

Viking CCS Pipeline

**9.44 Applicant's  
Summary of Oral  
Submissions Issue  
Specific Hearing 2 (ISH2)  
16 July 2024**

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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: July 2024

# Viking CCS Pipeline

## Applicant's Summary of Oral Submissions Issue Specific Hearing 2



This note summarises the submissions made by Chrysaor Production (U.K.) Limited (the "Applicant") at Issue Specific Hearing 2 ("ISH2") on 16 July 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 STRATEGIC MATTERS

#### Consideration of alternatives for the Theddlethorpe Facility site

- 1.1 The ExA invited the Applicant to explain the methodology it used for the selection of the site of the Theddlethorpe Facility, which is set out in its technical note [REP2-035]. The ExA raised a concern that wording at pages 4 and 7 of the technical note appear to suggest that the order limits were drawn first and were used to exclude options.
- 1.2 The Applicant explained that the language used in the technical note did not reflect the site selection exercise that was actually undertaken. The Applicant explained that the LOGGS pipeline comes into the former Theddlethorpe Gas Terminal ("TGT") site and constitutes a fundamental design constraint for the Proposed Development. To the extent the technical note refers to locations being "outside of the order limits", this is to paraphrase the problem of moving a greater distance away from the former TGT site. The Applicant is seeking to align the onshore pipeline with the LOGGS pipeline, and therefore moving the location of the Theddlethorpe Facility away from the former TGT site is to move away from the obvious connection point with LOGGS pipeline.
- 1.3 The Applicant confirmed that all the alternatives were given genuine and due consideration. All the alternatives were determined to be significantly deficient when compared with option one (and the now discounted option two) because they all involved stepping away from the former TGT site considerably. The substantive exercise/consideration was the proximity to the LOGGS pipeline and the draft order limits should not have been cited as a disbenefit of any option.
- 1.4 The ExA asked the Applicant to confirm that the wording in the Technical Note is incorrect and asked for reassurance that the correct process was followed for site selection.
- 1.5 The Applicant confirmed that the analysis was undertaken at the correct time, before the order limits were finalised for application. The Applicant accepted that the language used in the technical note is unfortunate as it could result in a misleading impression.

#### Corner Farm representation regarding routeing of the pipeline

- 1.6 The ExA referred to paragraphs 2.1.1 and 2.1.2 of the Applicant's technical note on the Lincolnshire Wolds Natural Landscape [REP3-025] and the relevant representation from the Residents of Corner Farm [RR-089]. The ExA invited the Applicant to explain why route E2 had been chosen and whether it constitutes a deviation from any of the route selection criteria.
- 1.7 The Applicant explained that best practice has been used in the routeing of the pipeline. The pipeline has been designed in accordance with the 'as low as reasonably practicable' ("ALARP") process which is described in the longstanding HSE framework 'Reducing risks: protecting people' (also known as 'R2P2'). The purpose of the ALARP process is to ensure that risks are reduced to as low a level as is reasonably practicable. The HSE has a general duty to ensure these requirements are met. The HSE guidance for conveying carbon dioxide in connection to carbon capture and storage projects requires that operators of such projects must comply with various sets of guidance and legislation, including the Pipelines Safety Regulations 1996. There are broadly three steps that the Applicant has followed, in accordance with prevailing guidance and legislation:

- (a) Step 1: Follow the codes and standards for pipeline installation.

The codes and standards set out in BSI PD 8010- 1:2016 have been followed, and have been exceeded for the pipeline route, for example through the design decision to have thick wall pipe for the whole route.

- (b) Step 2: Ensure good practice in design.

The Applicant has a highly experience team to ensure good practice is carried out. Work is checked by peer reviews and co-venturer reviews.

- (c) Step 3: Carry out a quantitative/engineering risk assessment.

The Applicant explained that a quantitative/engineering risk assessment has been carried out which confirmed that the pipeline is considered to be 'broadly acceptable', which is the lowest category of risk under ALARP. There is no "no risk" category. The other risk categories are "tolerable if ALARP" and "uncomfortably high".

