development and is not included in the Application but will be the subject of separate consent application(s) to be taken forward by NGCL.

1.2 The Proposed Development is designed to be capable of operating 24 hours per day, 7 days a week, with plant operation dispatchable to meet electricity demand and with programmed offline periods for maintenance. It is anticipated that in the event of CCP maintenance outages, for example, it could be necessary to operate the Proposed Development without carbon capture, with exhaust gases from the CCGT being routed via the Heat Recovery Steam Generator (HRSG) stack.

1.2 Various types of associated and ancillary development further required in connection with and subsidiary to the above works are detailed in Schedule 1 'Authorised Development' of the draft DCO [**APP-005**]. This, along with Chapter 4: The Proposed Development in the ES Volume I [**APP-047**], provides further description of the Proposed Development. The areas within which each numbered Work (component) of the Proposed Development are to be built are defined by the coloured and hatched areas on the Works Plans [**APP-012**].

1.3 The Proposed Development Site

1.3 The Proposed Development Site (the 'Order Limits') is located within and near to the existing Keadby Power Station site near Scunthorpe, Lincolnshire and lies within the

administrative boundary of North Lincolnshire Council (NLC). The majority of land is within the ownership or control of the Applicant (or SSE associated companies) and is centred on national grid reference 482351, 411796.

1.3 The existing Keadby Power Station site currently encompasses the operational Keadby 1 and Keadby 2 Power Station (under commissioning) sites, including the Keadby 2 Power Station Carbon Capture and Readiness reserve space.

1.3 The Proposed Development Site encompasses an area of approximately 69.4 hectares (ha). This includes an area of approximately 18.7ha to the west of Keadby 2 Power Station in which the generating station (CCGT plant, cooling infrastructure and CCP) and gas connection will be developed (the Proposed PCC Site).

1.3 The Proposed Development Site includes other areas including:

- a high pressure gas pipeline to supply the CCGT including a gas compound for NGG apparatus and a gas compound for the Applicant's apparatus;
- the National Grid4 00kV Substation located directly adjacent to the Proposed PCC Site, through which electricity generated by the Proposed Development will be exported;
- Emergency Vehicle Access Road and Potential Electrical Connection to Northern Powergrid Substation;
- Water Connection Corridors:
    - Canal Water Abstraction Option which includes land within the existing Keadby Power Station site with an intake adjacent to the Keadby 2 Power Station intake and pumping station and interconnecting pipework;
    - River Water Abstraction Option which includes a corridor that spans Trent Road and encompasses the existing Keadby Power Station pumping station, below ground cooling water pipework, and infrastructure within the River Trent; and
    - a Water Discharge Corridor which includes an existing discharge pipeline and outfall to the River Trent and follows a route of an existing easement for Keadby 1 Power Station;
- an existing river wharf at Railway Wharf (the Waterborne Transport Offloading Area) and existing temporary haul road into the into the existing Keadby 1 Power Station Site (the 'Additional Abnormal Indivisible Load (AIL) Route');
- a number of temporary Construction Laydown Areas on previously developed land and adjoining agricultural land; and
- land at the A18 Junction and an existing site access road, including two existing private bridge crossings of the Hatfield Waste Drain lying west of Pilfrey Farm (the western of which is known as Mabey Bridge, to be replaced, and the eastern of which is termed Skew Bridge) and an existing temporary gatehouse, to be replaced in permanent form.

1.3 In the vicinity of the Proposed Development Site the River Trent is tidal. Therefore, parts of the Proposed Development Site are within the UK marine area. No harbour works are proposed.

1.3 Further description of the Proposed Development Site and its surroundings is provided in **Chapter 3:** The Site and Surrounding Area in ES Volume I [**APP-046**].

1.4 The Proposed Development Changes

1.4 On 5 April 2022 the Applicant submitted a request for the following changes to the Proposed Development, together known as 'the Proposed Development Changes'.

1.4 The Proposed Development Changes have resulted from design contractor involvement, which has continued to refine the detail of this 'First of a Kind' Project implementation.

- Change No. 1 - Inclusion of riverbed within the Waterborne Transport Offloading Area (Railway Wharf)
- Change No. 2 - Changes to the Additional Abnormal Indivisible Load Route, largely within SSE land and all within existing Order Limits (since withdrawn by the Applicant on 26 April 2022).
- Change No. 3 - Increase to the maximum heights of the carbon dioxide absorbers/ stacks, if two are installed.
- Change No. 4 - Increase to the maximum heights of the carbon dioxide stripper column.
- Change No. 5 - Increase in proposed soil import volumes to create a suitable development platform.

1.4 With the Proposed Development Changes, the Proposed Development Site would cover an area of 69.7 hectares (ha) (a minor increase of 0.3ha in the amount of the Applicant's land required).

1.4 At the time of writing the Examining Authority has not determined whether to accept the Proposed Development Changes into examination and has issued questions to the Applicant and Canal and River Trust and Natural England dated 13 April 2022 (PD-017).

1.5 The Development Consent Process

1.5 As a NSIP project, the Applicant is required to seek a DCO to construct, operate and maintain the generating station, under Section 31 of the 2008 Act. Sections 42 to 48 of the 2008 Act govern the consultation that the promoter must carry out before submitting an application for a DCO and Section 37 of the 2008 Act governs the form, content and accompanying documents that are required as part of a DCO application.

1.5 An application for development consent for the Proposed Development has been submitted to and accepted for examination by the Planning Inspectorate (PINS) acting on behalf of the SoS. PINS is now examining the Application and will make a recommendation to the SoS, who will then decide whether to make (grant) the DCO.

1.6 The Purpose and Structure of this Document

1.6 This document sets out the Applicant's response to Deadline 5 Submissions from ClientEarth [REP5-051], Marine Management Organisation [REP5-053], Denise Steele [REP5-052] and Pollock Associates [REP5-058 to REP5-060 inclusive].

2.0 APPLICANT'S RESPONSE TO DEADLINE 5 SUBMISSIONS

2.1 The Applicant's response to the Deadline 5 Submissions are set out in the Tables below on the following pages of this document.

