

Viking CCS Pipeline

9.46 Applicants Responses to Actions from Issue Specific Hearing (ISH) 2 held 16 July 2024

Document Reference: EN070008/EXAM/9.46

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

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1 Introduction

1.1 Purpose of this Document

- 1.1.1 This document has been prepared for the Viking CCS Pipeline (the 'Proposed Development') on behalf of Chrysaor Production (UK) Limited ('the Applicant'), in relation to an application ('the Application') for a Development Consent Order (DCO) that has been submitted under Section 37 of the Planning Act 2008 (PA 2008) to the Secretary of State (SoS) for Energy Security and Net Zero.
- 1.1.2 This document provides the Applicant's responses to the actions set out by the Examining Authorities at Issue Specific Hearing 2 (ISH2) held on the 16 July 2024.

1.2 The DCO Proposed Development

- 1.2.1 The Proposed Development comprises a new onshore pipeline which will transport CO₂ from the Immingham industrial area to the Theddlethorpe area on the Lincolnshire coast, supporting industrial and energy decarbonisation, and contributing to the UK target of Net-Zero by 2050. The details of the Proposed Development can be found within the submitted DCO documentation. In addition to the pipeline, the Proposed Development includes a number of above ground infrastructure, including the Immingham Facility, Theddlethorpe Facility and three Block Valve Stations.
- 1.2.2 A full, detailed description of the Proposed Development is outlined in Environmental Statement (ES) Volume II Chapter 3: Description of the Proposed Development **[APP-045]**.

2 Applicant's response to actions set out by the ExA in ISH2 16 July 2024

2.1.1 This section provides the Applicant's response to actions set out by the Examining Authorities in ISH2 dated 16 July 2024.

Table 2-1: Applicant's response to actions set out by the Examining Authorities in ISH2 dated 16 July 2024

Action Ref.	Applicant Actions Raised in ISH2 16 th July 2024	Applicant's Response
1.	Lincolnshire County Council to provide position statement on articles 8 and 9, as well as the situation with New Roads and Street Works Act (NRSWA), and whether objections are retained as to the principle and/or wording of these Articles	N/A (Not for Applicant)
2.	Lincolnshire County Council to provide further detail on the Council's road permitting scheme and how/why it should be applicable to the Development Consent Order (DCO)	N/A (Not for Applicant)
3.	Provide commentary on whether a mechanism needs to be written into the DCO for the application of s278 of the Highways Act 1980, or whether a separate side agreement is sufficient.	Article 14 of the draft DCO serves this purpose. As noted in the Explanatory Memorandum at paragraphs 1.6.62 – 1.6.65, This article provides that the undertaker and street authorities may enter into agreements relating to various works on streets and bridges. The list in article 14 reflects article 14(1) of the model provisions, save that sub-paragraph (1)(b) has been added to clarify that, as well as providing for the construction of streets (including any structures carrying those streets) an agreement may relate to strengthening, improving, repairing or reconstructing streets (or structures). This article is included, as section 278 of the Highways Act 1980 (agreements as to the execution of works) does not relate to the powers under this Order. The terms of any agreement made under article 14 would be specific to the works proposed and would be agreed with the street authority at the relevant time.
4.	Provide a detailed description of the working of Article 19 in the DCO, and whether works could / would take place in an SSSI as a result of the article.	Article 19 gives powers to the undertaker to enter land for the purpose of surveying and investigating. Before doing so, the undertaker must give 14 days' notice to the owner and any occupier before exercising the powers of entry. This would give the undertaker a general power to undertake investigations within a SSSI, if such investigations were required. However, the draft DCO does not seek to disapply the provisions of the Wildlife and Countryside Act 1981. As such, the relevant provisions of that Act relating to SSSIs, and the need for consent/assent from Natural England for certain activities, will apply to the undertaker and the Proposed Development. The Applicant has discussed this further with Natural England following ISH2 and understands that they are now content with the article as drafted.
5.	To give examples of other DCOs where the Crown Estate have approved an Article in relation to restrictive covenants not being exercised without s135 consent having first been obtained.	<p>At ISH2, the Applicant explained that it was intending to include in the draft DCO a new article in respect of Crown Rights, which had previously been agreed by the Crown Estate as a suitable restriction on the exercise of compulsory acquisition powers such that they could issue section 135 consent. The Applicant is proposing to include the below article within the draft DCO, which has been included on a number of DCOs, including recently as article 43 of the Net Zero Teesside Order 2024.</p> <p>New article: Crown rights —(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker to take, use, enter upon or in any manner interfere with any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to— (a) His Majesty in right of His Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or (b) a government department or held in trust for His Majesty for the purposes of a government department, without the consent in writing of that government department.</p>