- 1.8 The Applicant explained that the whole pipeline route, including that near Corner Farm, has been assessed to hold a risk level better than "as low as reasonably practicable" ("**ALARP**") and is in the "broadly acceptable" category of risk. The route selection criteria based on the ALARP process considered built-up areas, local communities and highly sensitive building uses (e.g. schools). As the route has been assessed to meet key safety criteria in prevailing guidelines and legislation, there no safety issue to weigh in the balance in respect of the routeing near corner farm Corner Farm. Instead, the criteria that are weighed in the balance are those set out at paragraph 2.1.1 of [REP3-025], which includes avoiding areas in flood risk zones 2 and 3 where possible.

- 1.9 Since the pipeline is in the broadly acceptable category in the area of Corner Farm, there was no need to re-route the pipeline, and other factors weight against doing so. The HSE considers that projects falling into the broadly acceptable category are generally regarded as having an insignificant or adequately controlled risk and so don't require any other action. The Applicant is committed to preparing a comprehensive emergency response plan and will work with the relevant authorities to do so.

#### Progress with Phillips 66

- 1.10 The ExA invited the Applicant to explain the position in relation to the written representation of Phillips 66, which related to the Control of Major Accident Hazard regulations.
- 1.11 The Applicant explained that agreement has been reached with Phillips 66 in respect of a land agreement and protective provisions. The Applicant understands that the Phillips 66 objection remains outstanding because Phillips 66 operates a slightly protected approval process with sign off required from the relevant board in America. The Applicant anticipates the approval will be given before the end of the month and expects that the objection will be withdrawn by Deadline 4. That will include removal of any objection relating to the COMAH regulations.

#### Progress with IOT Operators

- 1.12 The ExA invited the Applicant to explain whether the agreement with Phillips 66 will mean that the objections from its two subsidiaries (the "**IOT Operators**") will also be withdrawn.
- 1.13 The Applicant explained that discussions are ongoing with the IOT Operators. The infrastructure the IOT Operators have an interest in is a pipeline running across the order limits to the Humber Oil refinery. It is anticipated that the objections will be resolved and a similar agreement to the one with Phillips 66 will be entered.
- 1.14 The Applicant explained that Mr Arnett of Town Legal represented both Phillips 66 and the IOT Operators at the Compulsory Acquisition Hearing 1 ("**CAH1**"). No substantive

issues were raised on behalf of the IOT Operators at CAH1 and Mr Arnett suggested that, whilst discussions were slightly behind those with P66, agreement is expected to be reached in the same way

#### Article 8 and 9 of the draft DCO

- 1.15 The ExA invited the Applicant to explain the benefit that articles 8 and 9 of the draft DCO bring to the Proposed Development as written and why the Proposed Development would be impeded without them.
- 1.16 The Applicant noted that it had recently met with Lincolnshire County Council and understood that their concern was not in respect of the articles themselves, but that the Council's permitting scheme apply to the exercise of the powers. The Applicant noted that this isn't the first DCO examination where the issue has arisen, where a highways authority wants to see an existing permitting process govern the delivery of nationally significant infrastructure. The Applicant wishes to see the project delivered expeditiously and does not want its delivery to be unnecessarily delayed by external permitting procedures. This is especially so given the DCO process is intended to be a one-stop process.
- 1.17 The Applicant explained that it is looking to work with Lincolnshire County Council in relation to this matter and discussions have taken place as recently as last week. It wasn't until last Friday that the Applicant quite understood the position that Lincolnshire County Council were adopting on this issue and so it appears there has been a slight misunderstanding between the parties. The Applicant is now working on establishing the best way of taking this matter forward.
- 1.18 The ExA invited the Applicant to comment on the permitting scheme mentioned in Lincolnshire County Council's written representation.
- 1.19 The Applicant explained that it has a copy of the Council's permitting scheme and the process for how it works. The point that is currently under consideration is how it may apply to the project.