Table 2.1: Applicant's Response to Deadline 5 Submission by ClientEarth

PARA NO.	DEADLINE 5 SUBMISSION BY CLIENTEARTH	APPLICANT'S RESPONSE
1.	**Summary** Following the Applicant's representations, ClientEarth remains concerned that under the current draft DCO there is a clear risk of the project being operated in a fundamentally different way to that assessed in this Examination.	There is no intention to operate the project in a fundamentally different way to that assessed and we believe the DCO provides adequate and precedented controls governing the lifecycle of the Proposed Development, in line with the draft White Rose CCS Project Order (unmade). We recognise that ClientEarth have articulated the basis of their concerns in more detail in this submission and we will respond to the new detail accordingly.
2.	In particular, as the Applicant confirmed at the hearings, current draft Requirement 33 allows the generating station to operate without carbon capture, or with a capture rate below the 90% rate assumed in the Environmental Statement.	In the hearings the Applicant confirmed that R33 precludes the bringing into commercial use of Work 1C without Work 7A. We also explained that the DPA requires a minimum capture rate and incentivises higher capture rates; the Environmental Permit will control the required capture rate in accordance with the use of Best Available Techniques (BAT), and the measurement of carbon emissions across all operating regimes and exceptions. The verification of the installation (i.e. Keadby 3 Carbon Capture Power Station) that will be carried out annually for the UK Emissions Trading Scheme (UK ETS) will result in published data on carbon emissions from the Proposed Development. We interpret the concern as being that the generating station, once constructed and commissioned and brought into commercial use with the carbon capture plant, would then not be operated so as to capture the carbon emissions generated.

		There is no intention or possibility of this given that, as explained above, it will be unlawful for the undertaker to operate the Keadby 3 Carbon Capture Power Station other than in accordance with Schedules 1 & 2 as a whole, and given the DPA, Environmental Permit and ETS controls.
3.	Equally, current draft Requirement 33 allows any captured carbon dioxide to be used commercially and subsequently emitted into the atmosphere, rather than permanently stored as assumed in the Environmental Statement.	In common with all DCOs, no single requirement provides end to end control over a functional component of the development, rather, Schedules 1 (the works descriptions), 2 (requirements) and other articles and schedules combine to govern how the project will be constructed, commissioned and operated. Article 5 authorises the undertaker to use and operate the generating station comprised in the authorised development; i.e. all items in Work 1 in Schedule 1. Work 1 cannot therefore be developed without Work 1C, the carbon capture plant (or for example its cooling system, Work 1B, and so on). Article 3 gives effect to the requirements. Requirement 33 supplements the control afforded by article 5 by stipulating that Work 1C cannot be brought into commercial use until work 7A (the carbon dioxide compression station connecting to Work 7B, the National Grid AGI and "export connection to the National Grid Carbon Gathering Network") also has been brought into commercial use. "Commercial use" is defined in Article 2 as "the export of electricity from the authorised development on a commercial basis, following the completion of commissioning of the authorised development and the first occupation of the authorised development by the undertaker".

		"Commissioning" is defined in Article 2 as "the process of testing all systems and components of the authorised development (including systems and components which are not yet installed but the installation of which is near to completion) in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker and "commission" and other cognate expressions, in relation to the authorised development are to be construed accordingly". Article 2 includes a definition of "maintain" that requires that maintenance activities carried out pursuant to Article 4 do not give rise to any materially new or different environmental effects ('EIA effects') from those in the certified environmental statement (which is based on a minimum 90% carbon capture rate). Therefore the existing draft DCO through the operation of articles 2, 3, 4, and Schedules 1 and 2 renders it unlawful for the undertaker to operate the Keadby 3 Carbon Capture Power Station with Work 1C and Work 7 not having been constructed, tested, verified, connected, maintained and exporting captured carbon dioxide to the National Grid Carbon Gathering Network. However in light of the additional detail raised by ClientEarth articulating their three areas of concern (operation without CCP, capture rate, and conveyance to NGCL's network) we have reflected on the definitions of "commercial use" and "commissioning" and a related definition "carbon capture and compression plant", and propose the following adjustments

		that embed the 90% capture rate and the conveyance of this to the wider carbon transport and storage network. The new text is shown in underline. This will be included in the Applicant's Final Preferred Draft DCO and the updated DCO at today's deadline. "carbon capture and compression plant" means the building and associated works comprised in Work No. 1C and Work No. 7 shown on the works plans and which are designed to capture, compress, and export to the National Grid Carbon Gathering Network, a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load; "commercial use" means the export of electricity, and of captured compressed carbon dioxide emissions, from the authorised development on a commercial basis, following the completion of commissioning of the authorised development and the first occupation of the authorised development by the undertaker; "commissioning" means the process of testing all systems and components of the authorised development (including the carbon capture and compression plant and including systems and components which are not yet installed but the installation of which is near to completion) in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker, and "commission" and other cognate expressions, in relation to the authorised development are to be construed accordingly. We believe the comprehensive rewording of these three definitions addresses all concerns articulated by ClientEarth.

		For the avoidance of doubt we do not consider other definitions, nor any requirements, require amendment.
4.	ClientEarth's proposed conditions are intended to avoid this risk and to secure these aspects of the proposal that go to the core of its planning merits. They are therefore necessary, relevant to planning and relevant to the proposed development, as well as meeting the other tests set out in EN-1.	Requirement 33 (or any requirement) is entirely inappropriate for end to end control over a functional process comprised in the authorised development. The purpose of Requirement 33 is as set out in the EM, regulating the commencement of development (which may not occur until the full CCUS chain is also consented, in common with the drafting of Requirement 30 of the Examining Authority's "Recommended" White Rose CCS (Generating Station) Order published in 2016), while also preventing the disposal of land required for the CCP (in common with many thermal power station DCO carbon capture reserve space requirements, such as Eggborough Gas Fired Generating Station Order Order 2018 requirement 31), and linking Work 7 to Work 1C in terms of commercial use commencement. NLC and Environment Agency have provided agreement to requirement 33's wording in the SoCGs submitted into examination. In particular it is not possible as a matter of legal construction for a requirement to place an obligation on a third party (in this case National Grid Carbon Limited regarding the end destination of the carbon dioxide in the National Grid Carbon Gathering Network); and it is not compliant with NPS EN-1 to duplicate a measurement and reporting regime for capture rate that will exist in Environmental Permitting and UK ETS, into the planning realm and require reports to be submitted to the local planning authority.

