

## Viking CCS Pipeline

# 9.12 Written summaries of oral submissions given at Hearings during the week commencing 25th March 2024

Document Reference: EN070008/APP/9.12

Applicant: Chrysaor Production (U.K.) Limited,  
a Harbour Energy Company  
PINS Reference: EN070008  
Planning Act 2008 (as amended)  
The Infrastructure Planning (Applications: Prescribed Forms  
and Procedure) Regulations 2009 - Regulation 5(2)(q)  
Date: April 2024

# Viking CCS Pipeline

## Applicant's Summary of Oral Submissions

### Preliminary Meeting



This note summarises the submissions made by Chrysaor Production (U.K.) Limited (the “**Applicant**”) at the Preliminary Meeting (“**PM**”) on 26 March 2024. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant’s submissions.

## **1 INITIAL ASSESSMENT OF PRINCIPAL ISSUES**

- 1.1 The Applicant was asked by the ExA whether it had any comments to make in respect of the initial assessment of principal issues.
- 1.2 The Applicant confirmed that it was content with the initial assessment of principal issues. It was also amenable to the request made by Lincolnshire County Council to keep the list of principal issues under review, recognising that this is not a closed list.

## **2 DRAFT EXAMINATION TIMETABLE**

### Change Request

- 2.1 The Applicant was invited by the ExA to provide an overview of its recent Change Request, and any effects that this may have upon the Examination timetable.
- 2.2 The Applicant explained that the notification of its proposed application for the Change Request is set out in its letter of 26 February 2024 [**AS-037**]. In summary, the application for the Proposed Development initially had two options for the pipeline to run through at Immingham. One of those options, ‘Option 2’, was to run through the Humber Oil Refinery itself. This was explored as it was the shorter and most direct route for the pipeline.
- 2.3 A review of ‘Option 2’ was undertaken by the Applicant in conjunction with Phillips 66, the operators of the Humber Oil Refinery. It was decided that this route was not feasible, largely because of the engineering challenges of attempting to route the pipeline through an area in which considerable infrastructure is already located. As such, the decision was taken to remove that option from the draft Development Consent Order (DCO) [**AS-008**], and to retain ‘Option 1’.
- 2.4 In terms of the potential effects of the Change Request, the Applicant’s position is that it does not give rise to any additional impacts or effects, as this reduces the scale of the Proposed Development, it is already within the extent of the existing Order Limits, and has been undertaken following engagement with the relevant landowner.
- 2.5 A timescale for allowing parties to comment on the Change Request was including within the submissions made, however the Applicant had not appreciated how quickly the ExA would consider the Change Request. The Applicant suggested that there were two potential options for allowing parties to comment on the Change Request. The first would be to give parties until Deadline 1 to comment. Phillips 66, who are principally affected by the Change Request, are already aware of its terms, so they may not have any particular difficulty in responding by Deadline 1. The Applicant is, however, mindful of the volume of information that is likely to be due from parties at Deadline 1. As such, if the ExA felt that it was more appropriate, the Applicant would suggest as a Deadline 2 as a second option, with the Applicant then to respond to any comments made on the Change Request at Deadline 3.

### Accompanied Site Inspection

- 2.6 The Applicant was asked by the ExA to confirm whether it could arrange for access to private land at the Immingham Facility and Theddlethorpe Gas Terminal as part of the Accompanied Site Inspection (ASI).
- 2.7 The Applicant advised that access to both sites could likely be granted for the purposes of the ASI, but that it would respond to the ExA in writing to confirm the position. The Applicant recognised that the ExA would be keen to get access to the Theddlethorpe Gas Terminal in particular, and noted that this would likely be the easier of the two sites to gain access to.

### Submissions at Procedural Deadline A

- 2.8 The Applicant was invited by the ExA to summarise its written submissions made to the ExA at Procedural Deadline A.
- 2.9 The Applicant explained that its preference would be for the hearings in the week commencing 15 July 2024 to be blended hearings, as opposed to entirely virtual hearings. In its experience, where there is technical or complex evidence, it can be better for attendees to be in-person to exchange that evidence wherever possible. In addition, blended hearings would allow further opportunities for parties from the local area to observe and participate in-person, rather than virtually.
- 2.10 The Applicant also noted that the ExA were intending to request, at each Deadline, a composite marked-up version of the draft DCO, showing (in different coloured text) the changes made as the draft DCO has gone through the Examination process. The Applicant recognised the reasons for this request, and the potential benefits that it may have for the Examination process. The difficulty for the Applicant, however, is a practical one. As of yet, there is no software or programme that can produce a composite marked-up version of the draft DCO. Accordingly, a composite marked-up version of the draft DCO would need to be produced manually, rather than through track changes or a delta view.
- 2.11 The Applicant's advisors have some experience of this process from other Examinations, and it has proven to be extremely challenging, both because it is a manual process and because the updating of the draft DCO is usually the last step to be taken prior to a Deadline, as this will normally need to reflect and take account of changes made to other documents. Only once that version of the draft DCO was finalised could a comparison against the previous version be produced, and a composite marked-up version be prepared manually.
- 2.12 The Applicant has suggested providing a composite marked-up version of the draft DCO at certain key Deadlines, so that the ExA would have visibility at certain points through the Examination process of that composite exercise. The Applicant has suggested Deadlines 1, 3 and 7 for these purposes, but notes that these are only suggestions, and that the final decision will be one for the ExA to take.

# Viking CCS Pipeline

## Applicant's Summary of Oral Submissions

### Compulsory Acquisition Hearing 1 (CAH1)



This note summarises the submissions made by Chrysaor Production (U.K.) Limited (the “**Applicant**”) at the Compulsory Acquisition Hearing 1 (“**CAH1**”) on 27 March 2024. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant’s submissions.

## 1 THE CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

### The Applicant’s case for CA and TP

- 1.1 The Applicant was invited by the ExA to provide an overview of its case for compulsory acquisition (CA) and temporary possession (TP) in the context of the relevant tests under the Planning Act 2008 and DCLG Guidance.
- 1.2 The Applicant noted that Section 122 of the Planning Act 2008 allows for DCOs to be granted with powers to compulsorily acquire land and rights in land. These powers can only be included where the Secretary of State is satisfied that the conditions of Section 122 have been met. These conditions are in essence a two-stage test. The first stage is that the land for which the powers are granted is either required for the development, is required to facilitate or is incidental to the development, or the land is replacement land for commons or open spaces. The second stage is that there is a compelling case in the public interest for land to be acquired compulsorily.
- 1.3 In respect of the first stage, the Applicant’s Statement of Reasons **[AS-013]** and associated Land Plans **[AS-016]** detail the land and rights in land it seeks to acquire through CA, in the event voluntary agreements cannot be reached. All plots of land are either needed for the development, or to facilitate the development. There are no proposals to acquire land as replacement land.
- 1.4 Consistent with the DCLG Guidance, the need and proposed use for each area of land is set out in the Statement of Reasons, and in particular in section 9 of this. Table 2 of the Statement of Reasons sets out the purpose for permanent acquisition of surface sites, Table 3 for permanent acquisition for the pipeline, Table 4 for permanent acquisition of rights only, and Table 5 sets out temporary possession.
- 1.5 In respect of the second stage, the Secretary of State must be satisfied that there is a compelling case in the public interest for land to be acquired compulsorily. The DCLG Guidance (at paragraphs 12 and 13) expand on this as requiring compelling evidence that the public benefits outweigh private loss.
- 1.6 The recently designated National Policy Statement (NPS) EN-1 identifies (at paragraph 3.5.1) that there is “*an urgent need for new carbon capture and storage (CCS) infrastructure to support the transition to a net zero economy*”. As was identified during the Preliminary Meeting, the new NPS is an important and relevant consideration in this Examination.
- 1.7 The case for the Proposed Development is set out in the Planning Design and Access Statement **[APP-129]** and the Need Case for the Scheme **[APP-131]**. These set out the substantial public benefits of the proposed development, which would contribute towards the urgent need identified by Government and Parliament for new carbon capture and storage infrastructure in the UK.