## **2 ARTICLES AND REQUIREMENTS**

### 2.1 Article 2 - definition of 'maintain'

- 2.2 The ExA explained that there remains concern regarding the definition of "maintain" and whether it could be used for the reconstruction or replacement of the entirety of the pipeline. The ExA invited the Applicant to explain the intention of the phraseology and whether more restrictive wording could be used.
- 2.3 The Applicant explained that an amendment was made to the definition of "maintain" at deadline 3, which adds the following after the words "improve, replace, dismantle, demolish, abandon or decommission any part of the authorised development":

*"provided these do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, but must not include the renewal, re-laying, reconstruction or replacement of the entirety of the new pipeline"*

- 2.4 The Applicant explained that this wording seeks to constrain the definition of maintain to the scope that has been assessed within the ES. It would not allow a wholesale diversion of the pipeline. It is far more likely to be a localised diversion over a very small section of pipeline.
- 2.5 The ExA explained that the Marine Management Organisation ("**MMO**") had stated that they would not accept the term 'improve' in the Net Zero Teesside application and were uncomfortable with the wide definition. The ExA invited the Applicant to respond to the matter.

- 2.6 The Applicant explained that its position could not be taken much further than its response to the ExA's first written questions [see response to WQ1.7.4 in REP1-045]. If there is a fault in the pipeline that could be prevented from recurrence through the upgrade of a small section, that would be considered an improvement and that is why the drafting includes the possibility. The definition doesn't allow for the wholesale renewal of the pipeline.
- 2.7 The ExA asked the Applicant to explain how it is intending to deal with the MMO down the line given that they are uncomfortable in relation to the word improve.
- 2.8 The Applicant explained that if an application were made to the MMO for a marine licence for the offshore element of the project then the matter would be discussed with them if needed at the time. The MMO has not raised any concerns regarding the \_proposed Development, in part because it is outside the scope of their consenting powers and the MMO has written in to that effect.
- 2.9 The Applicant noted that it had undertaken to provide clarity regarding the consenting of the offshore element of the project at deadline 4. However, this examination is primarily concerned with the application for the Viking CCS Pipeline DCO. If the MMO maintain the stance they took on Net Zero Teesside in relation to the word 'improve' the issue will be dealt with in the context of offshore consenting and in discussions with the MMO. The MMO is not engaged in the context of this examination and they have not made representations in relation to the suitability of the definition of 'maintain' or otherwise. If the MMO were to make such a representation, the Applicant would maintain that it is incorrect to suggest that the replacement or renewal of a small, localised section of the pipeline, in circumstances where works would be in the public interest, are not capable of being undertaken.

Article 19 – Authority to survey and investigate the land

- 2.10 The ExA explained that Natural England's written representation [REP1-079] raises a concern that Article 19 may allow investigative or disturbing works within an SSSI. The ExA invited the Applicant to explain what the process would be for the Applicant to carry out works outside the order limits which affect an SSSI.
- 2.11 The Applicant explained that the representation was not raised in advance of the session and so asked that the ExA submit the question as an ExQ, if possible. To provide an indication in advance of its written comments, the Applicant confirmed there have been many recent discussions with Natural England regarding potential issues around the HRA. The only SSSI which the project is close to is the Saltfleetby Dunes SSSI. There are no works in those dunes and Natural England have not raised them as an issue again.
- 2.12 The ExA noted that Natural England may also be concerned about the Humber Estuary and asked the Applicant to clarify whether this is the correct SSSI to consider.
- 2.13 The Applicant suggested that concerns regarding the Humber Estuary concerns are more to do with the Humber SPA and functionally linked land. The Applicant will confirm whether there is any other aspect in relation to the Humber SSSI and will include a reference to it in its updated note.

Article 24 and Schedule 7 – Imposition of restrictive covenants

- 2.14 The ExA invited the applicant to explain the reasons for the selection of plots and imposition of restrictive covenants at Schedule 7 of the draft DCO.
- 2.15 The Applicant confirmed that the plots shown in Schedule 7 are those on the land plans where only new rights are sought. It does not include areas of the pipeline corridor where freehold acquisition of the subsurface is requested. The Applicant would seek to impose restrictive covenants on the sections of land coloured yellow on the land plans. Further detail is provided in the statement of reasons.