		We consider that the above proposed amendments to three core definitions in article 2 address all perceptions or concerns of ClientEarth as to the purpose of the Proposed Development, by securing a 90% capture rate at the design stage and the commissioning stage and ensuring this is conveyed to the T&S network (the National Grid Carbon Gathering Network). Importantly this corresponds to the limit of the Applicant's control over the captured and compressed carbon dioxide emissions. The Applicant cannot be mandated in the terms of a DCO to govern the onward transport of the carbon dioxide once it is in the National Grid Carbon Gathering Network. This is also subject to its own upcoming planning and consenting process.
5.	From the information provided, there does not appear to be any duplication of the content of ClientEarth's proposed conditions in the commercial contracts, subsidy regimes or regulatory mechanisms that the Applicant has cited.	The inclusion of a means of measuring and reporting on (to the local planning authority) a minimum capture rate as shown in the draft wording by ClientEarth in Requirement 33(4) would serve to duplicate obligations that will be set out in other pollution control and environmental regulatory regimes namely environmental permitting and UK ETS and along with the reasons set out in the row above against item (4) form the rationale for our response and proposed wording for Requirement 33.
6.	The Applicant has also not explained why the enforcement or pipeline safety concerns that it has now raised cannot be accommodated within the terms of the respective conditions.	Pipeline safety is a regulatory regime regulated by the HSE outside of the planning process and should not be duplicated in the planning regime in accordance with NPS EN-1.

	ClientEarth has suggested updated illustrative drafting that would address these concerns at Annex 1.	
7.	Finally, ClientEarth rejects any suggestion that it misrepresented the Applicant's position. The Applicant has now clarified that it is opposed in principle to conditions requiring it to operate with CCS in the way assumed in the Environmental Statement, but that is not what it said in its REP1 submission.	Noted.
8.	**ClientEarth's proposed conditions remain necessary in light of the Applicant's representations** As summarised above, ClientEarth remains of the view that its proposed conditions are necessary to secure core aspects of the Applicant's proposal relating to the capture and storage of carbon dioxide produced by the proposed generating capacity, and meet the tests set out in 4.1.7 EN-1 (i.e. "necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects").	See rows 3-5 above.
9.	It is important to note at the outset that in its Deadline 3 comments the Applicant stated that paragraph 3 of draft Requirement 33 will "ensure the generating station will only be operated in conjunction with the carbon capture plant" (REP3-021, p. 62). However, as the Applicant confirmed at Issue Specific Hearing 2, this is not correct: paragraph 3 allows the generating station to be operated without carbon capture, provided only that the carbon capture plant had previously – at some point in time – been brought into commercial use.	See rows 3-5 above.

10.	The other argument made in the Applicant's Deadline 3 response to ClientEarth was that ClientEarth's proposed conditions would duplicate non-planning mechanisms, stating that these mechanisms would "together ensure the generating station will only be operated in conjunction with the carbon capture plant" (see REP3-021, p. 62).	Noted.
11.	However, from the information cited by the Applicant, it is not clear how any of these non-planning mechanisms will ensure the carbon capture and storage aspect of the proposal – whether taken "together" or on their own. Indeed, the Applicant has stated that the "range of government regimes and commercial mechanisms outside of planning" that it relies on in this context, are "all … still in development and evolving in parallel with the examination and after its close" (REP3-021, p. 58). Moreover, it is also not clear how the Applicant's approach is needed to avoid duplication with a "commercial regime" that it describes as being "still under development" (REP3-021, pp 62-63).	As confirmed by the Environment Agency, the operation of the Proposed Development will be regulated through the environmental permit which will specify the capture rate of CO2 to be achieved to be in accordance with BAT. The EA has also confirmed that they will utilise the UK Emissions Trading Scheme Monitoring, Reporting & Verification to verify performance.
12.	In respect of the provisional Dispatchable Power Agreement (DPA) Heads of Terms2 and 'Cluster Sequencing for Carbon Capture Usage and Storage Deployment: Phase-2 Guidance' (annexed to REP3-021) relied on by the Applicant in this context, ClientEarth observes that: a. The provisional DPA Heads of Terms are expressly subject to the disclaimer that the draft heads of terms "are indicative only and do not constitute an offer by government and do not create a basis for any form of expectation or reliance", while government "reserve[s] the right to review and amend all provisions within the document and its Annexes, for any reason and in	We consider that the proposed changes to definitions in Article 2 address the concerns raised by ClientEarth. We would note that the typical contract disclaimer to prevent a prospective contracting party relying on the information for financial or other contractual purposes ahead of the contract being formed, does not prevent these being influential planning considerations. Since the hearings, there have been two relevant updates by BEIS: - the DPA has been amended/updated (see April 2022 update at:

