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BY EMAIL

Secretary of State for Energy Security and Net Zero
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12 December 2023

Dear Kerry,

**CORY DECARBONISATION PROJECT (THE 'SCHEME')
DIRECTION MADE BY THE SECRETARY OF STATE IN RELATION TO THE SCHEME UNDER
SECTION 35 OF THE PLANNING ACT 2008 ON 6 OCTOBER 2022 ('THE SECTION 35
DIRECTION')**

We write on behalf of Cory Environmental Holdings Limited ('Cory'), in respect of its proposals for the above Scheme. As you are aware, the Secretary of State ('SoS') made the Section 35 Direction described above stating that the Scheme should be treated as a development for which development consent under the Planning Act 2008 is required.

The Scheme in both Cory's formal request and the made Section 35 Direction encompassed a Carbon Capture and Storage Project with its constituent elements and a Hydrogen Project with its constituent elements.

Since receiving the Section 35 Direction, Cory has continued to develop the Scheme's design and to undertake pre-application statutory consultation in line with the Planning Act 2008, with the intention of submitting an application for development consent in Q1 2024.

As a result of further Scheme design development, Cory has made a commercial decision not to pursue the Hydrogen Project element of the Scheme in the immediate future and, in particular, for it not to form part of the forthcoming application for development consent. Whilst Cory is still considering options for how to deliver the Scheme's hydrogen elements, Cory has decided to focus its immediate efforts on securing the delivery and associated benefits of the Scheme's Carbon Capture and Storage Project element as soon as possible in the upcoming development consent application.

The Applicant has published a Preliminary Environmental Information Report ('PEIR' and available [here](#)) as part of its statutory consultation materials. Chapter 2 of that PEIR details the elements proposed to form part of the Carbon Capture and Storage Project. This includes the proposed export jetty and the Carbon Capture Facility, which will contain up to two carbon capture plants (including flue gas pre-treatment, absorber column, solvent regeneration system and rich

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solvent/lean solvent heat exchanger), and associated CO₂ compression, conditioning and liquefaction plants, liquified CO₂ storage and loading and supporting plant (including a cooling system).

The Applicant notes that in the Section 35 Direction it is stated that:

“if the details of the PNS developments change, before submitting any application to The Planning Inspectorate, Cory may wish to seek confirmation from the Secretary of State that the Project and development that is the subject of the proposed application is the same as that for which the Direction is hereby given”.

In light of the project development since the Section 35 Direction was given (namely the decision on hydrogen and the progression to statutory consultation), Cory requests confirmation in writing from the SoS that the SoS is comfortable with the Applicant’s chosen approach to the scope of the prospective application and that the Applicant’s current proposed development consent application is the same for which the Section 35 Direction was given.

Cory considers that the SoS is able to make such confirmation for the following reasons:

Firstly, in respect of the development consent application not incorporating hydrogen, Cory notes that:

- the consequence of a section 35 Direction is simply that all of the development classed as the project of national significance must be brought forward through the Planning Act 2008 regime. There is no requirement that all of the development must be brought forward through the same development consent application;
- section 35 (2)(a)(i) of the Planning Act 2008 states that the SoS may give a direction only if the *“development is or forms part of”* a project that is in the field of energy. Both the carbon capture and hydrogen elements formed part of the wider overall decarbonisation project, thus each part constitutes development for which development consent is sought;
- both the section 35 Direction and the application for it, made clear that the ‘Proposed Project’ was made up of two ‘PNS developments’ being the Carbon Capture and Hydrogen projects;
- the Annex to the section 35 Direction makes clear the national significance of the carbon capture elements of the Project as separate from the hydrogen elements, with the first bullet point indicating that both the carbon capture and hydrogen elements would play an important role in meeting the UK’s commitment to reduce carbon emissions (i.e. each of them would), and the second bullet point being specifically being only about carbon capture; and
- nothing has changed in the period since the section 35 Direction in relation to the benefits of the Carbon Capture project captured by the section 35 Direction – it continues to be one of the largest carbon capture projects in the UK and will form a continuing key plank of the Government achieving the Greenhouse Gas Removal element of its net zero strategy.

In light of all of the above, the Carbon Capture elements remain a PNS development for which an application for development consent must be brought forward.

Secondly, in respect of the progression to statutory consultation, Cory considers that these elements as described are consistent with the Carbon Capture and Storage Project as described in the request for the Section 35 Direction, and thus the details of the Carbon Capture elements of ‘the PNS developments’ have not changed.

Whilst for the aforementioned reasons Cory considers that it is able to progress with the development consent application and is doing so with a target submission date of Q1 2024, it



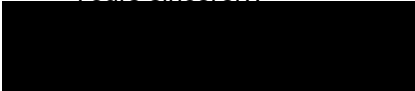
would welcome the certainty of the Secretary of State's confirmation of this, in light of the statement in the section 35 Direction highlighted above.

Such a determination would be beneficial prior to submission of the application, so that Cory can report on this in its Planning Statement submitted with the development consent application; and so that this does not need to be a matter of concern for the appointed Examining Authority in examining the development consent application.

Cory would therefore welcome confirmation from the SoS that she is content with Cory's proposed approach that a development consent application for a carbon capture only project, of the nature described in the PEIR, is still within the ambit of the section 35 Direction.

If you have any questions about the points made in the letter above please let us know.

Yours sincerely,



Richard Griffiths
Partner
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