- 1.8 The majority of the pipeline is to be situated in agricultural land and, once the pipeline is installed, the land would be returned to its former use. This will minimise the long-term impact on affected landowners. The Applicant has had regard to representations of landowners when routing the pipeline and siting the above-ground infrastructure, and continues to engage with landowners with a view to minimising impacts on them. The Applicant would suggest that the recently submitted Change Request is an example of this.
- 1.9 The Applicant's position is that there is a compelling case in the public interest for the use of CA powers in terms of Section 122 of the Planning Act 2008, and that the relevant legal and policy tests have been met.

The Applicant's criteria for determining whether to seek CA of land, CA of rights, or TP

- 1.10 The Applicant was invited by the ExA to outline its strategy and criteria for determining whether to seek the CA of land, the CA of rights in land or TP of land.
- 1.11 The Applicant explained that its strategy has been to look at the various components of the Proposed Development by reference to the permanent above-ground infrastructure, the pipeline itself, and the rights needed for the construction phase.

*(i) Permanent above ground-infrastructure*

- 1.12 In respect of the permanent above-ground infrastructure, the Applicant is seeking the freehold acquisition of land needed for the infrastructure at both ends of the pipeline, namely the Immingham and Theddlethorpe facilities, and the three block valve locations. The Applicant is also proposing the permanent acquisition of the dune valve site, which the ExA may have seen on its Unaccompanied Site Visit.
- 1.13 These sites will be fenced premises to which the Applicant will require to have exclusive possession. In the case of the block valves, these are to be located on what is currently agricultural land, and the nature of the works would preclude agricultural use from resuming. Detail on the land to be permanently acquired is set out in Table 2 of the Statement of Reasons. The Applicant would note, however, that this Table includes both Option 1 and 2 at Theddlethorpe, but that only one of these would ultimately come forward. As such, the extent of the CA of land set out in Table 2 of the Statement of Reasons appears more than would ultimately be the case.

*(ii) Pipeline*

- 1.14 In respect of the pipeline itself, the Applicant is seeking CA powers and TP over a corridor of land, within which to site the pipeline. The corridor, for the majority of the route, will be 100 metres wide, which is to allow for flexibility at the detailed design stage, having regard to further investigation of the land and the desire to minimise impacts on ecology. Within that corridor, the working corridor for the pipeline will generally be 30 metres (up to 50 metres at crossing points). The exact location within the 100 metre corridor will be determined by the location of the pipeline in the ground. New rights and restrictive covenants are also sought to allow access to inspect and maintain the pipeline.
- 1.15 The ExA noted that, whilst the corridor for most of the route would be 100 metres wide, a width of 200 metres is being sought in proximity to some land in which Anglian Water has an interest. The ExA invited Anglian Water to comment on this point, who highlighted their concerns regarding one part of the route at Louth, where expansion of their existing water treatment centre is proposed. The Applicant was asked by the ExA to explain why a width of 200 metres would be required at this location. The Applicant noted that this point is

currently under discussion between the Applicant and Anglian Water, and that the Applicant would provide further detail on this point in writing at Deadline 1.

- 1.16 More broadly, the Applicant noted the need to strike a balance for linear projects such as the Proposed Development between the amount of pre-consent work that is to be done to ascertain the route and the interest in allowing sufficient flexibility for the detailed design stage. To narrow the corridor width down at this stage would come at a significant cost and require intrusive work on land at a stage where the Proposed Development does not have approval. The intention would be that, once consent is granted, the amount of land take will ultimately be reduced once greater detail comes forward.
- 1.17 On the pipeline sections, the Applicant noted that the permanent acquisition of a strata of sub-surface land is sought. As set out in the Statement of Reasons (at paragraph 9.2.7), the Applicant is seeking to agree long leases over a strata of sub-surface land for the pipeline, to the extent necessary to construct, operate and maintain it. It is not possible, however, to acquire a lease through the CA process. It is for that reason that the Applicant is seeking CA powers over the freehold of sub-surface land in the event that an agreement for a lease cannot be reached with the relevant landowner.
- 1.18 In addition to the acquisition of subsurface land, powers are also being sought to acquire rights and impose restrictive covenants on the surface of this land. The need for these over each plot is set out in Table 3 of the Statement of Reasons. These restrictions are to protect the pipeline, but they have been framed so that they would not impact on the resumption of agricultural use, which is the existing use in respect of the vast majority of the surface land.
- 1.19 The Applicant is also seeking CA powers to create rights over land. These are set out in Table 4 of the Statement of Reasons, and are primarily to allow for access for inspection and maintenance of the pipeline. Permanent rights are also sought over the area of land where the Lincolnshire Offshore Gas Gathering System (LOGGS) Pipeline is situated, to ensure that the applicant has the necessary rights to operate and maintain this for the purposes of the Proposed Development. These rights are in substance the same as the rights that currently exist over the LOGGS Pipeline and reflect its original use.

*(iii) Temporary Possession for construction*

- 1.20 In respect of TP for the construction phase, there are two elements to this. The first relates to the construction of the pipeline itself. The extent of TP for pipeline construction can perhaps best be understood by reference to the indicative construction schedule set out at Table 3-5 of the Project Description chapter of the Environmental Statement [APP-045]. This lists the various activities associated with the installation of the pipeline. In summary, the period from works commencing on a section of the pipeline (i.e. from when the length of corridor was fenced off and stripping-off of the topsoil commenced) until the land was reinstated and the fencing removed would generally be expected to be a period of 7 months. This would be the length of time that the Applicant would normally have TP of any one section of pipeline for.
- 1.21 The second element of TP is land required in the construction phase, but not in operation more generally. The approach here has been to take TP to minimise the land over which rights are required, and as an alternative to permanent acquisition. These areas are set out in Table 5 of the Statement of Reasons. The use of such powers is quite common in DCOs, and includes the ability to use land for access during construction.

- 1.22 In this case, the majority of the land identified in Table 5 in the Statement of Reasons is needed to allow for access to the pipeline construction corridor. Most of these access points are expected to be reinstated, and the period of possession will generally align with the period of possession for construction of the pipeline itself (i.e. the 7 month period noted outlined above). There are a number of plots where the Applicant would be utilising an existing access. In those cases, the Applicant is not intending to take access exclusively, as such the proposal is to use TP powers to create temporary rights of access, as opposed to a permanent right of access.
- 1.23 TP is also required for the three construction compounds, and for working areas associated with the Immingham and Theddlethorpe facilities. Two areas of TP would, however, be removed pursuant to the Change Request discussed in further detail below. Possession of the construction compounds is expected to be for a period of 14 months, as additional time is needed for mobilisation works.