	particular to ensure that proposals are consistent with any new subsidy control regime" b. It is inherently uncertain that any DPA will be entered into with the Applicant, on the current provisional terms or otherwise – or that such contracts will remain in place over the life of the development. c. The provisional DPA Heads of Terms only require an average capture rate of 70%, with significant grace periods for lower capture rates (see the definition of "minimum CO2 capture rate" at p. 24 and the consequences of failure to comply with minimum CO2 capture rate set out at p. 57 for example). Higher rates may indeed be "incentivised" by the DPA as the Applicant suggests – to the extent that a DPA is entered into in the current form or at all – but clearly they are not required or ensured. d. The Cluster Sequencing Phase 2 Guidance states (with emphasis added) that: i. "Projects must be designed to achieve a minimum of a 90% capture rate when the plant is operating at full load." (p. 32); ii. "Each Project is required to have a projected capture rate of at least 90% to be eligible for the Phase-2 evaluation process …" (p. 39) e. Clearly, these requirements in the Phase 2 Guidance relate to the design of the projects concerned and not their actual operation.	https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models). In response to the point made in (c) the DPA has been amended to require a higher minimum. The DPA is out for public consultation by BEIS currently and the merits and content of it are not a matter for the Keadby 3 examination under the Planning Act 2008. - BEIS has published (22/3/22) the eligible power CCUS projects for cluster sequencing Phase-2 and this includes Keadby 3 (https://www.gov.uk/government/publications/cluster-sequencing-phase-2-eligible-projects-power-ccus-hydrogen-and-icc).
13.	Equally, as previously explained – and not disputed by the Applicant – there is currently no indication, much less assurance, that the project's environmental permit will require that the project's generating capacity is operated only when the project's carbon capture infrastructure is also in operation (at a particular capture rate or otherwise). Rather the	A signed SoCG with EA has been entered into examination and includes agreement to the wording of Requirement 33 and the operation of the CCP. No matters of disagreement are recorded in relation to carbon capture and we note EA have been asked a direct question in ExQ2 on carbon capture. We understand that the EA position will confirm the carbon capture

	environmental permit will regulate the operation of the capture and related infrastructure when such infrastructure is in operation. As the Applicant explained at Issue Specific Hearing 1, the environmental permit issued by the Environment Agency will require the use of 'best available techniques' (BAT), but the Applicant has not suggested that this will include a requirement to use carbon capture when operating the generating station (at a minimum capture rate of 90% or otherwise).	rate that represents BAT which will be specified within the environmental permit. Decision makers should give great or considerable weight to the advice of statutory consultees or provide cogent and compelling reasons for doing something different (see Visao Ltd v The Secretary of State for Housing, Communities And Local Government [2019] EWHC 276 (Admin)). Nevertheless the inclusion of the Applicant's new wording in the three definitions in Article 2 at this deadline addresses the point made.
14.	The Applicant has also suggested that the UK Emissions Trading System (ETS) and the associated Greenhouse Gas Emissions Trading Scheme Order 2020 would duplicate the conditions proposed by ClientEarth (REP3-021, p. 62). However, it is not explained how the ETS or the related regulations could serve to require the Applicant to operate the project with carbon capture (at a particular rate or otherwise) and that captured carbon dioxide be supplied to the National Grid pipeline network for onward permanent storage. In terms of emissions, the ETS simply requires operators to record their emissions and surrender the required amount of emissions allowances – it does not compel the use of any particular technology or fix the level of an installation's emissions.	We agree that the UK ETS is a reporting mechanism and will be used as such, alongside the environmental permit.
15.	Rather than risking duplication, ClientEarth's proposed conditions seek to secure aspects of the Applicant's proposal that are not secured by the commercial and regulatory regimes cited by the Applicant, and that are fundamental to the proposal's planning merits.	See rows 3-5 above.

16.	**The Applicant's practical concerns can be accommodated** ClientEarth welcomes the Applicant's confirmation that "the conveyance of the captured carbon dioxide to NGCL's carbon transport pipeline" is within its control (REP3-021, p. 61). This is all that would be required of the Applicant under ClientEarth's proposed condition, as previously set out in ClientEarth's illustrative drafting of its proposed conditions at REP2.	See rows 3-5 above. This represents the limit of the Applicant's control and has been reflected in the proposed amendments to the definitions in Article 2 at this deadline. The ClientEarth proposed wording goes further and seeks (R33(4)) to impose an obligation on NGCL as to the end destination of the carbon dioxide, and on the Applicant to ensure the purpose is consistent with that, which are aspects outside the Applicant's control.
17.	However, it is not clear that the further practical concerns now raised by the Applicant – regarding (i) the local authority's ability to enforce capture rates, and (ii) possible pipeline safety restrictions – cannot be accommodated in conditions: a. As the Applicant has explained, it will need to monitor capture rates, including for the purpose of ensuring compliance with the environmental permit (see e.g. REP2-006, p. 8). If it is the case that the local authority is not capable of assessing compliance against operating exceptions, then it is not clear why the Applicant cannot be required to report any instances of non-compliance to the local authority. ClientEarth would be happy for a relevant reporting obligation to be added to Requirement if this would provide clarity as to how this obligation would be enforced. b. Equally, an exception for pipeline safety restrictions could also be incorporated in any condition if necessary, as is the case in other conditions included	See rows 3-5 above. Reporting will be required by the EA under the environmental permit and used to enforce that permit; additional reporting to the local authority is therefore considered to duplicate the controls that will be put in place through that permit.

	in the draft DCO (see e.g. draft Requirement 27 (REP4-004)).	
18.	In Annex 1, ClientEarth has suggested updated drafting for its proposed conditions (with additional text in bold underline) to illustrate how the Applicant's concerns might be accommodated.	These are not accepted for the reasons set out in rows 3-5 above.
19.	The Applicant has also made the separate point that "it is not possible for the reader of the DCO to know what the operating exceptions are, where to read these, and how to interpret and apply these" (REP3-021, p. 62). However, this point is not understood, given that the environmental permit is a defined term in the DCO and already referred to in other provisions of the DCO (as is the case with other licences and consents, such as any licence under section 6 of the Electricity Act 1989 and any pipeline works authorisation required by section 14 of the Petroleum Act 1998).	For the reader (e.g. the local planning authority) to follow the wording proposed they must do more than simply know that a permit exists (such as the requirement to show evidence of a licence under section 14 of the Petroleum Act 1989 being in existence). They must "translate" terminology and performance from one regime to another. This points to why matters such as capture rates are controlled in other regimes with suitable reporting requirements, rather than duplicated in the planning regime. Accordingly we have proposed changes to core definitions in Article 2 which achieve the purpose of ClientEarth's representations.
20.	**The Applicant's suggestion that ClientEarth misrepresented its position is baseless** Finally, in its Deadline 3 comments the Applicant stated that ClientEarth's representation REP2-020 "misrepresented or misunderstood" the Applicant's position in a way that could serve to "bypass" analysis of how CCS technologies "are being developed and how they will be controlled and incentivised in a range of government regimes and	a. The Applicant's response to RR-001 (in paragraph 9.1.4 of REP1-021) stated clear objection to the principle of adding controls into the DCO that are already provided in two other regimes (environmental permitting, and government contract and rules via any forthcoming DPA). The subsequent statement by ClientEarth in REP2-020 that "the Applicant has not contested the principle of including conditions (…) to ensure a minimum capture rate" was contrary to this

