Meeting note

Project name	Keadby 3
File reference	EN010114
Status	**Final**
Author	The Planning Inspectorate
Date	19 April 2021
Meeting with	Keadby Generation Limited
Venue	Virtual
Meeting objectives	Project Update
Circulation	All attendees

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Draft Document Review

The following was discussed in relation to the recent draft Documents Review completed by the Inspectorate (see annexe for feedback table relating to reference numbers).

Ref No. 13: The Applicant asked about wording for the title of the draft Development Consent Order (dDCO), to reflect the intent of the project relating to the decarbonisation pathway. The Inspectorate advised the title of the dDCO wouldn't have to exactly match the name of the project, and that the title of the order should try and use neutral language. The Applicant noted the use of "re-generation" wording in Town and County Planning Compulsory Acquisition Orders and said it would consider how best to reflect the carbon capture technology.

Ref No. 14: The Applicant set out to advise parties of a change of company name through a s48 notice. It also carried out a targeted s42 consultation, including Environmental Impact Assessment (EIA) consultees, relating to a small expansion of the order limits. This was to include improved biodiversity mitigation and temporary measures for oversetting cranes on the river. An addendum to the Preliminary Environmental Information Report (PEIR) contained two additional chapters. Information will be included in the consultation report to explain this.

Ref No, 26: The Applicant advised it would be applying for the relevant environmental permit to gain discharge consent for the operational generating station. Two options for the water supply were being considered, one being use of the canal which would require a new abstraction licence. The second was the re-use of the existing abstraction licence for the River Trent, currently used by Keadby 1 Power Station. The Applicant queried whether the Inspectorate had any specific concerns or whether the feedback was generally raising awareness to the requirement. The Inspectorate advised there had been concerns about water abstraction licences needing to be in place to supply what

was listed in the dDCO. The feedback was to highlight the general requirement rather than a specific concern.

Ref No. 28: The Applicant acknowledged the need to exclude the Secretary of State and Marine Management Organisation from arbitrations. It confirmed it would be following the precedent set by the Hornsea Three Offshore Wind Farm Order and would be adopting a similar arbitration clause.

Ref No. 37: Since the draft document submission, the Applicant had obtained a variation to the existing planning permission to extend the permission until the DCO would be granted. This would allow the haul road to be retained until to at least the point where the dDCO would be made. The Applicant advised it would follow the general principles used in South Humber Bank Energy Centre project, however that project had various complexities and powers that wouldn't be required in this instance. The intention would be that the DCO itself would extend the use of the haul road, then it would be removed as per the original planning permission. If the DCO was not implemented there would still be a need for removal and restoration. The Applicant confirmed that a power requiring removal and restoration would be included in the DCO.

Ref No. 42, 45: The Applicant's view of the use of water courses and water abstraction was that these may not be novel provisions. The wording provided two alternatives, the use of which was dependent on agreement with Canal and River Trust (CRT) It would revert to the river option if this was not possible. Discussions were ongoing with the Environment Agency on the principal considerations and these had fed into the consultation documents. The Applicant would deal separately with the abstraction licence for the canal rather than including this as part of the dDCO. It was not thought to be novel in terms of construction but the Applicant would clarify any further novel issues as identified.

Ref No. 47: The Applicant confirmed the carbon capture plant (CCP) elements of the project would be explained in more detailed in the Application. The Applicant said there were two elements; the CCP which connects to the heat recovery steam generator, then the associated development element would be responsible for compression and entry into the gathering network. The associated development would cease at that interface. The Inspectorate advised that this needed to be clearly explained and justified as associated development in the application.

The Applicant was aware that the 2009 Carbon Capture Readiness Guidance advised there should not be reliance on cluster networks but believed that the technology and implementation of the Zero Carbon Humber partnership had advanced beyond the point anticipated in the Guidance. It was aiming to address this in the Carbon Capture Readiness (CCR) report. The Applicant was developing some wording with National Grid to show how the cluster network would be coming online to support Keadby 3. As the CCS Pipeline DCO application was behind Keadby 3, the Applicant was also trying to capture the risk of the pipeline not coming forward in the wording of its dDCO. It was considering providing information similar to that in a regulation 6 statement to evidence the relationship between Keadby 3 and the CCS pipeline. This would include an overview of any early agreements with National Grid (the CCS pipeline applicant). The Inspectorate advised that this would not be an acceptance requirement but it would be useful to have some reference to this in the application and/or cover letter. The Examining Authority would want to see some level of reassurance around the CCS

pipeline and Endurance Reserve in relation to Keadby 3. The Applicant advised it would most likely form part of the CCR report or a stand alone document.

Submission update

The Applicant confirmed a submission date at the end of May 2021 was still expected. S48 consultation closed on 1 May 2021 so it would need to take into account any responses.