#### Consideration of alternatives to CA

- 1.24 The Applicant was invited by the ExA to outline its consideration of the alternatives to the use of CA powers.
- 1.25 The Applicant explained that it has considered the question of alternatives in two broad categories: alternative practical solutions, and alternative legal mechanisms. In terms of alternative practical solutions, as is set out in the Design Evolution and Alternatives chapter of the Environmental Statement [AS-021], the routing of the pipeline is determined by its underpinning objective, which is to create a linkage between the carbon emitters in the Humber region and the existing LOGGS pipeline at Theddlethorpe. Given the distances involved, it is inevitable that the Applicant would require access to third party land to enable the Proposed Development to achieve its objectives, given that it does not hold the land itself.
- 1.26 The Statement of Reasons sets out (at section 4.2) that the Applicant has explored alternatives with landowners and occupiers through the pre-application process, and is continuing to work with affected landowners to minimise impacts on them. The Applicant is of the view that CA in this context is proportionate, necessary and consistent with the approach taken elsewhere regarding practical solutions.
- 1.27 In terms of alternative legal mechanisms, the alternative mechanism is to reach agreement with landowners and occupiers to secure the necessary rights, which remains the Applicant's preferred approach. The Applicant is continuing to work with landowners to try and reach agreement on a voluntary basis. However, as the DCLG Guidance notes (at paragraph 2) it may be sensible to initiate the CA process and run this in parallel with landowner negotiations. This is the approach which the Applicant is taking.

#### The extent of land sought to be subject to TP

- 1.28 The Applicant was invited by the ExA to set out the temporal extent of TP, particularly with reference to the relevant representations that have been submitted by agricultural businesses.
- 1.29 The Applicant explained that the realistic estimate of its project team was that occupation of a parcel of agricultural land for pipeline installation and site restoration works would generally be for a period of 7 months. This timescale would apply to a pipeline section of up to 5 kilometres in length at any one time, and would be a rolling 7 month programme. There are three construction compounds proposed as part of the Proposed Development, and the pipeline would be worked on simultaneously from the north, central and southern

construction compounds. Further detail on this is provided in the application documents, including the Project Description chapter of the Environmental Statement.

- 1.30 The Applicant was asked by the ExA to explain what standard the site restoration would be carried out to at the conclusion of this indicative 7 month period and, in particular, whether this would simply be a case of returning the topsoil. The Applicant noted that the intention would be that the land was restored back to the condition that it was in prior to installation and returned to its previous use, which will be agricultural use for the majority of the land in question. These measures would be secured through the Construction Environmental Management Plan (CEMP) and Soil Management Plan.

Update on negotiations with landowners

- 1.31 The Applicant was invited by the ExA to outline its strategy in seeking voluntary agreements over land, and to provide an update on its progress in doing so.
- 1.32 The Applicant noted that it had submitted a Compulsory Acquisition Tracker **[AS-030]**, in response to the Rule 9 letter from the ExA dated 1 December 2023 **[PD-005]**. Since doing so in January 2024, the Applicant has reached agreement with an additional 5 parties, bringing the total number of Heads of Terms (HOTs) agreements entered into up to 6.
- 1.33 An additional 7 parties will appear in the updated version of the Compulsory Acquisition Tracker that will to be provided to the ExA at Deadline 1, bringing the total number of parties to 190. If voluntary agreements are entered into in respect of each land interest, the Applicant would expect there to be a total of 97 HOTs agreements (including the 6 referred to above), as each agreement may cover more than one affected party due to the nature of the land interest and/or ownership arrangements.
- 1.34 The vast majority of the interests that appeared as Orange (*"No objection and Heads of Terms negotiations not commenced"*) on the Compulsory Acquisition Tracker will be updated to Yellow (*"No objection and Heads of Terms negotiations ongoing"*) in the next version of this document.
- 1.35 Of the 190 parties noted above, 130 of these are represented by a land interest group (which would equate to 69 HOTs agreements out of the potential 97). By way of explanation, a land interest group involves land agents within an area working together to agree a common set of terms for their clients, and to negotiate with an applicant on a collective basis to streamline the process of reaching agreement. Whilst the Applicant is engaging collectively with the land interest group, it also includes the individual landowners in any correspondence issued.
- 1.36 The Applicant has been engaging with parties within the land interest group since July 2023, and issued HOTs to the members of the land interest group and other affected landowners in August 2023. There have been a number of iterations of the HOTs since these were first issued. The Applicant considers that it is close to agreeing the final outstanding points with the land agents within the land interest group, and hopes that once these are resolved HOTs agreements can be entered into shortly thereafter.
- 1.37 As a general approach, the Applicant is looking to enter into voluntary agreements with each of the affected parties as soon as reasonably practicable, and will continue to engage with all affected parties (and, where appointed, their agents) to reach agreement prior to the close of Examination. Where affected parties have requested meetings to discuss their concerns, the Applicant has facilitated these requests. The Applicant will update on negotiations throughout the Examination, and will provide updates at each Deadline or as otherwise directed by the ExA.



- 1.38 The Applicant was asked by the ExA to comment on a number of points in the Compulsory Acquisition Tracker where a statement to the effect that the affected party was not objecting to the application did not appear to accord with the terms of their relevant representation. The Applicant noted that it would consider this issue and update the Compulsory Acquisition Tracker accordingly.

The purpose and adequacy of the Funding Statement

- 1.39 The Applicant was invited by the ExA to outline what comfort it could offer that it has sufficient resources to complete the Proposed Development.
- 1.40 The Applicant explained that its overall position is as set out in the Funding Statement **[AS-011]**. This clarifies that the costs of the Proposed Development sit 60% with the Harbour Energy group and 40% with BP. With the latest balance sheet for the Applicant showing net assets of approx. £712 million, there is more than sufficient funding available to meet the estimated costs of £20 million for the land acquisition associated with the Proposed Development. The Applicant noted that it could provide further information in writing around the company structure and the relationship between the Applicant and the parent company, if this is required.

**2 HUMAN RIGHTS AND EQUALITY ACT**

- 2.1 The Applicant was invited by the ExA to outline how the application for the Proposed Development has taken into account human rights and equalities issues.

*(i) Human Rights Act 1998*

- 2.2 The Applicant noted that the Statement of Reasons (at section 11) sets out a summary of how the Applicant considers that it has complied with the Human Rights Act 1998, which incorporated the European Convention on Human Rights (ECHR) into domestic law.
- 2.3 The Applicant did not consider that there is anything that needs to be specifically brought to the attention of the ExA in respect of a potential breach of human rights legislation, but it can provide a brief overview of how specific articles of the ECHR are complied with.
- 2.4 Article 1 of the First Protocol to the ECHR protects the right to peaceful enjoyment of possessions. No one shall be deprived of those possessions except where it is in the public interest and where relevant provisions of law allow for it. There is a clear public interest in the development coming forward, as set out in the Planning Design and Access Statement and the Need Case for the Scheme. As noted above, the acquisition of land and interests in land is authorised under the provisions of the Planning Act 2008.
- 2.5 Article 6 of the ECHR protects the right to a fair and public hearing. All affected parties have had and continue to have the opportunity to make representations to the ExA and to appear at CA hearings. On that basis, there is no infringement of Article 6.
- 2.6 Article 8 of the Convention protects the right to respect for private and family life, home and correspondence. No one shall be deprived of that except in cases where it is in accordance with the relevant laws and necessary in the interests of, amongst other things, national security, public safety or economic wellbeing. The DCLG Guidance notes (at paragraph 10) that Article 8 would apply in the case of the acquisition of a dwelling. The Applicant is not proposing to acquire any land or rights which encompass private residential dwellings or gardens, and as such it is considered that Article 8 is not engaged.