- 2.16 The ExA clarified that it was asking the Applicant to confirm why those plots in particular were selected.
- 2.17 The Applicant confirmed that the restrictive covenants sought in Schedule 7 relate to areas where the restrictions are intended to prevent interference or harm to the pipeline project. The Applicant explained that a number of plots shown in Schedule 7 are for accesses and roads. Within that there are restrictive covenants preventing activities that could block access, such as the erection of buildings, they also prevent blasting activities.
- 2.18 The ExA requested that the plot numbers continue to be updated when the next tracker is submitted.
- 2.19 The Applicant confirmed that it would do so.

#### Crown Land and Section 135 consent

- 2.20 The ExA noted that plots 36/12 to 36/16 are Crown Land and invited the Applicant to comment on how the ExA would deal with the request for restrictive covenants if the Applicant does not have section 135 consent by close of examination.
- 2.21 The Applicant explained that the matter is being discussed with the Crown Estate following the CAH1. The Applicant is currently considering, and has proposed to the Crown Estate, an amendment to the draft DCO that would restrict the Applicant's ability to exercise the powers over Crown Land without the Crown Estate's prior authorisation. The Applicant understands this has been accepted by the Crown Estate on other DCOs as the basis for providing section 135 consent. The Applicant will provide an update as soon as possible once the consent is obtained.

#### Article 43 – Restoration conditions

- 2.22 The ExA noted that the Applicant had added Article 43 to deal with extant planning permissions and asked Lincolnshire County Council whether they had any concerns about the Article.
- 2.23 In response to comments from Lincolnshire County Council, the Applicant confirmed that it will give the issue further thought and will look to engage Lincolnshire County Council on the matter. The Applicant's confirmed that its intention is to allow minimal departure from existing permissions and the conditions attached to them.

#### Biodiversity net gain

- 2.24 The ExA invited the Applicant to respond to Lincolnshire County Council's comments that they support the principle of including a requirement within the draft DCO which would secure biodiversity net gain.
- 2.25 The Applicant explained that its position is the same as previously stated; that a requirement isn't needed. It is proposing biodiversity net gain on a voluntary basis and has put forward proposals in the outline management plans on a voluntary basis only. Ultimately, the Construction Environmental Management Plan ("CEMP") and Landscape and Ecological Management Plan ("LEMP") will be submitted to the local authorities for approval. This will give the local authorities currency in the documents and therefore there isn't a need for the requirement. **[Post-hearing note: the Applicant notes that Table 2 in the draft CEMP [REP3-011] includes a range of environmental control plans that will be included in the final CEMP. This includes a Habitat Management Plan, which is to be based upon the strategy included in the Draft Biodiversity Net Gain (BNG) Strategy [APP-126].]**

#### Article 39 and 40 - Trees and Hedgerows

- 2.26 The ExA noted that Lincolnshire County Council's written representation **[REP1-060]** raises an issue regarding the compliance of Articles 39 and 40 with PINS Advice Note 15.

Following Lincolnshire County Council's comments on the matter, the ExA invited the Applicant to respond.

