

Application by Chrysaor Production (UK) Limited for an Order Granting Development Consent for the Viking Carbon Capture and Storage (CCS) Pipeline

Summary of submissions on behalf of Lincolnshire County Council

ISH2

1. Under agenda item 3(b) Lincolnshire County Council (“LCC”) raised the following concerns:
2. In relation to Articles 8 and 9 LCC made representations that our position remained the same as set out in written representations and the post ISH summary in relation to the operation of these articles in so far as they permit highways works or traffic regulation in LCC’s administrative area but without proper authorisation from LCC as highway authority (“HA”). However, LCC acknowledged that discussions were on going with the applicant and both parties were now clear on respective positions. LCC has set out its current position on Articles 8 and 9 and the New Roads and Street Works Act 1991 (NRSWA) as presented in Article 10 in its response to Action Point 1. LCC wish to highlight that the same point applies in relation to Articles 12 and 13 as raised at ISH1. LCC is confident that such issues can be rectified by amendments to the drafting and the agreement of a side agreement and looks forward to engaging with the Applicant on proposed changes and side agreement.
3. LCC were asked by the Examining Authority (ExA) to provide further detail in relation to its permitting scheme. Further details are provided in LCC’s response to Action Point 2.
4. LCC were asked by the ExA what mechanism would the Council like to see in terms of Section 278 agreements. Further details are provided in LCC’s response to Action Points 1 and 3.
5. In relation to Article 43 LCC advised that they were broadly in agreement with the drafting of the new Article 43 but had some concerns in relation to drafting of paragraph 3 which refers to land adjacent to the order limits and conditions attached to extant planning permission ceasing to have effect.
 - a. LCC’s concern is in relation to the current drafting of Article 43(3). Post-ISH2 discussions between LCC and the Applicant confirmed that substantively the intention and purpose of Article 43 is not a matter in dispute. LCC’s concern is in respect of Article 43(3) which permits non-compliance with conditions attached to planning permissions which relate to

land within the Order limits or land adjacent to the Order limits to the extent they are inconsistent with the authorised development. LCC is undertaking a review exercise to consider the extent to which the current drafting may lead to non-compliance with the entirety of a condition where that is not the intention of Article 43. For example, if there is a restoration condition, which in part relates to land within the order limits and thus cannot wholly and fully complied with, there is an argument that it would cease to have effect because the condition itself is indivisible. LCC is currently reviewing the same and will subsequently discuss the drafting with the Applicant as it appears now to be a minor drafting matter.

6. LCC were asked by the ExA for their opinion on the ‘without prejudice’ text provided by the applicant for securing biodiversity net gain (BNG). LCC has provided a response to the text wording under Action Point 9. LCC raised a general point of principle that as long as BNG is provided for and secured through the DCO that it can be considered by the ExA as a benefit in the planning balance.
 - a. LCC accepts the Applicant’s position that a minimum percentage uplift in BNG can be secured through the CEMP and LEMP to be approved and which must be substantially in accordance with the outline plans. However, ‘substantially in accordance with’, as provided by Requirements 5 and 11 of Schedule 2, are not sufficient to secure any precise figures that might be considered to be contained in the oCEMP [REP3-011] and oLEMP [REP2-026], see (b) below. To that extent, LCC consider a separate requirement to secure a prescribed minimum BNG would be more precise and clear. If it is not precisely secured in a separate requirement in LCC’s submission the ExA ought to approach the figures in the oCEMP and oLEMP with a degree of uncertainty in the planning balance.
 - b. As currently drafted the oCEMP and the oLEMP do not contain detailed information in respect of BNG. The oCEMP does not specify a figure for BNG, but refers the reader to the oLEMP. The oLEMP at paragraph 1.5.40 provides a commitment to deliver at least 10% BNG as part of the Proposed Development. The BNG potential of the Proposed Development is analysed in the initial Biodiversity Net Gain Assessment [APP-125]. The draft Biodiversity Net Gain Strategy [APP-026] sets out opportunities to achieve the applicant’s voluntary 10% BNG target.
7. In relation to Articles 39 and 40, please refer to LCC’s response in relation to Action point 9.
8. LCC made representation that it would wish to be consulted for a number of the requirements. LCC is currently in dialogue with applicant to agree which authority should be named as a consultee in relation to these requirements and would hope to see this reflected in the next version of the dDCO.

By way of an update, at ISH2 LCC requested to be a consultee for requirements 11, 12, 15 and 18. Since, LCC have reviewed the position and instead considers that it should be consulted just for requirements 11 and 15 (*i.e.* no longer 12 and 18).

9. LCC made representation in relation to fees provision for the discharge of requirements and referred to the recent decision for the Mallard Pass Solar scheme and representations LCC has made for other NSIP proposals. LCC considered that the fees prescribed for the discharge of conditions attached to planning permissions would be woefully inadequate to cover the costs of discharge of requirements in respect of an infrastructure project of this scale.
 - a. Schedule 17 (5) Fees for discharge – advice note 15 suggested drafting for this provision includes space for the insertion of a set fee. This is proposed here and LCC suggests.
 - (1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement discharge, a fee is to apply and must be paid to the relevant planning authority for each application.
 - (2) The fee payable for each application under sub-paragraph (1) is as follows—
 - (a) a fee of £2,535 for the first application for the discharge of each of the requirements 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, and 18;
 - (b) a fee of £578 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and
 - (c) a fee of £145 for any application for the discharge of—
 - (i) any other requirements not listed in paragraph (a); and
 - (ii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.