2.7 It is considered that the approach taken is proportionate and legitimate. The inclusion of CA powers in the DCO for the Proposed Development would not amount to unlawful infringement of the Human Rights Act 1998 or the ECHR.

*(ii) Equality Act 2010*

2.8 The Applicant noted that the Equality Act 2010 imposes a range of duties on public authorities, and seeks to tackle systemic discrimination and disadvantage affecting people with particular protected characteristics. For example, there is a general duty on public authorities under Section 149 of the Equality Act 2010 that sets out a number of matters that the authority is to have regard to in exercising its functions.

2.9 The Applicant does not fall within the definition of “*public authority*” as set out in Schedule 19 of the Equality Act 2010, and therefore the provisions of the Equality Act 2010 do not impose any obligations on the Applicant directly in this regard. It has, however, sought to conduct the application so as not to exclude any groups with protected characteristics from participating. For example, the Applicant has:

- (a) hosted virtual events and exhibitions for those that may not be able to attend events in-person;
- (b) offered to provide documents in different formats; and
- (c) held events at accessible and convenient venues.

2.10 During the pre-application stage and consultation on the development, the Applicant sought to engage with harder to reach groups. It is recognised in the Statement of Community Consultation [APP-036] (at section 5.5) that such groups can often overlap with those who have protected characteristics. The Statement of Community Consultation also set out how the Applicant would work with local authorities to reach those groups, and how engagement was undertaken through the pre-application stage.

2.11 Accordingly, whilst the Equality Act 2010 does not directly apply to the Applicant, the Applicant’s approach has ensured that the requirements of the Equality Act 2010 have been taken into account.

### **3 STATUTORY UNDERTAKERS**

3.1 The Applicant was invited by the ExA to outline its engagement with statutory undertakers to date, including negotiations regarding Protective Provisions.

3.2 The Applicant noted that it was not proposing to go through the full list of statutory undertakers at this stage. Schedule 9 of the draft DCO sets out Protective Provisions for the benefit of statutory undertakers. Where statutory undertakers are seeking bespoke Protective Provisions, the Applicant is actively engaged with those parties and negotiations are currently at varying stages. The Applicant considers that it is making good progress and is confident that it will reach agreement with statutory undertakers during the Examination process.

3.3 The Applicant was asked by the ExA to comment on the Statement of Reasons as it relates to the position with National Gas Transmission (NGT), and in particular whether NGT are a statutory undertaker under Section 127 of the Planning Act 2008.

3.4 The Applicant explained that negotiations between it and NGT are currently at a very advanced stage. There have been a number of in-person and virtual meetings, and significant progress has been made. The Applicant’s position is that, whilst NGT may as

an entity be a statutory undertaker, as far as the former Theddlethorpe site is concerned, this does not constitute operational land as it is no longer required by NGT for the purposes of their undertaking.

- 3.5 The position on this is ultimately quite fact sensitive, and there is little case law commentary on this point. The Applicant acknowledged that the decommissioning of a site is part and parcel of a statutory undertaker's operation. However, that process is effectively completed at Theddlethorpe; the site has been levelled and it is now in the final stages of being fully decommissioned. It is entirely possible that NGT or another statutory undertaker could retain land with a clear intention to use it for another purpose consistent with its statutory undertaking. That is reflected in the legislation. But where a statutory undertaker is promoting land for another, wholly different use, the land in question loses its status as operational land.
- 3.6 The Applicant understands that any proposals for alternative uses of the Theddlethorpe site are at a very early stage, with no planning applications currently in the system. The proposals raised by Mablethorpe Flexible Generation in its relevant representation are acknowledged, however this would be use of the site by a different entity. Whilst the Theddlethorpe site could come to constitute operational land for the purposes of that party's statutory undertaking, depending on its status, it would not be operational land for NGT's purposes. In terms of the site and its condition now, it does not meet the definition of operational land for the purposes of Section 127(1) of the Planning Act 2008. However, the Applicant considered that agreement is likely to be reached with NGT during the course of Examination.

#### **4 CROWN LAND**

- 4.1 The Applicant was invited by the ExA to provide an update on obtaining consent in terms of Section 135 of the Planning Act 2008 in relation to the acquisition of Crown land.
- 4.2 The Applicant explained that it has had very positive engagement with the Driver and Vehicle Standards Agency (DVSA) to date, and expect to reach agreement with them during the course of Examination. As to The Crown Estate itself, there have been detailed discussions between the Applicant and The Crown Estate in relation to Crown land and, in particular, the site of the LOGGS Pipeline.
- 4.3 The Crown Estate had been focusing their attention on Track 1 CCS projects, but they are now moving on to consider Track 2 CCS projects such as the Proposed Development. The Applicant is confident that, given the nature of those wider discussions with The Crown Estate, and the limited nature of any impact on Crown rights, the Section 135 consent will be wrapped up as part of that process and no difficulties are anticipated in this regard.
- 4.4 The Applicant was asked by the ExA to comment on the requirement for a lease from The Crown Estate for offshore elements of the wider project. The Applicant noted that the offshore lease is part of the discussions with The Crown Estate referred to above, and that those discussions are ongoing.

#### **5 SPECIAL CATEGORY LAND: COMMONS LAND AND OPEN SPACES**

- 5.1 The Applicant was invited by the ExA to provide an update in relation to special category land.

*(i) Open Spaces*

- 5.2 The Applicant explained that there is some open space special category land included within the Order Limits. There are areas of open space at the northern end of the Order Limits known as Mayflower Woods. This land is owned by Phillips 66, and it is intended that this will be captured in the Applicant's ongoing negotiations with them. In terms of works within this area, these would be carried out using horizontal directional drilling, so there would be no occupation of the open space itself.
- 5.3 The other areas of open space are located at the southern end of the Order Limits and relate to the LOGGS Pipeline, which is already in situ but in respect of which the Applicant is seeking the restatement of rights for its use as part of the Proposed Development.
- 5.4 In both cases, the Applicant's position is that neither Section 131 or 132 of the Planning Act 2008 are engaged.

*(ii) Commons land*

- 5.5 A similar position applies in relation to the small parcels of commons land that have been identified. The Applicant has consulted with Lincolnshire County Council, who have submitted representations to the effect that they have no concerns in respect of the commons land. Likewise, there is no evidence of registered commoners, and no submissions from any party purporting to be a commoner.
- 5.6 The Applicant is discussing voluntary acquisition with the relevant landowners as part of their wider land holdings. As above, the Applicant's position is that neither Section 131 or 132 of the Planning Act 2008 are engaged.

**6 ANY OTHER BUSINESS**

Change Request submitted by the Applicant

- 6.1 The Applicant was invited by the ExA to outline the proposals made in its recent Change Request, as well as the plots of land involved.
- 6.2 The Applicant noted that its notification of intention to submit an application for a Change Request is set out in its letter of 26 February 2024 [AS-037], with the application for the Change Request set out in its letter of 19 March 2024 [AS-038]. The Change Request followed further engagement by the Applicant with Phillips 66 and VPI Immingham.
- 6.3 In summary, there are two changes proposed as part of the Change Request. The first change is to reduce the area of land for the Immingham Facility. This was the result of further engagement with the landowners, which allowed for the extent of the area to be refined. The second change is to remove what was described as 'Option 2' for the route of the pipeline through the Humber Oil Refinery, and to remove this entirely.
- 6.4 In terms of the plot numbers in question, these are more fully set out in the Applicant's letter of 26 February 2024. It is a combination of permanent acquisition and temporary possession plots that are proposed to be removed or reduced, as set out in this letter.

