

Viking CCS Pipeline

9.57 Note on Policy Referenced at Issue Specific Hearing 3

Document Reference: EN070008/EXAM/9.57

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 - Note of Relevant Policy referred to by the Applicant in ISH3



1 PURPOSE OF THIS NOTE

- 1.1 This note relates to the following points of planning policy referred to by the Applicant during ISH3.
- (a) Policy considerations when assessing potential impacts on the National Landscape.
 - (b) Lincolnshire County Council (“LCC”) referenced National Policy Statement (“NPS”) for Renewable Energy infrastructure (EN-3) (“EN-3”), footnote 94. The Applicant considers this policy footnote irrelevant to the application for the Proposed Development.
- 1.2 As set out in Chapter 2 of the Planning Design and Access Statement [App-129] and in the Planning Design and Access Statement Addendum [REP-1-049], the Applicant submits that the Application falls to be determined under Section 105 of the Planning Act 2008 (“PA 2008”). Section 105 PA 2008 sets out the matters that the Secretary of State should have regard to when making decisions for applications where no NPS has effect. Such matters include:
- (a) Any local impact report;
 - (b) any matters prescribed in relation to development of the description to which the application relates; and
 - (c) any other matters which the Secretary of State thinks are both important and relevant.
- 1.3 The Applicant submits that the Overarching NPS for Energy (EN-1) (November 2023) (“EN-1”) and National Policy Statement for Natural Gas Supply Infrastructure and Gas and Oil Pipelines and (EN-4) (November 2023) (“EN-4”), are important and relevant factors which should be taken into account by the Examining Authority and the Secretary of State.
- 1.4 The Applicant wished to highlight the below NPS policy referenced at ISH3.

2 NATIONAL LANDSCAPE POLICY CONSIDERATIONS

The Exceptionality Test

- 2.1 EN-1 paragraph 5.10.32 states sets out that when considering applications for development within AONBs (now National Landscapes), the conservation and enhancement of the natural beauty should be given substantial weight by the Secretary of State in deciding applications for development consent in these areas. This paragraph goes on to state:

“The Secretary of State may grant development consent in these areas in exceptional circumstances. Such development should be demonstrated to be in the public interest and consideration of such applications should include an assessment of:

(a) the need for the development, including in terms of national considerations, and the impact of consenting or not consenting it upon the local economy;

(b) the cost of, and scope for, developing all or part of the development elsewhere outside the designated area or meeting the need for it in some other way, taking into account of the policy on alternatives set out in Section 4.3 [of EN-1]; and

(c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”

- 2.2 This test mirrors the test at Section 15 paragraph 183 of the National Planning Policy Framework (“NPPF”).
- 2.3 The Applicant submits that the Examining Authority and the Secretary of State ought to have

regard to this policy test in determining the Application for the Proposed Development.

Critical National Priority (“CNP”) Infrastructure

- 2.4 One of the key changes introduced through NPS EN-1 is the classification of certain forms of infrastructure as critical national priority (“CNP”) infrastructure.
- 2.5 Paragraph 4.2.4 of EN-1 states that the Government has concluded that there is a critical national priority for the provision of nationally significant low carbon infrastructure. Paragraph 4.2.5 notes that CNP infrastructure will include energy infrastructure, pipelines and storage infrastructure which fit within the normal definition of “low carbon”, including carbon dioxide distribution. In addition, paragraph 3.5.8 states that, to support the urgent need for new CCS infrastructure, CCS technologies, pipelines and storage infrastructure are considered to be CNP infrastructure.
- 2.6 Paragraph 4.2.8 states that during decision making, the CNP policy will influence how non-HRA and non-MCZ residual impacts are considered in the planning balance. It goes on to state that the policy will therefore also influence how the Secretary of State considers whether tests requiring clear outweighing of harm, exceptionality, or very special circumstances have been met by a CNP Infrastructure application.
- 2.7 Paragraphs 4.2.15 – 4.2.17 of EN-1 set out how this is to be applied by the Secretary of State in decision making. This sets out that there is a presumption that “in all but the most exceptional circumstances” any residual impacts will not outweigh the urgent need for CNP infrastructure. Paragraph 4.2.16 states that the starting point for the Secretary of State will be that CNP infrastructure is taken to meet any tests within the NPSs and other planning policy, and 4.2.17 sets out a non-exhaustive list where this will apply. This includes that the Secretary of State will take as a starting point that CNP Infrastructure meets the test “where development in nationally designated landscapes requires exceptional circumstances to be demonstrated”.