Keadby Hydrogen

The Applicant acknowledged the recent press announcement for the new Keadby Hydrogen project. It confirmed this is a separate project not linked with Keadby 3. Keadby Hydrogen was at concept stage so the Applicant was not able to consider it within its cumulative effects assessments, therefore, it would not be referred to in the Keadby 3 application documentation. It would be necessary for Keadby Hydrogen to include “committed developments” such as Keadby 3 in its cumulative assessment in the future.

AOB

In advance of the Examination the Inspectorate also advised it would send the Applicant a sample service level agreement for audio-visual (AV) services for virtual events, which included a GDPR agreement. The chosen AV provider would be required to complete this prior to any Examination events.

The Inspectorate advised it was in the process of developing its approach to blended events (part virtual/part physical).

Keadby 3 Low Carbon Gas Power Station Project EN010114

Section 51 Advice regarding draft Application documents submitted by SSE Generation Limited

This advice relates solely to matters raised upon the Inspectorate's review of the draft application documents submitted by SSE Generation Limited ("the Applicant"), and not the merits of the proposal. The advice is limited by the time available for consideration and raised without prejudice to the acceptance or otherwise of the eventual application. It is provided to assist the preparation of the next iteration.

Abbreviations used

1961 Act	Land Compensation Act	**DfT**	Department for Transport	**NPA2017**	Neighbourhood Planning Act
ANxx	Advice Note number	**DML**	Deemed Marine Licence	**NPS**	National Policy Statement
Axx	Article and number	**EM**	Explanatory Memorandum	**PA2008**	Planning Act 2008
CCR	Carbon Capture Readiness	**ExA**	Examining Authority	**The Inspectorate -**	Planning Inspectorate
CCS	Carbon Capture Storage	**MMO**	Marine Management Organisation	**SoS**	Secretary of State
CR	Consultation Report	**MPs**	Model Provisions		
dDCO	draft Development Consent Order				

General drafting points

1. The Applicant should ensure that when the draft development consent order (dDCO) is finalised for submission all internal references and legal footnotes are checked and that the drafting follows bests practice in AN13 and AN15 and any guidance on statutory instrument drafting.

2. A thorough justification should be provided in the Explanatory Memorandum (EM) for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power.

3. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in this DCO application is appropriate will be for the ExA to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

Draft Development Consent Order			
Ref No.	**Article/Requirements (A/R)**	**Extract from DCO (for ease of reference)**	**Comment/Question**
1.	**General**		The Applicant should ensure that that there are no inconsistencies within the dDCO and its constituent parts such as definitions or expressions in the articles, requirements, protective provisions, other schedules and any book of reference and/or any deemed marine licence (including scope of works permitted – deemed marine licence should not permit works outside the scope of those permitted by the dDCO itself), that all legislative references in the dDCO are to extant provisions and all schedules refer to the correct articles. Also, definitions should be precise, accurate and relatively easily understandable. (e.g. if a definition is drafted in a way that obliges the reader to cross refer to wording in multiple other documents in order to understand the definition, then it is not easily understandable). Where any registered company is referred to in the dDCO (or any deemed marine licence) it should be defined by using its full and precise company name and company registration number (as those appear on the register held by Companies House).
2.	**General**		The Applicant will be asked to maintain a list of all plans and other documents that will require Secretary of State (SoS) certification (including plan/document references). These should be updated throughout the examination process, and supplied to the Examining Authority (ExA) before the close of the examination
3.	**General**		The DCO is proposed to be a Statutory Instrument (SI) and so should follow guidance and best practice for SI drafting (for example avoiding "shall/should") in accordance with the latest version of guidance from the Office of the Parliamentary Counsel. It should also follow best practice drafting guidance from the Planning

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			Inspectorate and the Departments (see AN15). The dDCO (and any subsequent revisions) should be in the form required by the SI template (see AN15) and validated as such using the current SI template, including detailed footnotes to all statutory references.
4.	**General**		The Applicant should keep the dDCO under constant review throughout any examination so that definitions are kept up to date as matters evolve – e.g. : any definition of 'environmental statement' in the context of how/the purposes for which it is referred to in the dDCO; or how plans and drawings are defined (and where possible include drawing/revision numbers).
5.	**General references to Part 1 of the 1961 Act**	References to Part 1 of the Land Compensation Act (1961 Act)	Some Articles make provision for *"compensation to be determined, in case of dispute, under Part 1 of the 1961 Act"*. It is acknowledged that a provision in this form was in the various Model Provisions (MPs) and was commonplace in DCOs and other Orders. However, Part 1 of the 1961 Act only relates to compensation for compulsory acquisition. In order for there to be certainty that it would apply in other situations (e.g. the temporary use of land under **Article(A) 28**), please consider whether the modification should be included as with the other compensation provisions in **Schedule 8**?
6.	**General**		The application dDCO and any subsequent versions of the submitted to the examination: • should be supplied in both .pdf and Word formats, the latter showing any changes from the previous version by way of tracked changes. • should be accompanied by a document explaining the changes made– see e.g. Document explaining changes made to dDCO for Deadline 5 in the A19 (Testo's Junction) DCO examination The examination timetable will usually provide a deadline for receipt of the applicant's final or preferred version of the DCO. That version should be supported by a report of the outcome of