Review of options to exit the Immingham Facility

- 6.5 The Applicant was invited by the ExA to address the concerns raised by the DVSA and Calor Gas in relation to the 'Option 1' route at Immingham, and to comment upon the asset belonging to Cadent Gas which was not previously identified.

- 6.6 The Applicant noted that the DVSA have an operational site in this area, which includes a weighbridge. In addition to the weighbridge, the site has a concreted area for parking, with the remainder being a grassed area. The HOTs issued to the DVSA have two options for pipeline crossing through the site: one which would require a relocation of the DVSA site and another which would avoid this. The Applicant noted that it can provide copies of the option plans for these to the ExA at Deadline 1. If relocation was required, the Applicant would work with the DVSA to identify a suitable alternative location, should this be required (noting the current rationalisation exercise that The Crown Estate are undertaking).
- 6.7 As a result of further work undertaken by the Applicant, any interference with the subsoil land interest of Calor Gas is no longer required. Their wider objection related to questions of access, which the Applicant would look to address through agreement with them. Finally, having reviewed the position with regard to the previously unidentified Cadent Gas asset, both the Applicant and Cadent Gas are now satisfied that there will be no impact upon this.
- 6.8 The Applicant was asked by the ExA to advise as to whether the Change Request noted above would fully address, and lead to the removal of, the objections from Phillips 66 and VPI Immingham.
- 6.9 The Applicant considered that the Change Request will address a significant proportion of the objections that were submitted by Phillips 66, VPI Immingham, and associated parties. The concerns that have been raised regarding ongoing operations would remain, however, given the nature of the assets which these parties have in the area.
- 6.10 An element of co-ordination will be required between the Applicant and these parties in order to ensure that each can carry out their activities effectively. This has been discussed in their engagement to date, and there is a recognition that these will be addressed both through the terms of Protective Provisions and voluntary agreements between the parties.

#### Category 3 persons outside of the Order Limits

- 6.11 The Applicant was invited by the ExA to set out its justification for why it considers that there are no Category 3 persons outside of the Order Limits.
- 6.12 The Applicant explained that its position on this matter is set out in the Statement of Statutory Nuisance [APP-124]. In summary, the conclusion reached within that document (at paragraph 2.5.2) is that, with embedded design measures and mitigation, impacts will be reduced to such a level that there would be no breach of Section 79(1) of the Environmental Protection Act 1990, and that no statutory nuisance is expected to arise as part of the Proposed Development.
- 6.13 As the Applicant considered that there is no potential for Category 3 claims by persons outside of the Order Limits, no estimate or contingency for this has been factored into the Funding Statement.

#### Offshore consenting process

- 6.14 The Applicant was invited by the ExA to address the absence of consents for the offshore elements of the wider carbon capture storage project from the Consents and Agreements Position Statement [APP-130] in relation to the Proposed Development.
- 6.15 The Applicant noted that the Consents and Agreements Position Statement is focused on the application for a DCO for the Proposed Development, and the other consents that would be required for the Proposed Development. This document does not cover the

offshore consents, which are subject to a separate consenting process. Further information on that offshore consenting process is set out within the Bridging Document [APP-128], but the Applicant is happy to expand upon the relationship between the application for development consent for the Proposed Development and the consenting process for the offshore elements.

- 6.16 The Environmental Statement for the offshore elements of the wider project is currently being prepared for submission to the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED), but the Applicant does not at this stage anticipate this being in a position to submit this during the course of this Examination.
- 6.17 On the application of marine planning policy, the Applicant is not seeking a Deemed Marine Licence through the DCO for the Proposed Development, because it is not proposing that this will authorise any works within the marine area. There are no licensable marine activities for which authorisation is sought under the Marine and Coastal Access Act 2009. Those would be covered by a separate consenting process for the offshore elements of the wider project. Whilst rights are sought over the existing LOGGS Pipeline to MLWS, no works are to be undertaken within that area pursuant to authorisations granted in the DCO, and there is therefore no need for a Marine Licence.
- 6.18 The Applicant was asked by the ExA to discuss its proposed approach by reference to the recent decision of the Secretary of State on the Net Zero Teesside Project DCO. The Applicant noted that it was not familiar with the precise detail of that application, but that it could review and respond on this in writing. The wider point, however, is that the Applicant's position is that the offshore elements will be consented as a separate process to the Proposed Development. The purpose of the DCO application being made by the Applicant is to authorise the Proposed Development. The offshore development that will be undertaken as part of the wider project is approx. 118 kilometres away from the LOGGS Pipeline, and will be authorised through separate consenting regimes.
- 6.19 The Applicant was asked by the ExA if it considered the absence of offshore consents to be an impediment to the Proposed Development. The Applicant noted that it is not necessary for an applicant to have all relevant consents in hand before a DCO is granted incorporating CA powers. The Applicant noted that it could come back on this point more fully in writing, however its position is that it would not consider this to be an impediment, because it has good reason to believe that these consents will be forthcoming.
- 6.20 The Applicant was asked by the ExA if a DCO requirement could be imposed preventing the Proposed Development from proceeding unless and until the offshore consents had been obtained. The Applicant acknowledged that this could in principle be done, however it considered that such a requirement would not be necessary in practice. The commercial reality is that the Applicant would not look to incur the costs of bringing forward the Proposed Development without having first secured the ability to use the offshore carbon dioxide storage facility.

# Viking CCS Pipeline

## Applicant's Summary of Oral Submissions

### Issue Specific Hearing 1 (ISH1)



This note summarises the submissions made by Chrysaor Production (U.K.) Limited (the “Applicant”) at the Issue Specific Hearing 1 (“ISH1”) on 27 March 2024. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant’s submissions.

#### 1 SCOPE OF PROPOSED DEVELOPMENT

##### Connections to other emitters and scheme benefits

- 1.1 The Applicant was invited by the ExA to outline how the Proposed Development will operate and when it is likely to reach its full working capacity.
- 1.2 The Applicant explained that, once operational, the working capacity of the Proposed Development will ramp up. It is anticipated that the Proposed Development will transport up to 10 million tonnes of carbon dioxide annually by 2030, increasing to 15 million tonnes of carbon dioxide by 2035.
- 1.3 In terms of the ‘anchor emitters’ associated with the Proposed Development, VPI Immingham will be moving to introduce carbon capture technology at their 1.3 GW generating station. They anticipate that they will be able to capture approximately 3.4 million tonnes of carbon dioxide annually from the two capture plants that they are currently proposing to install. The precise volume of carbon dioxide that will be captured annually by the carbon capture proposals being advanced by Phillips 66 is still to be confirmed.
- 1.4 Later this year, the Applicant will make an application to Government under the Track 2 CCS process to have the ‘anchor emitters’ sequenced to the Proposed Development, as well as a build out of potential future emitters to connect into the scheme. The emitters assigned to the Proposed Development will ultimately be a matter for Government. This will define the pace at which the Proposed Development can move forward.
- 1.5 The Applicant noted, however, that the Proposed Development is not dependent upon future emitters coming forward, and that its ‘anchor emitters’ would be sufficient to allow the Proposed Development to proceed. The maximum capacity of the Proposed Development would be 18 million tonnes of carbon dioxide per year, so the ramp up to 15 million tonnes of carbon dioxide annually by 2030 is already quite close to this. Additionally, the ‘anchor emitters’ – Phillips 66 and VPI Immingham – submitted planning applications for their carbon capture facilities in March 2023, and these are now at an advanced stage of the planning process.
- 1.6 The Applicant was asked by the ExA to explain how future connections to the Proposed Development at the Immingham Facility and block valve stations would be made, and who would be responsible for bringing forward those connections. The Applicant explained that these connection points leave the potential for future tie-ins to the Proposed Development at those locations. The manifold at the Immingham Facility has five connections on to it, allowing for up to five emitters to tie-in to the Proposed Development at each of those valves. One future emitter could also tie-in at each of the block valves on the pipeline route.