	commercial mechanisms outside of planning" (REP3-021, pp 56-58). It is not clear on what possible basis the Applicant could seek to make these claims: a. First, ClientEarth's representation simply pointed out that the Applicant's response to RR-001 appeared to object to ClientEarth's proposed conditions only on the basis that their precise scope made them practically unworkable – specifically because (i) the capture rate "may be lower outside of normal operating conditions (e.g. at start-up) or in response to events outside of the Applicant's control", and (ii) "[t]he storage site is not operated by the Applicant" (REP1-021, p. 25). Indeed, this is further demonstrated by the Applicant's conclusion that "as such" it "cannot" amend the wording of draft Requirement 33 in the way proposed. Equally, no argument was made by the Applicant at REP1 that ClientEarth's proposed conditions would be unreasonable or unnecessary due to duplication with regulatory and commercial regimes, as it is has since argued at Deadlines 2 and 3. The Applicant's position may be that it objects in principle to conditions of the kind proposed by ClientEarth (as it has since clarified), but that is not what it stated in its response to ClientEarth's RR-001. It is therefore hard to understand the possible complaint flowing from the Applicant having to clarify and justify its position with information and arguments that on any view were not included in its REP1 submission. b. Secondly, the Applicant's suggestion that ClientEarth's REP2 representation somehow served to "bypass" consideration of how non-planning mechanisms will control the technologies used in the	and therefore the Applicant provided a clear response to correct the record in examination at page 56 of REP3-021. b. The Applicant's response to RR-001 (in paragraph 9.1.4 of REP1-021) wrote clearly to object to the principle of adding controls into the DCO that are already provided in two other regimes (environmental permitting, and any DPA), thus making a case at deadline 1 against duplication.

	proposed development is clearly wrong. ClientEarth engaged directly with these issues in its REP2 representation in the context of the project's environmental permit – i.e. before the Applicant made arguments regarding duplication with non-planning mechanisms at Deadlines 2 and 3.	
21.	**Conclusion** ClientEarth remains of the view that its proposed conditions remain necessary and meet the planning tests under EN-1.	The Applicant has proposed at this deadline changes to three definitions in Article 2 of the draft DCO that address any concern or perception around the operation of the generating station without carbon capture and taken with articles 3 and 4 mean that the DCO secures the 90% minimum capture rate and the conveyance of the captured carbon dioxide into the NGCL network. No other amendments to, or new, requirements are required as a result.
22.	In particular, the Applicant has not pointed to any non-planning mechanism that can be relied on to ensure that the following assumptions from the Environmental Statement will be fulfilled (subject to reasonable operating exceptions): a. the generating station will only be operated commercially with carbon capture; b. a minimum carbon dioxide capture rate of 90% will be achieved during commercial operation of the generating station; and c. all captured carbon dioxide will be supplied to the National Grid gathering network for onward permanent storage.	
23.	Under the current draft DCO terms, there is therefore a clear risk of the generating station being used in unabated mode or with a capture rate below 90%, or for the captured carbon dioxide to be used commercially and subsequently emitted into the atmosphere, rather than permanently stored. This would result in a fundamentally different project to that assessed in this Examination.	

24.	Finally, the Applicant has cited concerns regarding enforcement and pipeline safety, but it has not explained why these issues cannot be addressed in the drafting of the conditions.	
25.	ClientEarth would be happy to provide further comment or clarification in relation to these matters should it assist the Examining Authority.	

Table 2.2: Applicant's Response to Deadline 5 Submission by Denise Steel

PARA NO.	DEADLINE 5 SUBMISSION BY DENISE STEEL	APPLICANT'S RESPONSE
1.	Concern about the light pollution during construction and after construction of Keadby 3. The light pollution from Keadby 2 is too great and after contacting Jade Fearon regarding this matter is no better. My concern is how much more light pollution will Keadby 3 bring? I live in the countryside between [REDACTED] with a side view of the Keadby 1 and 2 Power stations. Keadby 1 is low lit and therefore acceptable, but Keadby 2 is hugely brightly lit and interferes with my personal outside space. Can it be assessed and reported on please. This impacts both [REDCATED] and [REDACTED].	While controls over construction lighting for Keadby 2 Power Station are not a matter for this Application as Keadby 2 was consented under a different planning regime with different controls, the Applicant understands that the temporary commissioning stage lighting will be removed before the winter i.e. before handover from the EPC to the Applicant. At present commissioning stage lighting remains outside of the Keadby 2 buildings (I.e. external task and other lighting) to allow safe commissioning of the development. The Keadby 2 interior lighting no longer has external spill due to the cladding having been installed. The Applicant would draw attention to its previous response to the Relevant Representation submitted at Deadline 1 (REP1-021) including the nature of the permanent Keadby 2 Power Station permanent lighting. Adequate controls are in place for the Proposed Development and secured in the draft DCO,

		including a lighting strategy (APP-040) specifying lighting standards that avoid obtrusive light emissions, and identify the area as being within the category set by the Institute of Lighting Professionals of "Low district brightness", meaning "sparsely inhabited rural areas, village or relatively dark outer suburban locations". The potential light emissions of the Keadby 3 Carbon Capture Power Station have therefore been assessed and reported on, and compliance with the lighting strategy (APP-040, a document to be certified under article 41) is secured by Requirement 7 in the DCO.