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			validating it through the Publishing section of the legislation.gov.uk website.
7.	**General**		There needs to be an adequate preamble with recitation of powers (see AN 15 para 3.3)
8.	**General**		A brief explanatory note at the end of the draft DCO will be necessary, detailing plans etc (see AN15 12.2)
9.	**General/ Precedent**		Where drafting precedents in previous made DCOs have been relied on, these should be checked to identify whether they have been subsequently refined or developed in the most recent DCOs so that the DCO provisions reflect the Secretary of State's current policy preferences. If any general provisions (other than works descriptions and other drafting bespoke to the facts of this particular application and DCO) actually differ in any way from corresponding provisions in the Secretary of State's most recent made DCOs, it would be preferable for an explanation to be provided as to how and why they differ (including but not limited to changes to statutory provisions made by or related to the Housing and Planning Act 2016)
10.	**General**		It would be helpful to provide clarity on who owns and/or will hold responsibility for any pipelines, whether this is the Applicant or other parties, and the other details on pipelines required by Reg 6 (4) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations to go with the application in due course.
11.	**General**		More detail on the stages of the requirements would help clarify the processes anticipated and how they fit together in terms of timing.
12.	**A15 and A18 (relating to water extraction and**	description of the Works concerning proposals for water supply connection works and discharge.	The purpose of and necessity for any provision which uses novel drafting and which does not have precedent in a made DCO or similar statutory order should be explained in the Explanatory Memorandum. The Planning Act 2008 power on which any such

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	discharge) Schedule 1, 5.1.4ff		provision is based should also be identified in the Explanatory Memorandum. The drafting should • be unambiguous • be precise • achieve what the Applicant wants it to achieve • be consistent with any definitions or expressions in other provisions of the DCO • follow guidance and best practice for SI drafting referred to above.
13.	**Title of Order**	The Keadby 3 Low Carbon Gas Fired Generating Station Order	Specific justification of how 'Low Carbon' is an appropriate and neutral description of the project should be provided.
14.	**A2**	The undertaker (and the beneficiary of the Order) named in Article 2 is proposed to be Keadby Generation Limited (KGL	The background to this should be explained in the Consultation Report (CR) and substantive reassurance should be provided that the only material change in consultation terms was to the name of the undertaker. This is most relevant in reference to section(s) 48 of the Planning Act 2008 (PA2008) but it may be helpful to have an independent explanation with the CR which can be referenced where necessary.
15.	**Schedule 1, para 5.1.4 in defining Work No. 4**	Flexibility – as provided for example in the maintenance article and definition, definition of commencement, power to deviate, Schedule 1 authorised development and requirements	The extent of any flexibility provided by the dDCO should be fully explained, such as the scope of maintenance works and ancillary works, limits of deviation and any proposed ability (through tailpieces) of discharging authorities to authorise subsequent amendments. The preferred approach to limiting this flexibility is to limit the works (or amendments) to those that would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement. Also, further as to tailpieces, see section 17 of AN15.

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			The drafting which gives rise to an element of flexibility (or alternatives) should provide clearly for unforeseen circumstances and define the scope of what is being authorised with sufficient precision. For example, the SoS had to amend article 6 (Benefit of Order) of the National Grid (Richborough Connection Project) Development Consent Order 2017 at decision stage to remove ambiguity (as later corrected by the National Grid (Richborough Connection Project) (Correction) Order 2018). In relation to the flexibility to carry out advance works, any "carve out" from the definition of "commencement" should be fully justified and it should be demonstrated that such works are de minimis and do not have environmental impacts which would need to be controlled by requirement. See section 21 of AN15. Pre-commencement requirements should also be assessed to ensure that the "carve out" from the definition of "commencement" does not allow works which defeat the purpose of the requirement.
16.	**Article 39**		The intent of this article is to avoid inconsistency with other relevant statutory provisions applying in the vicinity, but, notwithstanding other precedents, as much information as possible should be provided about "any enactments" together with clarification about how far from the Order limits the provision might bite.
17.	**A19, A21, A22 and Schedule 8**		These provisions (and any relevant plans) should be drafted in accordance with the guidance in AN15, in particular sections 23 (extinguishment of rights) and 24 (restrictive covenants) The SoS Department for Transport's (DfT) decision (paragraph 62 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO) should be noted: *"to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear*

