

**National Gas Transmission Plc Response to Examining Authority’s Request for Further Information in respect of the Viking CCS Pipeline DCO**

This response is submitted on behalf of National Gas Transmission Plc (“**NGT**”) in respect of Chrysaor Production (UK) Limited’s (“**Applicant**”) Viking CCS Development Consent Order (“**Viking CCS DCO**”).

ExA Question	NGT Response
<p><b>1.5.17</b></p> <p><b>Theddlethorpe</b></p> <p><i>It is stated at paragraph 10.4.8 of the SoR [AS-013] that the Theddlethorpe Gas Terminal (TGT) site does not meet the requirements set out in s127(1) PA2008 for Statutory Undertaker’s Land. Please provide a justification for this assessment as the site was decommissioned as recently as 2021 and, as stated at paragraph 10.4.9, National Grid has been “exploring plans for future development”?</i></p>	<p>NGT has now had the benefit of reading the Applicant’s position statement (“<b>PS</b>”), which was submitted at Deadline 1 (EN070008/EXAM/9.16).</p> <p>While NGT broadly agrees with the history of the TGT as set out in the PS, some corrections are required, as follows:</p> <ul style="list-style-type: none"> <li>• Paragraph 2.1 – The operator leases did not expire. They were terminated by notice given by Chrysaor on 4 March 2020 terminating the leases on 1 April 2023. It would be more accurate to include an additional line in the history of the site stating “2020 operator of the TGT terminal serves 2 year notice to terminate the leases” and to change “expires” to “terminate” in the line for 2023.</li> <li>• Paragraph 3.2 – It would be more accurate to say “the Applicant has passed responsibility for ground conditions and any necessary remediation to NGT by a settlement agreement agreed between the Applicant and NGT on the termination of the leases”.</li> </ul> <p>NGT assumes based on the PS that the only dispute as to the applicability of s.127 Planning Act 2008 is in relation to s.127(1)(c). In order for s.127 to be engaged, this requires that the Secretary of State be satisfied that:</p> <p>(i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or</p> <p>(ii) an interest in the land is held for those purposes.</p> <p>As noted in NGT’s Relevant Representation, the Theddlethorpe site is intended to be used as an energy hub, subject to obtaining all of the necessary consents and approvals. NGT considers Theddlethorpe to be a prime location for this use due to its direct connectivity to NGT’s national transmission system, which will allow the transmission of natural gas and hydrogen.</p>

	<p>NGT proposes to develop the land around its existing, operational gas terminal<sup>1</sup> as an energy park using that terminal to supply and receive gas and hosting new low or zero carbon energy technologies, which may include hydrogen production and storage, battery storage, carbon capture, electricity generation and distribution and associated activities such as desalination and biodiversity net gain. Such technologies work best when integrated with one another (for example, electricity generation and battery storage). Having an area of land compulsorily acquired would disrupt the proposals and make them more difficult to implement on the remaining land. In addition, NGT intends to use a leasehold structure to manage ground conditions, site drainage and contamination through enforceable lease covenants. Losing freehold land to compulsory acquisition would inhibit this optimal land management proposal.</p> <p>NGT submits that, on this basis, its interest in Theddlethorpe is plainly held for the purposes of its undertaking. The Applicant does not explain in the PS why it considers that this is not the case. In paragraph 4.7 the Applicant appears to be suggesting, though does not state expressly, that the land should only be treated as held for the purposes of NGT's undertaking where there is a live application for consent for a new use. If this is the Applicant's position, NGT submits that it is plainly wrong.</p> <p>NGT is not aware of any authority suggesting that this is the appropriate test (and none is cited by the Applicant), nor can such a test be derived from the words of the Act. Section 127 is clearly intended to provide a high degree of protection to statutory undertakers, which would be diluted if the Applicant's unduly narrow approach were taken. Section(1)(c)(ii) is intended to afford protection where land is not in active use at the relevant time, but continues to be held for the purposes of carrying on the statutory undertakers' undertaking. It would be highly onerous to require that statutory undertakers at all times maintain active applications for consent for alternative uses of such land in order that they may rely on the s.127 protection. NGT respectfully submits that such an interpretation should not be adopted by the ExA or by the Secretary of State.</p> <p>The Applicants submissions also do not take into account the fact that NGT could not implement plans for the wider site until the notice served by the Applicant to terminate the TGT leases had expired. This happened on 1 April 2023. In anticipation of the expiry date and since 1 April 2023 NGT has been negotiating with the Applicant and with Statera for the grant of options for the development of the NGT site as an energy park using its existing gas terminal and hosting new energy technologies, as set out above. Such proposals inevitably</p>
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<sup>1</sup> Note that the terminal referred to here is still active and is different from the terminal discussed in the PS.