Table 2.3: Applicant's Response to Deadline 5 Submission by Marine Management Organisation

PARA NO.	DEADLINE 5 SUBMISSION BY MARINE MANAGEMENT ORGANISATION	APPLICANT'S RESPONSE
N/A	This document comprises the Marine Management Organisation's (MMO) Deadline 5 response in respect to the above Development Consent Order (DCO) Application. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development. The MMO reserves the right to modify its present advice or opinion in view of any additional matters or information that may come to our attention.	Noted.

1.1.1	**Comments on any information submitted for Deadline 4** REP4-004 Keadby Generation Limited Deadline 4 Submission - 2.1 - Draft Development Consent Order – Tracked With regards to Part 1 (1) – The MMO welcome the amendment to "maintain" within the definitions. It is noted that it includes the following wording "materially new/materially different" which was not recommended by the MMO. The MMO would like to see this removed from the Deemed Marine Licence ("DML").	The Applicant has amended the definition of "maintain" to remove the requested wording.
1.1.2	With regards to paragraph Part 1 (1) – After the definition of the Maritime and Coastguard Agency "MCA", the following should be included "the executive agency of the Department for Transport".	The Applicant can confirm this wording has been incorporated.
1.1.3	With regards to paragraph Part 1 (1) – After the definition of Trinity House the following should be included "of Deptford Strond".	The Applicant can confirm this wording has been incorporated.
1.1.4	The MMO welcome the inclusion of a local contact email address within the DML. The MMO have noted that the local address as identified by the Applicant is Beverley, however, the MMO in our Deadline 3 response provided a contact email for the North Shields office. The correct email should be [redacted]	The Applicant can confirm this amendment has been incorporated.
1.1.5	With regards to Part 2 (7) – The MMO note that comments were provided within our Deadline 3 response (REP3-026)	The Applicant can confirm that this paragraph has been removed.

	that this provision is not required, as once a DCO is granted the DML falls under the administration of the MMO and governed by the Marine and Coastal Access Act (2009). The MMO would be happy to discuss this with the Applicant.	
1.1.6	The MMO provided comments in our Deadline 3 Response with regards to the inclusion of a definition of 'office hours' (paragraph 2.1.10 of REP3-026). As above the MMO are happy to discuss this further with the Applicant.	The Applicant can confirm that a new definition of "office hours" has been included.
1.1.7	The MMO note that comments were provided to the Applicant in our Deadline 3 Response with regards to clarification regarding "transport managers" (paragraph 2.1.11 of REP3-026). The MMO suggest this phrasing is either included within the definitions under Part 1 of the DML's or is removed from the sentence.	The Applicant can confirm this has been removed.
1.1.8	With regards to Part 3 (9)(4) - The MMO recommend the removal of the word "authorised" as the definition of "enforcement officer" within the definitions confirms their authorisation.	The Applicant can confirm this has been removed.
1.1.9	The MMO welcome the amendment to Part 3 (9)(6) to expand the UKHO to "United Kingdom Hydrographic Office", it is noted that in Part 2 (9)(7) it reverts to UK Hydrographic Office. The MMO recommend that this is written out in full like Part 2 (9)(6).	The Applicant can confirm the amendment has been incorporated.
1.1.10	With regards to Part 3 (9) (6) – The MMO suggest the word "both" on line 1 is removed, as there is a requirement to notify of commencement, progress, and completion – therefore at least 3 instances.	The Applicant can confirm this word has been removed.

1.1.11	With regards to Part 3 (10) – As an abbreviation for the Maritime and Coastguard Agency has previously been given, the MMO recommend this should be abbreviated to "MCA".	The Applicant can confirm this amendment has been incorporated.
1.1.12	For consistency within the DML the MMO recommend the brackets are removed in Part 2 (10) where it reads "(and approval in writing by the MMO)". The MMO also recommend the inverted comments within the ('CEMP') are removed for consistency within the DML.	The Applicant can confirm that this amendment has been incorporated. The term "CEMP" has now also been added as a new definition instead to Part 1.
1.1.13	With regards to Part 3 (11)(1)(e) – The MMO previously commented within our Deadline 3 response (paragraph 2.1.17 of REP3-026) that there is currently no definition for ABP Humber within Part 1(1) of the DML. The MMO recommend that this is included. The MMO also request that the use of "shall" is replaced with "must".	The Applicant can confirm that the term is now a new definition.
1.1.14	With regard to Part 3 (13) – The MMO request that "shall" is replaced with "must" and that the "s" at the end of "subcontractors" in the penultimate line is not required. The MMO note that there also appears to be an additional full stop at the end of the sentence.	The Applicant can confirm the amendments have been incorporated.
1.1.15	With regards to Part 3 (19) – The MMO welcome the restriction of piling within the DML and request that the final sentence is worded to make it clearer when the restrictions are, e.g., insert "to" between "restricted" and "between".	The Applicant can confirm the amendments have been incorporated.
1.1.16	With regards to Part 3 (20) – The MMO note that this condition ties in with condition 17 and the Applicant might	The Applicant can confirm this condition has been moved to below condition 17 (now 16).

	consider it more appropriate if this was placed immediately after condition 17.	
1.1.17	With regards to Part 3 (24)(1) – The MMO recommend the brackets are removed from (24).	The Applicant can confirm the brackets have been removed.
1.1.18	With regards to Part 3 (24)(2) – The MMO request the inclusion of "at its own expense" after "surveys" on the third line.	The Applicant can confirm the amendments have been incorporated.
1.1.19	With regards to Part 3 (26) – The MMO note that there should be a space between "Enforcement" and "Office".	Noted.
1.1.20	With regards to Part 3 (27) – The MMO do not consider that it is sufficiently clear which provision it is referring to. The MMO take it to mean Part 2 (5)(a) of the DML but suggest that this could be clearer.	The Applicant can confirm the correct paragraph is now referenced.
1.1.21	With regards to Part 3 (28) – The MMO provided comments within our Deadline 3 response (paragraph 2.1.31 of REP3-026) and would like to reiterate our advice: "With regard to Schedule 13, Part 3 'Conditions Discharge' 29 (1) & (2) – The MMO disagrees with point (2) and the limit of determining an application for the discharge of a condition. While the MMO consider 3 months to be a reasonable period for determination, any restriction as set out in (2) hinders the ability of the MMO to carry out is regulatory responsibility. It is the position of the MMO that the MMO must not be subject to deemed approvals. This would lead to a disparity between licence issued under DMLs and those issued directly by the	The Applicant can confirm that paragraph 27(2) has now been removed.