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			justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used". Other DfT decisions have included very similar positions, e.g. the A556 (Knutsford to Bowdon Improvement) DCO and the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) DCO. Compulsory acquisition of an interest in land held by or on behalf of the Crown cannot not be authorised through this or any other article. This could be achieved, for example, by expressly excluding all interests held by or on behalf of the Crown in the book of reference land descriptions for relevant plots (where the dDCO is drafted to tie compulsory acquisition powers to the Book of Reference entries) or by excepting them from the definition of the Order land (if 'Order land' definition is not used for other purposes in the dDCO) or by drafting the relevant compulsory acquisition article to expressly exclude them. Where an applicant wishes to compulsorily acquire some other person's interest in that same land, that can only be done if the appropriate Crown authority consents to it under s135(1) of the Planning Act 2008. Where an applicant wishes to create and compulsorily acquire new rights over land, those rights should be fully, accurately and precisely defined for each relevant plot and the compulsory acquisition should be limited to the rights described. This could be done by drafting which limits the compulsory acquisition of new rights to those described in a schedule in the dDCO or to those described in the book of reference. If the article is drafted to enable compulsory acquisition of new rights over all of the Order land, with a schedule which limits the compulsory acquisition power in defined plots to the defined rights

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			listed in that schedule, this approach (allowing undefined rights in land not listed in that Schedule) should be clearly identified and the need for it explained and justified in the Explanatory Memorandum and Statement of Reasons. It is likely to be difficult to justify. There must be evidence to show that persons with an interest in the Order land were aware that undefined new rights were being sought over all of the Order land and were consulted on that basis. The SoSDfT has in at least three decisions (A585 Windy Harbour to Skippool Highway DCO, A30 Chiverton to Carland Cross DCO, Manston Airport DCO) limited the power to create undefined new rights by amending the temporary possession article (see below at 22). It should be noted that in the Manston Airport DCO the SoSDfT removed the ability to create undefined new rights over land identified for temporary possession even though it was not an issue in examination. The reasons for this are set out at paragraph 121 of the DL: "The Secretary of State is concerned about the creation of new unidentified rights and is unclear whether affected land owners have been appropriately consulted". In all respects (including in relation to the book of reference), the applicant should follow Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land published by DCLG (now MHCLG) in September 2013.
18.	**A30, A32 and A3; Schedule 11 (protective provisions) - as yet unpopulated; NB the**		Where a representation is made by a statutory undertaker (or some other person) that engages s127(1) of the Planning Act 2008 (PA2008) and has not been withdrawn, the Secretary of State will be unable to authorise compulsory acquisition powers relating to that statutory undertaker land unless satisfied of specified matters set out in s127. If the representation is not withdrawn by the end of the examination, the ExA will need to reach a conclusion

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	applicability of this Article cannot be known prior to a formal application being accepted for examination.		whether or not to recommend that the relevant statutory test has been met in accordance with s127. The Secretary of State will be unable to authorise removal or repositioning of apparatus (or extinguishment of a right for it) unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with s138 of the PA2008. Justification will be needed to show that extinguishment or removal is necessary.
19.	**A12 to A14 and Schedules 5 and 6 (as yet unpopulated).**	Articles 12 – 14 and Schedules 5 and 6 (as yet unpopulated).	Notwithstanding other precedents, justification should be provided as to why the power is appropriate and proportionate having regard to the impacts on pedestrians and others of authorising temporary working sites in these streets.
20.	**A10 and Schedule 4**	Article 10 and Schedule 4	This is a wide power – authorising alteration etc. of any street within the Order limits. It should be clear why this power is necessary and consideration given to whether or not it should be limited to identified streets.
21.	**A8**		The guidance in section 25 of AN15 should be followed and, if not already provided, additional information sought such as • the purpose of the legislation/statutory provision • the persons/body having the power being disapplied • an explanation as to the effect of disapplication and whether any protective provisions or requirements are required to prevent any adverse impact arising as a result of disapplying the legislative controls • (by reference to s120 of and Schedule 5 to the PA2008) how each disapplied provision constitutes a matter for which provision may be made in the DCO.

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			Where the consent falls within a schedule to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 evidence will be required that the regulator has consented to removing the need for the consent in accordance with s150 PA2008.
22.	**A34**		The word "take" should be removed from this article. Consent under s135 (1) and (2) should also be obtained from the Crown authority
23.	**A35**		The guidance in s22 of AN15 should be followed. If it hasn't been followed justification should be provided as to why this is the case. If the 'felling or lopping' article is drafted to allow such actions to trees both within and 'near' the Order limits, should consideration be given to amending that, so that it only applies to trees within or 'encroaching upon' the Order limits?
24.	**A10 and Schedule 2**		AN15 provides standard drafting for articles dealing with discharge of requirements. If this guidance hasn't been followed justification should be provided as to why this is the case.
25.	**A6 and A7**		If any part of this article is drafted so as to allow any transfer of benefit by the Applicant (undertaker) to any other named person or category of person without the need for the SoS's consent, then the Applicant should provide full justification as to why a transfer to such person is appropriate. Where the purpose of the provision is to enable such person(s) to undertake specific works authorised by the DCO the transfer of benefit should be restricted to those works. If the provision seeks to permit transfer of compulsory acquisition