- 1.7 For any future emitters, if there was a need to connect into the Proposed Development at either the Immingham Facility or at a block vale station, that would need to be subject to its own consenting process. There could, for instance, be a new pipeline required to connect that emitter to the Proposed Development. Where the future emitter is located, and their distance from the Proposed Development, would determine whether such a connection required to be authorised through either the Town and Country Planning Act 1990 or the Planning Act 2008. This is because the length of any proposed pipeline will determine whether it falls within the planning permission or development consent regime. In any event, the future emitter would need to obtain their consents, and undertake their own environmental assessments as part of this process.

#### The Lincolnshire Offshore Gas Gathering System (LOGGS) Pipeline

- 1.8 The Applicant was invited by the ExA to outline its options for the Proposed Development should National Gas Transmission (NGT) oppose an extension of the LOGGS Pipeline in accordance with 'Option 2' at Theddlethorpe.
- 1.9 The Applicant noted that the consideration with NGT is not necessarily a concern about the LOGGS Pipeline being extended. The concern regarding the use of the Theddlethorpe Gas Terminal site is more about the above-ground infrastructure, and how this could potentially sterilise an area for future use. Following the relevant representation from Mablethorpe Flexible Generation [RR-056], the Applicant has been engaging further with NGT and Mablethorpe Flexible Generation to ensure that all infrastructure in this location can successfully co-exist. However, the concern with 'Option 2' relates to the above-ground infrastructure; it is not the Applicant's understanding of the objections raised that there would be any issues with an extension to the LOGGS Pipeline itself. Additionally, no concerns have been raised by NGT about the siting of the southern construction compound within the Theddlethorpe site, which would be required under both 'Option 1' and 'Option 2'.
- 1.10 The Applicant was asked by the ExA to respond to the concerns raised by Natural England in their relevant representation [RR-073] regarding the complexity of assessing the onshore and offshore elements of the wider carbon capture project separately. The Applicant noted that there is a separation distance of approximately 118 kilometres between the Proposed Development and any infrastructure to be constructed offshore as part of the wider project.
- 1.11 Both the onshore and offshore elements are being considered under the Environmental Impact Assessment regime, and the environmental impacts that may arise for each either have been or will be addressed in an Environmental Statement prepared by the Applicant. In terms of the potential for cumulative interaction, the Bridging Document [APP-128] does give consideration to the potential for interaction of effects between the Proposed Development and the offshore elements, and concludes that there is no potential pathway for cumulative intra-project effects across the two elements.

#### Optionality in the draft Development Consent Order

- 1.12 The Applicant was invited by the ExA to explain its approach to optionality at the Theddlethorpe end of the Proposed Development, as set out in the draft Development Consent Order (DCO) [AS-008].
- 1.13 The Applicant noted that it has been engaging with NGT in respect of the Theddlethorpe site, and considers that discussions are progressing well. The Applicant will keep the ExA updated throughout Examination on whether agreement can be reached with NGT. If such



agreement is reached, the Applicant would intend to submit a Change Request to remove 'Option 2' from the draft DCO and provide certainty on its approach.

- 1.14 The Applicant was asked by the ExA to advise as to whether it envisaged any other potential Change Requests being made in respect of other parts of the Order Limits. The Applicant explained that there was one area where further engagement with the landowner at that location has resulted in a request for a change being made to the Applicant. The Applicant is considering the feasibility of this request in engineering terms. The Applicant is conscious of the provisions of Advice Note Sixteen, and will advise the ExA as soon as possible if it intends to make this change.
- 1.15 The Applicant was asked by the ExA to summarise the documents that have had to change to reflect the Change Request that is currently with the ExA for consideration, and in particular the removal of that option from the draft DCO. The Applicant noted that the changes to the draft DCO to reflect the Change Request **[AS-039]** are relatively minor, and mainly involve the deletion of Work Nos. 2A and 2B and all subsequent references to these. In Part 1 of Schedule 6 to the draft DCO, which relates to the land in which temporary possession may be taken, those tables have been amended to reflect that there has been a removal of temporary working areas. Beyond this, the main changes fall outwith the draft DCO itself, as these are to be achieved through updated Land Plans **[AS-049]** and Works Plans **[AS-046 and AS-047]**.

#### Limits of deviation

- 1.16 The Applicant was invited by the ExA to outline what it considers to be an appropriate and proportionate use of its powers under Article 6 (limits of deviation) of the draft DCO.
- 1.17 The Applicant noted that, by way of context, every major infrastructure project (and linear projects, in particular) face the challenge of striking a balance between how much design work and site investigation is undertaken prior to application, compared to the post-consent stage. The Applicant's approach seeks to ensure that there is sufficient flexibility to deal with uncertainties that might emerge as detailed design and survey works are taken forward. The Applicant considers that the level of engineering and site investigation that it has undertaken to date is consistent with that of other similar projects.
- 1.18 In terms of the draft DCO itself, Article 6 sets out limits of deviation, based on precedent from other nationally significant linear projects, such as the Southampton to London Pipeline Development Consent Order 2020, and is consistent with the equivalent provisions in the recently granted HyNet Carbon Dioxide Pipeline Order 2024. The lateral limits of deviation are shown as coloured areas on the Works Plans **[APP-014 and APP-015]**, and in general they cover the full width of the Order Limits, which will be 100 metres wide at most locations within the pipeline corridor. Within that corridor, the Applicant would take a narrower working width within which construction would take place. Regardless of where that working width was located, all construction works would be undertaken fully within the Order Limits.
- 1.19 On horizontal limits of deviation, the Works Plans do not include a centre line in relation to the pipeline works, with a specified metrage on either side. This is a deliberate choice of the Applicant. The Applicant's view is that a centre line would not serve any useful purpose on the Works Plans. The current preferred pipeline route does not always follow the centre line at certain locations within the Order Limits. It is considered that the lateral limits of deviation are sufficiently clear from the Works Plans. This is an approach that is consistent with other determined pipeline DCOs, including the HyNet Carbon Dioxide

Pipeline Order 2024, and with other linear schemes such as the Hornsea Four Offshore Wind Farm Order 2023.