	MMO and create an unlevel playing field across the regulated community." This advice remains unchanged, and the MMO welcome discussion with the Applicant if they wish to discuss the MMO's response. Removal of this time constraint is consistent to recent DMLs granted.	

Table 2.4: Applicant's Response to Deadline 5 Submission by Pollock Associates Ltd on behalf of Mssrs Strawson and Severn

PARA NO.	DEADLINE 5 SUBMISSION BY POLLOCK ASSOCIATES	APPLICANT'S RESPONSE
1.	Strawson Severn and RH Strawson Comments on Representations by the Applicant at the Compulsory Acquisition Hearing and Response to Statement of Reasons. Pollock Associates are the fully appointed agents on behalf of the Mssrs Strawson and Severn. Our clients object to the grant of compulsory powers in respect of their land as set out in the application and discussed at the hearing. You reiterated in the Compulsory Acquisition hearings that power granted had to be legitimate, proportionate and necessary. You queried whether sufficient time had been allowed for negotiations and you queried the applicant as to whether the scheme was due to shrink further (proving necessity).	This representation makes three key points which can be summarised as follows: 1) The cables are not necessary, and the applicant inferred at the CA hearings that the northern route was the only route when this is not the case 2) The Applicant has not allowed sufficient time for negotiations, and it is disputed that the Applicant has been in negotiations for the rights described in the BoR since 10th December 2020 3) Insufficient regard has been given to the impact of the of the scheme on a proposed solar scheme. The Applicant responds to each of these points as follows:

2.	(1) We do not believe the cables suggested are necessary the Applicant inferred in the CAH hearing on the 16th March that the only work stream where they were still seeking multiple alternatives was in respect Water Abstraction Points. We dispute this as we have been informed by the applicant, supported by the workstream plans that the route of the 132kv export cable to the NPG substation through our clients' land is one of the two alternatives (A second alternative being through the applicants own land and National grid land).	The Applicant did not intend to infer that the northern route is the only route under consideration. It is very clear from the dDCO submissions and supporting plans that there are two routes under consideration and the need for the consideration of both routes has been set out. The Applicant maintains that both routes are necessary albeit the northern route is the most practicable and preferred option from an engineering and technical point of view. The Applicant notes that Pollock have not provided any reasons as to why the northern route should be rejected save for the reference to the proposed solar farm development which the Applicant addresses in its response to point 3.
3.	(2) We do not believe the applicant has provided sufficient time for negotiations. We note that the Statement of Reasons suggests that the applicant has been in negotiation for the rights described in the Book of Reference since 10th December 2020. Our clients dispute this claim. You have asked the applicant to confirm timings. We set in the appendix below our understanding of the timings. We do not believe sufficient time has been provided for these negotiations.	The BoR records that, in respect of plot 42 the Applicant is seeking *"new rights over 1359.06 square metres of agricultural land, access track, grass verge, drain and overhead cables…"* This is part of the intended route for the underground 132 KV cable. In addition, the BoR states in respect of plot 40 *"permanent acquisition of 1214.52 square metres of grass verge, west of Chapel Lane…"* This is part of the emergency bridge access The works for which the rights are required are set out in a number of documents including:

		1) Document Ref: 4.8 "Indicative Electrical Connection Plans" and 2) Document Ref: 4.4 "Access and Rights of Way Plans" 3) Document Ref: 4.17 "Emergency Access Bridge General Arrangement and Sections." 4) Document Ref: 4.3 "Works Plans" The dDCO also set out a description of Work No. 3B and Work No. 8C at Schedule 1. It is therefore the case that, contrary to the "Diary of Key Events" as attached to REP5-057 by Pollock Associates, the Applicant was clear from the outset as to what was required from Affected Persons which, in respect of his clients, included the acquisition of cables rights, emergency access and the construction of a bridge the position and design of which was set out within Document 4.17. The Applicant has already set out broad details of the negotiations in its response to Section 1 of this question but, to reiterate the point, first contact was made with Pollock Associates by telephone on 10 December 2020 followed up by an email with proposed Heads of Terms on 22 December 2020. Further negotiations took place as follows: • 10 Dec 2020 - Initial contact by phone from SSE to agent. • 22 Dec 2020 - Email proposal made to agent and sent in Heads of Terms format. • 3 Mar 2021 - Email exchange with agent • 18 Mar 2021 - Phone call with Pollock Associates • 1 June 2021 - Applicant submits dDCO • 5 Aug 2021 - Email sent containing revised Heads of Terms

		• 22 Sept 2021 - Phone call with Pollock Associates • 28 Oct 2021 - Phone call with Pollock Associates • 4 Nov 2021 - Email exchange with Pollock Associates • 2 Dec 2021 - Email exchange with Pollock Associates containing revised Heads of Terms and drawings (these made explicit reference to the 132 KV and bridge proposals) • 3 Dec 2021 - Email exchange with Pollock Associates • 15 Dec 2021 - Email containing Property Questionnaire sent to Pollock Associates • 16 Dec 2021 - Email exchange relating to Table of Enquiries with Pollock Associates • 22 Dec 2021 - Email exchange with Pollock Associates • 12 Jan 2022 - Meeting with Pollock Associates requested • 26 Jan 2022 - Video conference with Pollock Associates • 2 Feb 2022 - Video conference with Pollock Associates • 2 Feb 2022 - Email to Pollock Associates with plot and acreage information • 2 Feb 2022 - Pollock Associates emails with drainage information • 7 Feb 2022 - Pollock Associates forward comparable evidence • 9 Feb 2022 - Applicant responds with comparable evidence • 16 Feb 2022 - Applicant emails revised Head of Terms • 28 Feb 2022 - Applicant requests update and offers a call to discuss. • 7 Mar 2022 - Telephone call to discuss the Head of Terms for cable easement, emergency access easement, laydown and bridge footings. Tentative agreement reached on Head of Terms.