- 2.27 The Applicant explained that its position is the same as set out previously, that it is already secured through the CEMP, the LEMP and the Arboricultural Report **[APP-086]**. Advice Note 15 provides that the article should include a schedule and plan to specifically identify hedgerows to be removed in order to allow the question of their removal to be examined in detail. However, the Arboricultural Report already serves this function by specifying, on a worst-case basis, the hedgerows and trees that may need to be removed as part of the proposed development. The CEMP provides that a trees and hedgerows protection strategy will be developed in the final CEMP, based on the detailed design. The strategy would set out in more detail the specified hedgerows and trees that are likely to be impacted and the extent of the impact. This is secured through commitment O5 in the CEMP and also within the LEMP and Arboricultural Report. Therefore, the approach taken serves the same purpose as what Advice Note 15 is trying to achieve, which is to set out in detail the hedgerows and trees that may be impacted so that they can be examined. The appropriate mechanism for the final list to be set out is post consent at the point of discharge of the management plans. This approach was accepted in the Net Zero Teesside DCO at Article 18.
- 2.28 The ExA noted that the Applicant's position was that the Arboricultural Report sets out what trees and hedgerows may, or are likely, to be removed and so translating the list into the draft DCO may not serve the greater purpose as the final detailed design may require the list to be increased or decreased which would either require an amendment to the DCO or would not be done.
- 2.29 The Applicant explained that if a schedule is included in the DCO, then its is possible that the Applicant would need to make a non-material amendment application if the detailed design of routing meant that works were required that were not anticipated. That would be undesirable and there is no need for it in circumstances where there is a mechanism in the CEMP, the LEMP and Arboricultural Report to control this

#### Work Plans

- 2.30 The ExA noted that the definition of work plans is lower case and asked that it is capitalised to "Work Plans".
- 2.31 The Applicant confirmed that the change would be made.

#### Article 6 – Limits of Deviation

- 2.32 The ExA invited the Applicant to respond to the various representations from a farmer concerned that a 0.7m depth for the pipeline is very close to the depth that the farmer would go with their farming equipment (see **[AS-056]**, **[AS-057]** and **[AS-058]**).
- 2.33 The Applicant explained that in advance of detailed design and getting on site, the Applicant cannot state with certainty what depth the pipeline will be at any particular location. However, in general terms the Applicant will look to avoid a scenario where the ongoing cropping of the field was interfered with by reason of the pipeline. If the pipeline does need to be set at a shallower depth at a particular location, which results in a restriction on a landowner's ability to make full use of the field, that would be reflected in a compensation settlement. The various agreements that the Applicant is seeking to reach with landowners reflects that position.
- 2.34 The ExA noted that it was suggested at an earlier hearing that there would be engagement with landowners if the pipeline was to be set at a depth of less than 1.2m, which is embedded in the leases with landowners. The ExA asked the Applicant to comment on whether a similar obligation should be included in the DCO.
- 2.35 The Applicant explained that it is looking to work with landowners in every instance to ensure there is an agreed position that the parties are comfortable with. The Applicant must allow itself a degree of flexibility since ground conditions may dictate that the pipeline

needs to go to a shallower level. Where this is the case the Applicant will engage with the landowner.

- 2.36 The Applicant's position is that it is not appropriate to include specific drafting in the DCO to deal with this issue. In practice, the Applicant wants to achieve the target depth and ensure minimal interference with landowners which could give rise to a compensable event. As a matter of practice, the Applicant will engage with landowners on that basis to reach a solution.
- 2.37 The ExA queried whether it makes any difference to the Applicant to include the commitment to engage with landowners in the DCO given that it will be included in leases.
- 2.38 The Applicant confirmed that it is not a question of the Applicant being unwilling to include wording in the DCO to escape the obligation - the Applicant actively wishes to have that degree of engagement. The question is whether it is appropriate to include that type of site/location specific issue in the context of the DCO more broadly. The Applicant stated that it would take the issue away and give thought to whether it would be practical and appropriate to make a further amendment to the DCO.

#### Schedule 2 – Requirements 11, 12, 15 and 18

- 2.39 In response to comments from Lincolnshire County Council, the Applicant confirmed that it would consider that they are listed as a consultee for requirements 11, 12 15 and 18. It would also consider the Council's submissions on the appropriate fees for discharge of requirements.