- 1.20 In respect of the vertical limits of deviation, these are specified within Article 6 of the draft DCO. The upwards vertical limit of deviation, being the minimum depth at which the pipeline may be laid, is 1.2 metres from the surface of the ground, except where ground conditions make compliance with this limit impracticable. In such cases, the upward limit is 0.7 metres below the surface of the ground. That limit has been chosen because it would largely avoid any interference with agricultural operations being undertaken above. The downward vertical limit of deviation is the maximum depth that any pipeline might be installed to, and is included in Article 6 of the draft DCO. The approach taken is a precautionary approach to allow for horizontal directional drilling (HDD) to be used for crossings such as the North Beck Drain near Keelby and Louth Canal/River Ludd, near Alvingham. The maximum limit that is specified is 20 metres, however the actual depth required at those locations will be determined during the engineering design stage.
- 1.21 For other crossing types, technologies and installation techniques, the Applicant noted that, whilst there is no limit specified, these would fall within the maximum limits upwards and downwards limits already stated. In practice, there are some limitations to what depths the pipeline could be installed at, due to the technology used. For instance, for open cut the downward limits would generally be about 5 metres below the surface, due to limitations on how low the trenching machine can excavate. For auger bore, the limit would generally be 6 metres. The Applicant considered its approach to specifying upper and lower limits to be consistent with other recent precedent.
- 1.22 The Applicant was asked by the ExA to outline what ground conditions it would consider to make pipeline burial at a depth of 1.2 metres to be impracticable, and who would be notified and/or consulted in such circumstances. The Applicant explained that the main constraint forcing the pipeline to be laid at a depth higher than 1.2 metres, whilst that forcing an increased depth would be the presence of drains. Before deviating from those limits, the Applicant would engage with the landowner to seek to determine a solution.
- 1.23 The Applicant was asked by the ExA to explain what it considers by the use of the term “convenient” in Article 6(1)(c) of the draft DCO, and whether this could give rise to any greater environmental effects than those assessed within the Environmental Statement for the Proposed Development. The Applicant noted that there may be instances where, as outlined above, the ground conditions may not be favourable, in which case the Applicant may seek to agree a solution which deviates upwards. This would be the case in the example of drains given above, which the Applicant considers to be an example of a “convenient” alternative. This is because the relocation of drainage infrastructure for the pipeline may, whatever its merits, be at least technically feasible. This could be contrasted from a case of necessity, such as where rock within the ground necessitates a deviation.
- 1.24 The Applicant was asked by the ExA to explain its reference to a minimum 5 metre burial depth within the Explanatory Memorandum to the draft DCO [APP-007]. The Applicant noted that the narrative in this part of the Explanatory Memorandum was describing the practicalities of installation more so than a limit of deviation included within the draft DCO itself. The Applicant’s approach has been to secure the upper and lower limits, and it has not sought to secure different pipeline depths for different technologies.

### Scheme parameters

- 1.25 The Applicant was invited by the ExA to outline where the temporary 50 metre vent stack discussed in the Project Description chapter of the Environmental Statement [APP-045] is provided for within the draft DCO.
- 1.26 The Applicant explained that the maximum scheme parameters set out in Requirement 4 at Part 1 of Schedule 2 to the draft DCO relate to the permanent infrastructure of the Proposed Development. Within that, for instance, the permanent vent stacks at the Immingham and Theddlethorpe Facilities are both restricted to 25 metres from ground level. The Applicant considered the temporary nature of the 50 metre vent stack in the preparation of the Environmental Statement for the Proposed Development. The view that was reached was that, due to its highly temporary nature of only two weeks, it would not give rise to any new environmental effects beyond those that are already set out in the Environmental Statement. It was, therefore, considered as part of that assessment work.
- 1.27 In terms of the powers to erect the temporary 50 metre vent stack, Part 1 of Schedule 1 to the draft DCO authorises development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the Proposed Development which does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement. This would permit such other works as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the Proposed Development. The Applicant considers that this definition of associated development covers the temporary vent stack, should erection of this be required in the course of the operation of the Proposed Development.

## **2 SCOPE OF ASSOCIATED DEVELOPMENT**

### Definition of associated development

- 2.1 The Applicant was invited by the ExA to outline its approach to associated development within the draft DCO.
- 2.2 The Applicant noted that Part 1 of Schedule 1 to the draft DCO sets out the development that would be authorised by the DCO. Within that, the Applicant hasn't chosen to differentiate between the nationally significant infrastructure project itself and associated development works. Given that, ultimately, all elements of the Proposed Development either constitute part of the nationally significant infrastructure project or are "associated development" within the meaning of Section 115(2) of the Planning Act 2008, the Applicant has taken the view that they can be properly authorised within the DCO.
- 2.3 The Explanatory Memorandum for the draft DCO sets out a number of aspects of the Proposed Development that the Applicant would consider fall within the scope of associated development, rather than the nationally significant infrastructure project itself. This includes permanent and temporary accesses, temporary construction compounds, temporary logistics and construction storage hubs, and electrical connections for above-ground infrastructure. The Applicant has not, however, split these out into separate Works Nos. within the draft DCO, depending on whether they fall within the scope of the nationally significant infrastructure project or constitute associated development.
- 2.4 The Applicant recognises that such an approach has been taken in relation to other DCOs, however, and can update the next version of the draft DCO to reflect this approach if this would be of assistance.

### Telecommunications

- 2.5 The Applicant was invited by the ExA to outline the nature of the telecommunications cables proposed as part of the Proposed Development.
- 2.6 The Applicant explained that a description of the telecommunications equipment that would be installed as part of the Proposed Development is set out (at paragraph 3.7.27) in the Project Description chapter of the Environmental Statement. Further detail on this is then provided in the section of that chapter dealing with the pipeline construction (at paragraph 3.12.134 onwards). The main piece of infrastructure would be a fibre optic cable, together with other ancillary equipment. The telecommunications equipment will provide monitoring information across the pipeline and data communications between the Immingham and Theddlethorpe Facilities, together with critical telephone, CCTV and leak detection systems along the pipeline route.
- 2.7 With respect to the reference to telecommunications in the draft DCO, the Applicant has reviewed this and would propose to make more specific reference to the equipment set out within the Project Description chapter of the Environmental Statement, rather than a reference to telecommunications more broadly. The Applicant would intend to update the draft DCO accordingly for Deadline 1.

### Electrical connection

- 2.8 The Applicant was invited by the ExA to explain the reference to “*transmitting or distribution electricity*” within some of the rights to be acquired as set out in Schedule 7 to the draft DCO.
- 2.9 The Applicant noted that the electrical connection works to be undertaken as part of the Proposed Development are set out at Works Nos. 01c, 07b, 14b, 21b, 31b and 45 within Part 1 of Schedule 1 to the draft DCO. These relate to connections from the local electricity distribution network to above-ground infrastructure and block valves, from locations generally within the road or verges of the road where there is already a distribution network electricity cable. The above-ground infrastructure and block valves will all require an electricity connection of some kind, the scale of which would be similar to a standard business connection. These cables would be buried in the ground.
- 2.10 The Applicant recognises that references to the transmission and distribution of electricity have specific meanings within other legal regimes, and intends to review the references made to the electrical connection works within the draft DCO in order to clarify the scale and purpose of the infrastructure that is being proposed.

## **3 ARTICLES AND REQUIREMENTS**

### Reference to “*abandon*”

- 3.1 The Applicant was invited by the ExA to explain the reference to “*abandon*” with the definition of “maintain” in Article 2 (interpretation) of the draft DCO, and the implications of this for the decommissioning of the Proposed Development.
- 3.2 The Applicant noted that the decommissioning of the pipeline would ultimately depend on what would be the most appropriate method as at the point of decommissioning. The base position is that the pipeline would be made safe and left in situ, with this reflected in the reference made to “*abandon*”. The Applicant would, however, come back in writing on this point in response to the ExA’s question and the points raised by Lincolnshire County Council.