		• 8 Mar 2022 - Applicant confirms that they agree the terms. • 8 Mar 2022 - Pollock Associates email to advise that there is an Option Agreement in place on the affected land. No copies are provided but Pollock Associates advice that the Option Agreements prevents that Affected Persons from agreeing the HoTs due to the Agreement terms and conflict with bridge footings and laydown location. No alternative proposals are proposed. • 8 Mar 2022 - The Applicant acknowledges receipt of Pollock Associate's email. The Applicant seeks internal advice as to the way forward • 24 Mar 2022 - Pollock Associates request update • 29 Mar 2022 - Pollock Associates ring the Applicant requesting an update. • 31 Mar 2022 - Applicant emails Pollock Associates providing further details of electrical surveys and stand-off distances. In addition, the Applicant requests a copy of the Option Agreement. • 13 March 2022 - Telephone call between the Applicant and Pollock Associates. It is agreed to set up a tripartite call to include the solar developer. • 13 March 2022 - Email from Pollock Associates advising that they need the consent of the solar developer to share copies of the Option Agreement but proposes dates for a meeting. • 14 April 2022 - The Applicant emails a repeat request for copies of the Option Agreement to be provided in advance of any meeting and propose dates and times for a call on 20 April or 21 April.

		• 21 April 2022 - Redacted copy of Option Agreement received by Applicant and confirmation of meeting to take place • 21 April 2022 - Conference call with Solafields (beneficiary of Option Agreement), Pollock Associates and the Applicant. The current position is that the Applicant is seeking internal advice in respect of engineering issues but anticipates that these new issues can be overcome. In addition, Solafields have indicated that they would be willing to amending their Option Agreement to accommodate both schemes, but further discussions are required in respect of how this could be achieved from a legal point of view. There are 6 key issues to point out in the context of these discussion. 1) Pollock Associates did not advise the Applicant of the existence of the Option Agreements until 8 March 2022 2) The Option Agreements are dated 5 November 2021 and 20 August 2021 3) The Applicant could not have become aware of the existence of these Option Agreements prior to being informed of their existence by Pollock Associates 4) Furthermore, the Applicant is not aware of any planning application having been submitted in respect of the solar farm 5) The Option Agreements would have been under negotiation for a significant period prior to being completed. As such, the parties would have been fully aware of the dDCO and, inter alia, the documents submitted in support thereof as listed above when negotiating the Option Agreements

		6) The Applicant had already issued 4 Heads of Terms prior to March 2022. The Applicant therefore does not accept there has been insufficient time for negotiations. The actual position is that the Applicant made early contact with Pollock and has made strenuous efforts to agree terms. It is only because the Affected Persons entered into the Option Agreements despite being in full knowledge of the Applicant's intentions as set out in the dDCO and then failed to inform the Applicant as to the existence of these Option Agreements despite having the opportunity to do when, for example, completing the "Request for Information", that negotiations have not yet been concluded. In this regard the Affected Parties had, in common with all other Affected Parties, been given the opportunity to attend consultation events, respond to consultations, complete "Requests for Information", register as an interested party and submit representations to be considered at the CA Hearing but chose not to do so. In addition, as at the date of the CA hearing and Deadline 5 (5 April 2022), the Applicant had still not received a copy of the Option Agreement and, in the absence of any planning application having been made by the Affected Persons or the beneficiary of the Option Agreement had no information as to what the proposed scheme may entail or the intended timescales for delivery. The Applicant was therefore unable to consider any impact of the landowner's proposed scheme and the Option Agreement as Pollock had not provided any details thereof. Whilst the Applicant was only provided with copies of the Option Agreements, certain parts of which are redacted, on 21 April

		2022, it is optimistic that an engineering and legal solution can be found. Clearly, had Pollock Associates advised the Applicant of the existence of the Option Agreements prior to 8 March 2022 it is entirely probable that full agreement would already have been reached.
4.	(3) We do not believe sufficient merit has been given by the applicant to the impact of their proposal on the proposed solar scheme the applicant has not engaged with the developer on their ability for both their cable and ours to run through the same corridor. We have had it suggested to us that Keadby Thermal believe "they got there first and will rely on Compulsory Powers" leaving the solar developer to resolve their issues separately."	To a certain extent, Pollock Associate's third point covers the same ground as already addressed above. However, for clarity, the Applicant can only engage with Pollock on issues if they are brought to their attention. As such, the Applicant could only address the solar scheme proposal once they were provided with details thereof by Pollock. As is evidenced above, the Applicant has, having been made aware of this issue, responded quickly and proactively. The Affected Parties have been fully aware of the dDCO since it was submitted and it is regrettable that the Option Agreements, which were entered into after the dDCO had been accepted for examination, did not take account of the dDCO. From a compensation point of view, therefore, there is an argument that the Affected Persons have not mitigated their loss. Furthermore, the Option Agreements do no more than grant the beneficiary an option to draw down land for a particular development and they do not in themselves create a compensation entitlement to the beneficiary. No planning permission has yet been submitted for that development and therefore no development can come forward at the present time irrespective as to whether the Option Agreement can or would be triggered.

		The relevant point therefore is that the dDCO should not, in the Applicant's opinion, be delayed or frustrated on account of future development of the land where such development is dependent upon the grant of an interest in land that has yet to be triggered that was granted in full knowledge of the dDCO, and planning permission which has yet to be applied for. In this regard, to the extent that it can be demonstrated that the dDCO would impact upon reasonably anticipated future development such that the Affected Persons have suffered unavoidable loss, they would be able to submit a claim for compensation to be determined by the Upper Tribunal Lands Chamber, if necessary.