Application of policy to the Proposed Development

- 2.8 EN-1 (2023) is up to date Government planning policy for the Proposed Development. The Applicant submits that it should be the starting point for the Examining Authority and the Secretary of State in assessing the planning merits of the Proposed Development.
- 2.9 The Proposed Development is CNP for the purposes of EN-1. As such, it is submitted that it should benefit from the presumption set out in section 4.2 of EN-1 that it has met the test of demonstrating there are exceptional circumstances that justify the short section of development within the National Landscape. The Applicant submits that no evidence has been presented by any interested party to the Examination that would overcome that presumption.
- 2.10 Even if that presumption did not exist, the Applicant considers that it has very clearly demonstrated that, in terms of paragraph 5.10.32 of EN-1, there are exceptional circumstances that justify part of the Proposed Development being in the National Landscape. The Planning Design and Access Statement Addendum **[REP-1-049]** and the Need Case for the Scheme **[APP-131]** set out that it is recognised in policy that there is an “urgent need” for infrastructure of this type. There is an overwhelming public benefit to the Proposed Development proceeding. The updated Technical Note in Response to Natural England's Written Representation Regarding the Lincolnshire Wolds National Landscape (document reference 9.28) sets out the reasons that the Applicant required to route the Proposed Development through the National Landscape, and that there was no viable alternative. That technical note and Environmental Statement - Volume II - Chapter 7: Landscape and Visual **[APP-049]** demonstrate that the potential effects of the Proposed Development are limited and none of the special qualities of the National Landscape would be undermined.
- 2.11 The Examining Authority and the Secretary of State can and should conclude that the relevant policy tests have been met.

3 THE RELEVANCE OF EN-3 TO THE HERITAGE ASSESSMENT

- 3.1 During ISH3, LCC stated that it considered NPS EN-3 was relevant to the heritage assessment forming part of this application and, in particular, that footnote 94 was relevant. The Applicant disagrees.
- 3.2 As the Applicant has set out in the Planning Design and Access Statement **[App-129]** and the Planning Design and Access Statement Addendum **[REP-1-049]**, the relevant NPSs to be taken into account for the Proposed Development are EN-1 and EN-4.
- 3.3 Paragraph 1.6 of EN-3 sets out the infrastructure covered by that NPS and none of the technology types, being different forms of renewable electricity generating stations, are comparable to a CO2 pipeline.
- 3.4 Furthermore, footnote 94 is specifically referenced in a section of EN-3 that relates to solar farm development. It is entirely specific to that technology type.
- 3.5 EN-3 and footnote 94 are irrelevant to the consideration of the Proposed Development.
- 3.6 The correct NPS policy setting out how to assess potential impacts of the Proposed Development on the historic environment is outlined in EN-1 section 5.9. Paragraph 5.9.11, which mirrors Section 16 paragraph 200 NPPF, sets out the evidence that can be expected from a heritage assessment:
- “Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.”*
- 3.7 The Applicant has completed the assessment of heritage assets in accordance with these requirements. This is reported on in the Environmental Statement. The Applicant has also carried out a geophysical survey which was completed over all areas where access was available. The results were reported, and the assessment reviewed/updated at Deadline 1 within the Supplementary Environmental Information - Geophysical Survey Report and Assessment Update **[REP1-043]**. The environmental information that has been submitted by the Applicant is a robust assessment, which aligns with the requirements of EN-1 and the NPPF.
- 3.8 The Applicant is now undertaking trial trenching, which will inform the detailed mitigation strategy to be developed, and thereafter approved by the planning authority, post-consent. The Applicant submits that this approach is well precedented and entirely appropriate for a development of this type.