### Acquisition of airspace

- 3.3 The Applicant was invited by the ExA to provide further clarity around Article 29 (acquisition of subsoil or airspace only) of the draft DCO, the justification for the acquisition of airspace and how the Applicant would intend to exercise the powers conferred by this Article.
- 3.4 The Applicant explained that it was not intending to acquire any of the airspace above land within the Order Limits. The Statement of Reasons **[AS-013]** sets out the rights and land that the Applicant is seeking to acquire. In respect of those, the Applicant has included restrictive covenants over various parcels that would suitably control any development or activities which may adversely impact the pipeline. That is the Applicant's intended way to control any potential interference with the pipeline, and to restrict that from taking place. It is not the Applicant's intention to acquire the airspace.
- 3.5 The provisions of Article 29 of the draft DCO and the reference to airspace within this are based on similar rights conferred in DCOs for other linear projects, such as the Southampton to London Pipeline Development Consent Order 2020. The Applicant will take this point away, however, and consider whether this reference to airspace should remain.

### Planning Design and Access Statement

- 3.6 The Applicant was invited by the ExA to explain why the Planning Design and Access Statement **[APP-129]** has not been included within Article 44 (certification of plans etc.) of the draft DCO.
- 3.7 The Applicant noted that the Planning Design and Access Statement is not a control document. It was not felt necessary to include this document for certification. There are a number of controls within the draft DCO already with regard to how the Proposed Development would be laid out. In particular, Requirement 4 within Part 1 of Schedule 2 to the draft DCO covers the design of the scheme, and requires the listed Works Nos. to be carried out in general accordance with the general arrangement plans **[APP-019, APP-020, APP-021, APP-027, APP-028 and APP-029]**, which would be certified. Those plans set out a general arrangement as to how broadly these pieces of infrastructure would be laid out, how they would look and so forth.
- 3.8 Alongside this, the main other controlling factor on how the above-ground infrastructure would be landscaped and screened would be dealt with through the Landscape and Ecological Management Plan, which would be secured in Requirement 11 within Part 1 of Schedule 2 to the draft DCO, and an outline draft of which **[APP-127]** has been provided as part of the application documents. The Applicant considers that the relevant section of the Planning Design and Access Statement is seeking to explain how the Proposed Development would look in the context of a good design obligation, with regard to the relevant provisions of the National Policy Statements, rather than trying to function as a constraining document on how the Proposed Development would appear.
- 3.9 The Applicant was asked by the ExA to explain some particular discrepancies between the Planning Design and Access Statement and the draft DCO as to the design parameters of certain aspects of the Proposed Development. The Applicant noted that it was willing to take this point away and consider whether there one of these documents is in error.

### Highways issues

- 3.10 The Applicant was invited by the ExA to respond to the submissions made by Lincolnshire County Council, raising concerns on a number of highways issues with regard to the provisions of the draft DCO.
- 3.11 The Applicant noted that it was very happy to engage further with Lincolnshire County Council on the points raised. On the provisions within the draft DCO itself, the powers that have been sought reflect those that have been granted in a number of other recent linear projects, such as the recently granted HyNet Carbon Dioxide Pipeline Order 2024.
- 3.12 There are mechanisms that would allow the Applicant to enter into future agreements with the highways authority, such as Article 14 (agreements with street authorities). There are also controls on when the Applicant could undertake the construction of any permanent or temporary means of access to the highway under Requirement 7 within Part 1 of Schedule 2 to the draft DCO.

### Felling or lopping of trees and removal of hedgerows

- 3.13 The Applicant was invited by the ExA to respond to the submissions made by Lincolnshire County Council concerning the powers conferred by Article 39 (Felling or lopping of trees and removal of hedgerows) of the draft DCO and the controls on these.
- 3.14 The Applicant noted that it recognised that the power in Article 39 of the draft DCO is drafted in broad terms. That is consistent with the model provisions, and drafting confirmed in a number of other recent DCOs, such as Article 34 of the Hornsea Three Offshore Wind Farm Order 2020 and Article 35 of the Norfolk Boreas Offshore Wind Farm Order 2021.
- 3.15 The Applicant's view is that the broad power of Article 39 of the draft DCO is constrained by the Requirements in Part 1 of Schedule 2 to the draft DCO. In particular:
- (a) Requirement 5 requires a Construction Environmental Management Plan (CEMP) to be submitted to and approved by the relevant planning authority, and thereafter complied with; and
  - (b) Requirement 11 also requires a Landscape and Ecological Management Plan (LEMP) to be submitted to and approved by the relevant planning authority, and thereafter complied with.
- 3.16 A draft outline CEMP **[APP-068]** and outline LEMP **[APP-127]** have been submitted as part of the application documents. As part of the CEMP, the Applicant will be required to prepare a Trees and Hedgerows Protection Strategy, a draft of which is set out in the Arboriculture Report **[APP-086]**. That document does contain various details about hedgerows and trees that would potentially be impacted.
- 3.17 The general commitments that are within the CEMP and LEMP do include requirements to minimise the number and extent of hedgerows to be removed, to reinstate them to an improved standard, and various controls requiring the Applicant to adopt a range of good measure practices. Although the power in Article 39 of the draft DCO is drafted in broad terms, the Applicant considers that this is sufficiently constrained by the existing Requirements and by the terms of the management plans. The Applicant is happy to engage further with Lincolnshire County Council on this point, however.

### Discharge of requirements

- 3.18 The Applicant was invited by the ExA to respond to the submissions made by Lincolnshire County Council, raising concerns with the provisions of Part 2 of Schedule 2 of the draft DCO as these relate to the timescales for the discharging authority to determine applications in respect of the Requirements, the fees payable in respect of such applications, and the deemed approval provisions should a response not be forthcoming.
- 3.19 The Applicant acknowledged that timescales have been raised as a concern. The timescales set out in Part 2 of Schedule 2 of the draft DCO reflect those agreed on DCOs for linear projects, including the Southampton to London Pipeline Development Consent Order 2020. The Applicant is very happy to engage with the local authorities on timescales, noting that similar issues have been raised by the Environment Agency in its relevant representation [RR-034], and that the Applicant is currently engaging with them on this point.
- 3.20 It would, however, wish to manage expectations on the question of timescales and deemed approval. The Applicant is under considerable pressure to deliver the Proposed Development within a certain timescale, and the discharge of Requirements and timelines associated with this might not be able to be as long as those sought by Lincolnshire County Council in the first instance. Likewise, the Applicant would consider that there is a certain period after which it would be reasonable and appropriate for a deemed approval process to apply.
- 3.21 The Applicant would be happy to undertake further engagement with the local authorities on these points, however, and to report back to the ExA on how these negotiations are progressing.

### Construction hours

- 3.22 The Applicant was invited by the ExA to respond to the submissions made by North East Lincolnshire Council on the wording of Requirement 13 within Part 1 of Schedule 2 to the draft DCO with regard to construction hours, as well as working on Sundays and public/bank holidays.
- 3.23 The Applicant noted that it was grateful for the comments made by North East Lincolnshire Council in respect of the nature and level of engagement between the Applicant's project team and the Council in respect of the Proposed Development. It would consider the points raised by North East Lincolnshire Council, including the terms of Requirement 13, and engage further in respect of these.