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		<p>(2) No interest in Crown land may be acquired compulsorily under this Order unless the appropriate Crown authority consents to the acquisition.</p> <p>(3) A consent under paragraph (1) or (2) may be given unconditionally or subject to such conditions or upon such terms as may be considered necessary or appropriate.</p>
6.	<p>To consider the word 'adjacent' in Article 43 of the DCO and whether this places undue burdens or restrictions on the ability for the Council to pursue land restoration conditions.</p>	<p>The Applicant does not consider that this places any undue burden or restriction on the Council.</p> <p>The wording "or land adjacent to the Order limits..." in sub-paragraph (3) is intended to address a possible situation where a planning permission covers both land within the Order limits and land adjacent to the Order limits. The provision in sub-paragraph (3) is qualified by the wording "to the extent that they are inconsistent with the authorised development..." A restoration condition would clearly be inconsistent with the Proposed Development to the extent that it could not be undertaken as a result of new built infrastructure having been developed. However, the Applicant considers that restoration would remain possible over the wider landholding, and therefore to the extent that such restoration can be completed the condition would continue to apply.</p>
7.	<p>Lincolnshire County Council to review the wording of the 'without prejudice' requirement in respect of biodiversity net gain and provide any comments on the drafting.</p>	<p>N/A (Not for Applicant)</p>
8.	<p>All Local Authorities and Natural England to review the Construction Environment Management Plan (CEMP) and the Outline Landscape and Ecology Management Plan (OLEMP), with a view to checking whether such documents do satisfactorily secure biodiversity net gain to the extent that a separate requirement in the DCO is not required.</p>	<p>N/A (Not for Applicant)</p>
9.	<p>To refine or otherwise agree on the scope and limitation of articles 38 and 39, or whether a separate tree / hedge removal schedule is required for the DCO.</p>	<p>The Applicant does not consider it necessary to refine the scope of the articles that relate to hedgerows and trees (which the Applicant notes are articles 39 and 40).</p> <p>The Applicant's view remains that the broad power of Article 39 of the draft DCO is sufficiently constrained by the Requirements in Part 1 of Schedule 2 to the draft DCO. In particular:</p> <ul style="list-style-type: none"> (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. <p>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 details about hedgerows and trees that would potentially be impacted.</p> <p>The general commitments that are within the CEMP and LEMP 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.</p> <p>At ISH2, Lincolnshire County Council made reference to the Planning Inspectorate's advice note 15 as the basis for a schedule to be included. However, the Applicant notes that paragraph 22.1 of the advice note suggests that the reason to include a schedule of specific hedgerows is to "allow the question of</p>

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		<p>their removal to be examined in detail". The Applicant considers that the level of detail within the Arboriculture Report [APP-086] already serves this purpose, and goes far beyond simply listing grid-coordinates in a schedule.</p> <p>The Applicant considers that it is appropriate that the final detail of hedgerows and trees that would be impacted by the Proposed Development be set out in the Trees and Hedgerows Protection Strategy based on the detailed design. As that document will be included within the CEMP and is to be approved by the Planning Authority, this provides a suitable mechanism for control. It is unnecessary to include this detail in the draft DCO.</p> <p>The approach taken by the Applicant is similar to that taken in the Net Zero Teesside Order 2024.</p>
10.	To consider fees and whether fee increases are required in line with Lincolnshire County Council point.	<p>The Applicant has updated the draft DCO (Revision F) (document reference 2.1) to amend the provision relating to fees payable for the discharge of requirements. This now provides that the fee payable to the planning authority for agreement or approval in respect of a requirement will be the same as that payable for the discharge of conditions in a planning permission as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. If the fees payable under those regulations increase in the future, that will therefore automatically apply to the discharge of requirements under the DCO for the Proposed Development</p> <p>The Applicant considers this fee level appropriate. The Applicant has submitted draft management plans as part of the DCO application, which have been scrutinised through the Examination process. These will not be new documents for the relevant planning authority to consider when discharging the relevant requirements.</p> <p>The fee provisions included in the draft DCO (Revision F) align with those included in other DCOs granted for projects within Lincolnshire, including the Boston Alternative Energy Facility Order 2023 and the Gate Burton Energy Park Order 2024. The provisions also align with other DCOs for linear development that have recently been granted and that have comparable requirements to the Proposed Development, such as the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.</p>
11.	To consider whether the commitment with landowners to discuss with them pipeline burial depth and subsequent restrictions would be appropriate to write into the DCO.	<p>The Applicant does not consider it necessary or appropriate to amend the draft DCO to include further specific provision to discuss pipeline burial depth with landowners.</p> <p>The Applicant notes that a concern that has been raised by landowners is there being an impact on their use of land if the pipeline was deviated upwards of 1.2m. The Applicant notes that in terms of article 6(1)(b) it can only deviate upwards where ground conditions make compliance with the upward limit of 1.2m impracticable in which case the upwards limit is 0.7 metres below the surface of the ground. The Applicant will therefore only be deviating upwards where there is a need to do so. In those circumstances, it remains in the Applicant's interest to bury the pipeline at the lowest depth possible.</p> <p>Restrictive covenants will be imposed over the land in which the pipeline is situated for the protection of the pipeline. This will restrict activities that could damage the pipe. If this interferes with the current use of the land or sterilises a proportion of it, then the owner/occupier of the land will be entitled to compensation. The Applicant has offered to agree this through voluntary agreements, or where rights are taken through compulsory purchase powers, the owner/occupier would be entitled to compensation.</p>

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		<p>It is in the Applicant's interest to cause the least amount of interference to the ongoing use of land. As a matter of practice, the Applicant will engage with owners/occupiers to achieve this. However, this should not be a specific provision of the draft DCO.</p>
12.	<p>To consider whether Lincolnshire County Council can be a named consultee with Requirements 11, 12, 15 and 18 and, if so, make amendments to the DCO.</p>	<p>Requirement 11 – the Applicant has updated the draft DCO (Revision F) (document reference 2.1) to include Lincolnshire County Council as a named consultee.</p> <p>Requirements 12 and 15 – these requirements do not require to be discharged by any planning authority, and therefore there are no named consultees in the requirement.</p> <p>Requirement 18 relates to amendments to approved details and sub-paragraph (1) already provides that the relevant planning authority must consult "with any body specified in the relevant requirement". For any requirement that Lincolnshire County Council was a consultee in the initial discharge, they would also be a consultee for any amendment to approved details.</p>
13.	<p>National Highways to set out National Highway's objections to the deemed consent provisions in Articles 13 and 16, and the reasoning behind them.</p>	<p>N/A (Not for Applicant)</p>