#### Article 32 – Date of Completion

- 2.40 The ExA invited the Applicant to explain when it is expected that land parcels could be returned to landowners following the temporary use of the land.
- 2.41 The Applicant explained that the period of works will consist of setting out alignment of the pipeline depending on where the land is (if it uses stock proof fencing or not), stringing out the pipe, welding the pipe, excavation of the trench, laying the pipe and backfill. Certain sections will require more time, but hydrostatic testing at the end of the installation process will be the determining factor in when land can be returned. The Applicant plans to carry out the hydrostatic testing in 5 sections of 7-8 kilometres each. Once the pipeline passes the test the topsoil can be reinstated and the land handed back to the farmer. Depending on how the hydrostatic test is carried out it is estimated that the works will take up to 7 months in total, but may be returned significantly faster for some sections, possibly as little as 7-8 weeks.
- 2.42 The ExA asked the Applicant whether it would be possible to phase the date of completion (within the DCO).
- 2.43 The Applicant explained that it is the Applicant's intent to return sections of land to landowners as and when sections of pipeline are completed and tested. It is not looking to hold onto the land. Not only is it the right thing to do, but it is also in the Applicant's interests to minimise compensation liability. However, the DCO is not the place to deal with this matter as it will be dealt with in the construction programme. The construction contractor will phase the works in the most efficient way and will want to hand the land back as quickly as possible. The Applicant can then inform the relevant parties appropriately.

### **3 PROTECTIVE PROVISIONS**

#### National Highways

- 3.1 In respect of the protective provisions, the Applicant indicated broad agreement with the comments made by National Highway's regarding the great deal of progress that had been made by the parties. Protective provisions are currently under negotiation and are almost there with a large number of issues resolved. There are some commercial considerations,



e.g. financial security where discussions are ongoing and it is hoped that an agreement will be reached on those matters. The Applicant confirmed to National Highways that it anticipated being able to respond to its comments on the protective provisions very shortly and within the next week.

- 3.2 In response to comments that National Highways raised regarding its opposition to deemed approval provisions, the Applicant noted National Highways' position and that this isn't the first time they have resisted deemed approval provisions in relation to works under a DCO. However, the Applicant explained that the SoS had accepted such provisions were appropriate on the HyNet Carbon Dioxide Pipeline Order 2024 and did not accept National Highways' position. The Applicant will continue to liaise with National Highways on this point.

National Gas Transmission plc

- 3.3 The ExA invited the Applicant to provide an update on the position with National Gas Transmission plc.
- 3.4 The Applicant stated that it recognises the objection is outstanding and confirmed that it has agreed terms with National Gas Transmission (on the basis the change application is accepted). The agreement with National Gas is awaiting formal approval which is expected imminently and before Deadline 4. The Applicant does not anticipate any further participation from National Gas Transmission and the protective provisions will be included in the next iteration of the draft DCO.
- 3.5 The ExA noted that it is waiting for an answer in relation to the issue around section 127 Planning Act 2008.
- 3.6 The Applicant explained that it will provide the ExA with a note in relation to section 127 and National Gas Transmission at Deadline 4.

Driver and Vehicle Standards Agency ("DVSA")

- 3.7 The ExA invited the Applicant to provide an update on the position with the DVSA.
- 3.8 The Applicant confirmed that there have been no substantive updates since the matter was discussed at CAH1. The Applicant will revert when there is any material progress in that regard.
- 3.9 The Applicant explained that agreement has been reached with the DVSA as to routing which will not interfere with their operations and will not require their relocation. Since the CAH1 the Applicant has had two further meetings with the DVSA and there is a further meeting scheduled in the near future. The position is agreed in relation to the routing of the pipeline and there are a couple of more commercial matters outstanding. The outstanding matters aren't points of principle and the Applicant is very confident they will be resolved.
- 3.10 The Applicant explained that the DVSA are not seeking protective provisions and it is not anticipated that they will be needed. It will be a private land deal with everything bound up in the agreement.
- 3.11 The ExA asked the Applicant to confirm whether there should be safeguards in the DCO requiring the Applicant to help the DVSA find a new site if relocation is needed.
- 3.12 The Applicant confirmed that the eventuality would be addressed in the context of the agreement with the DVSA. Moreover, the Applicant would not be in a position to compulsorily acquire the DVSA's interest without their agreement in any event. Therefore, the Applicant does not consider that the issue needs to be addressed in the protective provisions or otherwise in the DCO.