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			powers the applicant should provide evidence to satisfy the SoS that such person has sufficient funds to meet the compensation costs of the acquisition. See 23 below in relation to references to arbitration in this article.
26.	**A15**		The applicant should be aware of and mindful of s146 of the PA2008.
27.	**A8, A23, A28, A29 and Schedule 9**		Temporary possession is not itself compulsory acquisition. Articles giving temporary possession powers should be considered carefully to check whether or not they allow temporary possession of any land within the Order limits, regardless of whether or not it is listed in any Schedule to the dDCO which details specific plots over which temporary possession may be taken for specific purposes listed in that Schedule. If they do, then the applicant should justify why those wider powers (which also allow temporary possession of land not listed in that Schedule) are necessary and appropriate and explain what steps they have taken to alert all landowners, occupiers, etc. within the Order limits to this possibility. If not already present, consideration should also be given to adding in a provision obliging the Applicant (undertaker) to remove from such land (on ceasing to occupy it temporarily) any equipment, vehicles or temporary works they carry out on it (save for rebuilding demolished buildings under powers given by the DCO), unless, before ceasing to occupy temporarily, they have implemented any separate power under the DCO to compulsorily acquire it. If compulsory acquisition articles (land and rights) are drafted to authorise the compulsory acquisition of all of the Order land there will need to be a provision in the temporary possession article

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			which prevents compulsory acquisition of land which is only intended to be used temporarily. For example: The undertaker may not compulsorily acquire under this Order the land referred to in paragraph [(1)(a)(i)] except that the undertaker is not to be precluded from acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article [xx] (acquisition of subsoil or airspace only). In that scenario the compulsory acquisition article would also need to be drafted in a way that expresses that it is subject to the temporary possession article (by reference to the temporary possession article number). If the temporary possession article drafting also says that the undertaker is not precluded from: acquiring new rights or imposing restrictive covenants over any part of that land under article [xx] (compulsory acquisition of rights) careful consideration must be given to the drafting of the compulsory acquisition of rights article in relation to new rights/restrictions and the effect of its interaction with this provision. If the compulsory acquisition of rights article authorises the creation of new rights over all of the order land, in addition to the new rights described in a specific schedule, wording permitting the creation of new rights in accordance with that article will permit the creation of undefined new rights in the land over which temporary possession powers are granted (i.e. the schedule in the dDCO listing the plots over which temporary possession is authorised – Schedule 9). This is likely to be difficult to justify.

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			In these circumstances it is important to look carefully at the book of reference, land plans and Statement of Reasons to see how the land to be set out in Schedule 9 is identified and described. If the land is consistently descried as being for temporary possession, then it may be that persons with an interest in the land have not understood the nature of powers sought over their land and consequently have not been correctly consulted. The applicant should be able to clearly explain the powers that they are seeking over these plots, the need for these powers, how this is secured in the DCO and provide evidence that all persons with an interest in these plots have been consulted appropriately in a way that was clear about the nature of the powers sought. The SoSDfT has issued three decisions amending the drafting of the temporary possession article to remove the power to create undefined new rights in the land described as being for temporary possession (A585 Windy Harbour to Skippool Highway DCO, A30 Chiverton to Carland Cross DCO, Manston Airport DCO). One of the main reasons for this related to the failure to accurately consult those with an interest in the land on the nature of the powers sought, the land being described in all supporting documents and on the land plans, as being for temporary possession only. There may be circumstances where it is permissible to retain drafting which enables the undertaker to acquire new rights in the land in the schedule in the dDCO listing the plots over which temporary possession is authorised (Schedule 9; A28). For example, where there are cross-over plots with those listed in a schedule in the dDCO containing detail of the new rights being compulsorily acquired (Schedule 9; A28). In those circumstances, if the new rights are precisely defined and have been consulted on, drafting could be included in the dDCO along the following lines:

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			The undertaker may not compulsorily acquire under this Order the land referred to in paragraph [(1)(a)(i)] except that the undertaker is not precluded from— (a) acquiring new rights or imposing restrictive covenants over any part of that land under article [ ] (compulsory acquisition of rights) to the extent that such land is listed in column [(1)] of Schedule [xx]… This drafting has precedent in the East Anglia Three Offshore Windfarm DCO, Hornsea Two Offshore Windfarm DCO and Norfolk Vanguard Offshore Windfarm DCO. Given the parliamentary approval to the temporary possession regime under the Neighbourhood Planning Act 2017 (NPA2017), which were subject to consultation and debate before being enacted, should any provisions relating to notices/counter notices which do not reflect the NPA2017 proposed regime (not yet in force) be modified to more closely reflect the incoming statutory regime where possible? As examples: • The notice period that will be required under the NPA2017 Act is 3 months, substantially longer than the 14 days required under A28. Other than prior precedent, what is the justification for only requiring 14 days' notice in this case? • Under the NPA2017, the notice would also have to state the period for which the acquiring authority is to take possession. Should such a requirement be included in this case? • Powers of temporary possession are sometimes said to be justified because they are in the interests of landowners, whose land would not then need to be acquired permanently. The NPA2017 Act provisions include the ability to serve a counter-notice objecting to the proposed temporary possession so that the landowner would have the option to choose whether temporary possession or permanent acquisition was desirable. Should this

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			article make some such provision – whether or not in the form in the NPA2017?
28.	**A45**		It is unlikely that a consenting SoS will allow arbitration provision wording to apply arbitration to decisions he/she, or, if relevant the Marine Management Organisation ('MMO') may have to make on future consents or approvals within their remit. By way of example: The SoS for Business, Energy and Industrial Strategy (BEIS) included the following drafting in the arbitration article in the Norfolk Vanguard Offshore Windfarm DCO and the draft Hornsea Three Offshore Windfarm DCO (published with a minded to approve decision) to remove any doubt about the application of arbitration to decisions of the Secretary of State and the MMO under the DCO: *Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.* The SoSBEIS also agreed with the ExA recommendation to remove reference to arbitration in the transfer of the benefit article and the deemed marine licences (DMLs) in the Hornsea and Norfolk Vanguard DCOs. The Hornsea ExA recommendation report at 20.5.9 details the reasons for removal from the transfer of benefit article, and at 20.5.17 – 20.5.24 regarding removal from the DMLs. It should also be noted that the Secretary of State removed the following from the arbitration clause in both DCOs: *Should the Secretary of State fail to make an appointment under paragraph within 14 days 42 of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator*.

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Ref No.	**Article/Requirements (A/R)**	**Extract from DCO (for ease of reference)**	**Comment/Question**
29.	**A41**		Are the controls on noise elsewhere in the DCO sufficient to justify the defence being provided by this article to statutory nuisance claims relating to noise? If the defence has been extended to other forms of nuisance under section 79(1) Environmental Protection Act 1990, the same question will apply to those nuisances. This article also sometimes refers to legislation that has been repealed – e.g. s65 Control of Pollution Act 1974. It should refer to extant legislation only.
30.	**A40 and Schedule 14**		It is unlikely that a consenting SoS will allow bespoke appeal procedures to apply to the MMO decisions on discharge of conditions in a deemed marine licence. By way of example: The SoSBEIS removed drafting in the Norfolk Vanguard Offshore Windfarm DCO and the Hornsea Three Offshore Wind Farm DMLs creating a bespoke appeal procedure against MMO decisions on discharge of conditions. The ExA recommendation report for Hornsea Three provides reasons at 20.5.25 – 20.5.29.
31.	**Schedule 1**		More detail on the design would be helpful, eg AN9, para 2.5, bullet 5 on the Rochdale Envelope suggests, "the Applicant must ensure they have assessed the range of possible effects implicit in the flexibility provided by the DCO", the maximum height of emissions stacks should be given.
32.	**Schedule 1**	The inclusion of a maximum MW output	There is precedent within granted DCOs, such as The Cleve Hill Solar Park Order 2020, for not including a maximum MW output. It needs to be ensured that the worst-case environmental impacts have been assessed within the Environmental Statement (ES) and

Draft Development Consent Order			
Ref No.	**Article/Requirements (A/R)**	**Extract from DCO (for ease of reference)**	**Comment/Question**
			Preliminary Environmental Information Report (PEIR) as appropriate and that these impacts have been consulted upon. However, it is noted that these may constrained elsewhere i.e. in the outline design principles.
33.	**Schedule 1**	The inclusion of the Carbon Capture Plant (CCP) as part of the NSIP (Schedule 1) and not treating it as "associated development	There should be an explanation and justification of how CCP falls within the definition of the development as contained within s15(2) PA2008 within in Explanatory Memorandum (EM)
34.	**Schedule 1, Works 4A/ 4B)**	The inclusion of two options for water abstraction	The respective merits of two options will be a matter for the Examining Authority in due course. It is essential that the Applicant can demonstrate that effective and meaningful consultation has taken place in relation to both options and that worst-case scenario for environmental impacts has been assessed prior to Examination if they are to be treated as viable alternatives.
35.	**Schedule 2 R2**	The proposal that planning powers are valid for 7 years	The Inspectorate notes the justification and explanation has been provided in the dEM. This may need to be updated given the timeframes with the Energy White Paper for when details of revenue mechanisms will be bought forward. The effect of the 7-year validity will need to be assessed in the ES and the CR should demonstrate that it has been consulted upon. The Inspectorate also notes that a Funding Statement will need to be submitted with the Application which will have to meet the standards within s55
36.	**R28**	This stipulates the reservation of the space for Works 1C and 7 (carbon capture equipment works	As mentioned, the CCR regulations are due to be updated and therefore advice on this may be premature. However, it does appear to in effect, subject to the changed circumstance, replicate Requirements in other made orders Such as the Eggborough Gas Fired Generating Station Order 2018