	<p>take time to develop. It is therefore unsurprising that applications for further consents are not currently live.</p> <p>Finally, the PS suggests that, if s.127 does apply, the relevant land could be purchased or a right in it acquired without causing serious detriment to NGT's undertaking. No justification for this conclusion is offered by the Applicant. NGT submits that the Secretary of State cannot be satisfied that serious detriment will not be caused on the basis of a bare assertion from the Applicant. For all the reasons set out above, NGT maintains its position that serious detriment would be caused.</p>
<p><b>1.5.18</b></p> <p><b>Theddlethorpe</b></p> <p><i>In their representation [RR-070], National Gas Transmission Plc (NGT) say that their site “was acquired and is generally needed for NGT’s own operational purposes.” They add that “negotiations ..... are at an advanced stage”. Is this still disputed by the Applicant and, if so, please can NGT and the Applicant provide details of the original acquisition and current proposals and activities with the site?</i></p>	<p>Please see NGT’s response to Q1.5.18.</p>
<p><b>1.5.19</b></p> <p><b>Theddlethorpe</b></p> <p><i>If it is found that NGT are not a Statutory Undertaker (SU) within s127 PA2008, then it is still argued [RR-070] that the land take includes “an excessive amount of land within the Order Limits” which will sterilise the future proposals for clean energy use on the site. The land required is shown on sheet 35 of the Land Plans [AS-016]. Can the Applicant be more specific as to their land requirements to minimise the effect on future alternative uses?</i></p>	<p>NGT has agreed and signed non-binding heads of terms with the Applicant and has instructed solicitors to draft and negotiate the documents required by the heads of terms including an option, lease and replies to commercial property standard enquiries. These negotiations are progressing, but not concluded. The order limits should be reduced to reflect the red line of the premises in the heads of terms together with a 50m wide easement corridor to the west of the premises (location to be determined) within which the carbon capture pipeline will be constructed and located, since this would be in line with the Applicant’s actual needs.</p>
<p><b>1.5.20</b></p> <p><b>Immingham and Theddlethorpe</b></p>	<p>The restrictive covenants set out at page 35 of the SoR are wider than those agreed between NGT and the Applicant in the heads of terms. The Applicant has agreed in the heads of terms that the carbon pipelines will be laid in a 20m easement (an additional 30m strip will be</p>

*The terms of the restrictive covenants set out at page 35 of the SoR [AS-013] appear rather wide. Please clarify over which land these covenants are being sought as according to the BoR [AS-015] it would appear to be limited to the blue land at the proposed IAGI and TAGI? Do the Landowners have any further comments concerning the imposition of these covenants?*

available for construction and then returned to NGT). The Applicant is to construct and protect the pipelines such that:

- NGT and those authorised by NGT can exercise the rights and reservations in the lease over and across the easement strip;
- Normal arable and other agricultural operations can be undertaken without restriction;
- The pipeline can be crossed in any direction by vehicles, plant and machinery which can travel on UK public highways. NGT will engage with the Applicant on the location of such access roads to agree any further special protective or other arrangements which shall be implemented at the Applicant's cost;
- New pipelines, cables, drains, ducts and other services can be laid and retained by the Landlord and those authorised by the Landlord without special provisions or protective arrangements being made. NGT must provide prior information to the Applicant about such new service infrastructure and is to act reasonably and take account of reasonable representations made by the Applicant appreciating the need for the integrity and safe use of the pipelines to be maintained including any special protective or other arrangements being made which shall be implemented at the Applicant's cost; and
- Where there are exceptional road crossings or service crossings i.e. for vehicles not permitted on UK public highways, NGT and the Applicant must agree the location and any special protective or other arrangements which shall be implemented at NGT's cost.