

## **Cory Decarbonisation Project**

### **Reply to Applicant's response to the application to cross examine on behalf of Landsul**

#### **Limited and Munster Joinery (U.K.) Limited**

1. This is Landsul and Munster Joinery's response to the Applicant's letter of 29 January 2025, in which it objects to the application for cross examination.
2. It is wrong to suggest that the cases referred to by Landsul and Munster Joinery have no application in this context. First, they explain the circumstances in which fairness may require a decision maker to permit cross examination of a witness. They therefore indicate how the discretion under section 94 should be exercised to ensure that the requirements of procedural fairness are met. Although the process for examining the application is primarily inquisitorial, the 2008 Act anticipates that cross examination may be required in some circumstances and the cited case law assists in identifying those circumstances. Second, an example was given (Thames Tideway) of circumstances in which cross examination was permitted in a DCO examination and the reasons for it.
3. In respect of the "series of assertions" referred to in the application, the Applicant appears to have misunderstood the case against it. Landsul and Munster Joinery do characterise the response at D2 to Dr Edgar's Alternative Layout as being based on assertion, there being no detailed analysis as to why the Alternative Layout is not workable. It is for the applicant to demonstrate that Dr Edgar's alternative layout is not feasible, such that it does not present an alternative to compulsory acquisition. This goes beyond justifying the Applicant's own layout, which Landsul and Munster Joinery accept to be technically feasible.
4. The Applicant suggests that it would need to call more than one witness to address the points raised in the agreed list of issues. However, it does not identify *who* it would propose to call to give this evidence and why it would need to be someone other than its CCS engineering expert. The limitations on its CCS expert's expertise have never been set out. The Applicant suggests that the need for other unnamed witnesses would result in a process akin to a "multi day adversarial inquiry", but this it at odds with its later suggestion that cross examination of 90 minutes would be excessive.
5. It is respectfully suggested that 90 minutes of cross examination would be entirely proportionate, and that permitting cross examination is necessary to

deal fairly with Landsul and Munster Joinery's case. If Mr Alderson is unable to answer questions because of limits on his expertise, either the relevant person could be called to answer those questions, or such questions could be deferred to writing. There is no indication that 90 minutes of cross examination could not be accommodated within the 1 day set aside for CAH2.

6. Accordingly, Landsul and Munster Joinery maintain the application. As previously identified the purpose of cross examination would be:
  - a. Testing the Applicant's case that Dr Edgar's alternative layout is not feasible;
  - b. Testing the Applicant's case in respect of the need for a two line plant, the need for a heat transfer station, and the claimed unfeasibility of locating certain infrastructure to the south of Landsul's land.
7. As previously indicated, Dr Edgar will be available for questioning and there is no objection to him being cross examined on similar terms.

Richard Turney KC  
Landmark Chambers

3 February 2025