Draft Development Consent Order			
Ref No.	**Article/Requirements (A/R)**	**Extract from DCO (for ease of reference)**	**Comment/Question**
37.	**R19(3) and R26**	Incorporation of two extant planning permissions relating to the construction of the Keadby 2 project	See the Examination of the South Humber DCO, particularly the ExA's written questions for examples of possible considerations when bringing extant planning permissions into a dDCO.
38.	**Schedules 3 to 14**		These are not currently populated (except for Schedule 8). It is therefore impossible for the dEM or the draft DCO to be assessed for clarity/accuracy in relation to these Schedules and/or the Articles to which the Schedules are linked.

Draft Explanatory Memorandum (dEM)			
Ref No.	**Paragraph**	**Extract from EM**	**Comment/Question**
39.	**General**		At present many of the descriptions in the draft dEM of the draft Articles are too brief and do not contain full details on the purpose and effect of each provision as required by AN13, in particular paragraph 2.14, and AN15, paragraph 1.5 and everywhere. They do not specify whether they are based on model provisions or provide much detail on the extent to which they mirror or differ from the model provisions and/or precedent DCOs to which they refer. Without that context it is impossible to assess the extent to which they diverge from precedent. If they are different to model provisions/ named precedent, it would be helpful for the Applicant to explain how, and why, they differ. The Drax Power DCO 2019 EM (on the NI website) demonstrates an effective use of these techniques – in particular setting out clearly which Articles are derived from the model provisions and may be a useful example. Where provisions are explicitly described by the Applicant as "not a model" provision, (eg R3ff, 27ff etc) , it would be helpful to explain whether they are novel or have been used elsewhere, and why they are necessary for this proposal.
40.	**General/ Precedents**		Notwithstanding that drafting precedent has been set by previous DCOs or similar orders full justification should be provided for each power/provision taking account of the facts of this particular DCO application

Draft Explanatory Memorandum (dEM)			
Ref No.	**Paragraph**	**Extract from EM**	**Comment/Question**
41.	**General**	Absence of glossary/ clear use of definitions/ terminology	The dEM would benefit from a glossary which clearly set out terminology, acronyms etc and made the drafts more accessible to the reader. The technology envisaged in the proposal is not straightforward and needs to be made accessible to lay parties as much as possible (eg CHP and CCGT are acronyms introduced in the dEM without prior explanation of what they stand for, Combined Heat and Power and Combined Cycle Gas Turbine respectively). See AN13, 2.9, for guidance on this point. For an example of how this can be done see, for example, the Drax Power DCO 2019 EM.
42.	**General**	Novel points	The dEM does not contain any reference to whether the draft Articles of the DCO contain novel provisions. This makes it harder to identify the extent to which the proposal is likely to involve novel or controversial aspects, and to form a realistic view of Articles which will require more scrutiny at examination. It appears that the proposal may require novel provisions in relation to water abstraction and the relationship with water courses (see below). It would be helpful if/ where appropriate such matters could be identified explicitly in the dEM as being novel. See AN15 1.1, 1.2, 1.4 etc for guidance on this point.
43.	**General**	The relevant Local Planning Authorities (LPAs)/ district councils/ location	It would be helpful if the identity of the relevant LPA (/s) could be set out clearly where applicable so that it is clear to the Examining Authority and the parties and/or lay observers which LPA(s) will be involved in the application (and/or which bits of the application) and potentially, in due course, giving approvals under the provisions of the DCO.
44.	**General**	Proof-reading	There are quite a lot of typos/ missing words which obscure the sense of the dEM at present. The draft would benefit from proof-reading and a sense-check.

Draft Explanatory Memorandum (dEM)			
Ref No.	**Paragraph**	**Extract from EM**	**Comment/Question**
45.	**Paragraph 3.3 of the dEM and dDCO Articles 15 and 18**		These appear to raise novel issues related to the use of watercourses. A15 appears to envisage some form of water abstraction from either the river Trent or Stainforth and Keadby canal (see also para 5.1.4 of the dEM setting out Work No 4). Water abstraction of this kind is likely to require a licence, under s24 of the Water Resources Act 1991. The requirement for such a licence could be disapplied via s150 PA2008 and Regulation 5 and Schedule 2 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (IPMPP Regs), although there does not appear to be any precedent for this in any DCO previously published – presumably because the kind of water cooling system envisaged appears to be novel. In any event the dEM needs to clarify whether there is to be water abstraction (as A15 appears to suggest), and if so whether a licence is necessary (as it appears to be), and if so, whether it will be pursued independently from the Environment Agency, or as part of the dDCO under s150 and the IPMPP Regs.

Draft Explanatory Memorandum (dEM)			
Ref No.	**Paragraph**	**Extract from EM**	**Comment/Question**
46.	**Paragraph 3.4 of the dEM**		This refers to the proposed development being located on land owned by the Applicant that already accommodates two other power generating stations, and suggests that therefore the site is less sensitive to the development proposed and that the flexibility sought by the applicant is therefore appropriate. This statement does not address satisfactorily the question of flexibility: Firstly because the statement in dEM paragraph 3.4 does not clearly logically relate to the flexibility sought in paragraph 3.3 without further explanation (eg why does the prior existence of other generating stations justify flexibility in relation to water extraction for this proposal? It's not obvious on a straightforward reading). Secondly, far from providing reassurance, the existence of proximate and prior-existing development raises concerns of environmental cumulative impacts which will need to be addressed in the Environmental Statement and may, without explanation/ mitigation etc, potentially undermine the case for the proposal in this location.
47.		Associated development	Greater clarity in the draft EM on the nature of proposed associated development and how it constitutes associated development within the meaning of the PA2008 would help
48.			

Draft Land Plans			
Ref No.	**Land Plan Ref**	**Extract from Plan Key (for ease of reference)**	**Comment/Question**
49.	Key plan	North facing arrow	North facing arrow not included.
50.	Key plan	Order land	Order Land boundaries unclear in parts.
51.	Sheets 1, 2 and 3	Plot checks	Cannot be checked properly, no Book of Reference submitted.

Draft Land Plans			
Ref No.	**Land Plan Ref**	**Extract from Plan Key (for ease of reference)**	**Comment/Question**
52.	Sheets 1. 2 and 3	Plot checks	Schedule 7 table is empty.

Draft Works Plans			
Ref No.	**Work Plan Ref**	**Extract from Schedule 1: Authorised Development (PART 1)**	**Comment/Question**
53.	Sheet 14	Work No. 7B	Description on Plan does not match description in dDCO.

Draft Habitats Regulations Assessment Screening Report (HRA report)			
Ref No.	**Paragraph/ Section**	**Extract from HRA report (for ease of reference)**	**Comment/Question**
54.			The Applicant's cover letter dated 2 February 2021 requested comments on the following: 1) Agreement with the impact pathways scoped in. 2) Agreement that only operational air quality needs to be carried forward to Appropriate Assessment stage. Whilst the impact pathways and assessment matters identified appear consistent with the characteristics of the project and the receiving environment, the Inspectorate cannot provide definitive agreement on these issues, since this could fetter the discretion of the ExA during examination.
55.	5.2.13	… an acceptable receptor dose (i.e. regular noise level at the bird) of or below 70 dB has been identified by AECOM through discussion with Natural England on schemes in other parts of England.	Further justification that this is an appropriate threshold for this particular development and context would be welcomed, e.g. with reference to other NSIPs.

Draft Habitats Regulations Assessment Screening Report (HRA report)			
Ref No.	**Paragraph/ Section**	**Extract from HRA report (for ease of reference)**	**Comment/Question**
56.	5.3.1	The outfall of cooling water will replace the existing consented discharge from Keadby 1 Power Station	The justification for screening out habitat disturbance and modification resulting from discharges of cooling water from Appropriate Assessment is based on the existing operational discharge from Keadby 1 Power Station having no effect on habitats within the River Trent. The HRA should provide further detailed explanation as to how Keadby 1 and Keadby 3 developments are comparable to support this screening decision.
57.	Annexes A and D	Advice Note 10 screening matrices	Matrices have been drafted for each cluster of European sites. A separate matrix for each site is the preferred format.

Draft Carbon Capture Statement (CCS) and Carbon Capture Readiness (CCR) Assessment			
Ref No.	**Paragraph/ Section**	**Extract from CCS and CCR Assessment**	**Comment/Question**
58.	**General**	Use of the proposed Humber Low Carbon pipeline	The DECC CCR Guidance 2009 does indicate that applicants shouldn't assume they will be able to outsource transport arrangement at the time of future CCS deployment. However, the NPS EN-1 notes that *'A model assessment structure is suggested in DECC's CCR guidance, although this is not the only way which the assessment could be addressed. It is the responsibility of applicants to justify the capture, transport and storage options chosen for their proposed development.'* It will be a matter for the ExA to assess whether CCS and CCR assessment complies with the NPS.

General

1. Where references are provided to other Application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of sign-posting) as well as their respective reference number.

2. DCLG: Application form Guidance, paragraph 3 states: "*The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.*"