



**Canal &
River Trust**

Making life better by water

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your Ref EN070007

Our Ref HYCO-EIA071

Thursday 6th April 2023

hynetco2pipeline@planninginspectorate.gov.uk

Dear Sirs

Proposal: Application by Liverpool Bay CCS Limited for an Order Granting Development Consent for the HyNet Carbon Dioxide Pipeline Project (“the Application”)

Canal & River Trust (the Trust) Submission for Deadline One on the Trusts Relevant Representations (Unique Reference: HYCO-EIA071).

Summary

The Canal & River Trust’s (the Trust’s) written representations provide further detail on those matters raised in our Relevant Representation, dated 13th January 2023 [RR-008]. It responds to the Development Consent Order application by Liverpool Bay CCS Limited to the Secretary of State in respect of the HyNet Carbon Dioxide Pipeline Project.

The representations address the Trust’s main outstanding concerns:

1. The proposed compulsory acquisition of rights over land owned by the Trust
2. The draft Development Consent Order (DCO)
3. The lack of the protective provisions contained within Schedule 10, Part 2 of the draft DCO (as amended)
4. The Trust’s Third Party Works Code of Practice
5. Surface water drainage to the canal
6. Environmental Mitigation and the Outline Landscape Environmental Management Plan
7. The Construction Environment Management Plan
8. The Construction Traffic Management Plan
9. Landscape and Visual Impact

In summary:

1. *Proposed Compulsory Acquisition*

The Trust considers that:

- (a) The Applicant has failed to demonstrate that there is a compelling case in the public interest for the land/rights to be acquired in the manner sought (as required by S122(3) of the 2008 Act). Such powers are intended to be used as a matter of last resort and the Applicant has failed to use reasonable efforts to voluntarily acquire the land and rights they require from the Trust; and
- (b) The Applicant has failed to comply with guidance issued by the Department for Communities and Local Government, “*Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*” (September 2013) (as amended) (the ‘Guidance’) in seeking to use powers of compulsory acquisition. We consider that the Trust’s consent

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should be required prior to the compulsory acquisition of Trust's land or undertakings. As set out below, the Trust are further prejudiced in relation to this matter as the draft Order does not contain any protective provisions for the Trust to safeguard and protect our undertakings.

2. The Draft Development Consent Order

There are a number of provisions within the draft DCO which will impact on the Trust and interests it seeks to protect and promote as owner and operator of the Shropshire Union Canal and associated infrastructure.

The Trust have concerns with Article 6 (limits of deviation); Article 19 (discharge of water); Article 21 (survey and investigate land); Part 5 powers of acquisition and Article 24 (compulsory acquisition of land); Article 26 (compulsory acquisition of rights and restrictive covenants); Article 29 (private rights); Article 31 (acquisition of subsoil); Article 34 (temporary use of land); Article 36 (statutory undertakers) and Article 39 (removal of hedgerows).

3. Draft Protective Provisions

The draft Order [APP-024] did not contain any protective provision for the Canal & River Trust as a statutory undertaker, at Schedule 10, Part 2. The amended draft DCO [AS-017] does now appear to contain the intention to include protective provisions for the Trust.

To aid the Examination we provided the Applicant with a set of protective provisions on 13th January 2023 which would resolve and satisfy our principal concerns. The protective provisions have been adapted from the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (made 7 December 2022), being the most recent NSIP to be examined and which contains provisions relevant to the Trust land and assets. For ease of reference, we provide a copy of these at Appendix C to our Deadline One response.

The applicant has not provided a response to the Trust to these protective provisions.

4. The Trust's Third Party Works Code of Practice

The Trust considers that the protective provisions for the Trust should require compliance with its Canal & River Trust Third Party Works Code of Practice (CoP) affecting our interests. The Applicant has agreed with the Trust that any works that interface with our waterways would be carried out in accordance with the Trusts CoP and indeed application forms have already been provided to the Trust in relation to Work No.18. The Trust requires an express obligation from the Applicant to have regard to the CoP in the detailed design, construction and approval of all the relevant works affecting the canal to be included in the protective provisions for the Trust.

5. Surface water drainage to the canal

The Trust would object to any surface water drainage to the canal (or watercourse which is culverted under the canal), without our prior consent. The Trust is not a land drainage authority, and such discharges are not granted as of right. Any discharges to our waterways would be subject to internal review within the Trust including in terms of hydrology, heritage and environment to consider quality, quality and design of outfalls. The works to construct and install the surface water discharge to our waterways must comply with the Code of Practice.

6. Environmental Mitigation and the Outline Landscape Environmental Management Plan

The Trust would have concerns in relation to landscaping planting potentially having an adverse impact on the structural integrity of the canal, especially if planted too close; has no root containment; or if inappropriate species are selected. The Trust would welcome a requirement for the applicant to consult with the Trust in relation to any canalside landscaping/planting as part of the Schedule 2, Part 1 Requirements 11 (Landscape and Ecological Management Plan).

7. The Construction Environment Management Plan

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The Trust would welcome a requirement for the applicant to consult with the Trust in relation to any canalside CEMP's to protect our watercourses and any watercourse which might flow into or under our assets, as part of the Schedule 2, Part 1 Requirements 5 (Construction Environment Management Plan).

8. The Construction Traffic Management Plan

The Trust would welcome a requirement for the applicant to consult with the Trust in relation to the final construction traffic management plan, insofar as it relates to the crossing of our waterway, as part of the Schedule 2, Part 1 Requirements 6 (Construction Traffic Management Plan).

9. Landscape and Visual Impact

Insofar as the works relate to the canal corridor and would be visible from the canal, the Trust are satisfied that the visual impact on the canal corridor would be limited. There would be some localised short-term impact but we consider that the mitigation planting/landscaping would be able to compensate for any harm caused. The Trust no longer have concerns in relation to this matter.

The above comments are given without prejudice to any further matters which may be raised by the Trust at a later stage as more details emerge.

Written Representation of the Canal & River Trust

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These Written Representations are submitted in accordance with rule 10(1) of the Infrastructure Planning (Examination Procedure) Rules 2010 in relation to an application under the Planning Act 2008 (“the 2008 Act”) for a Development Consent Order (“DCO”) for the HyNet Carbon Dioxide Pipeline Project (“the Project”) submitted by Liverpool Bay CCS Limited (“the Applicant”) to the Secretary of State.

The Canal & River Trust (the “Trust”) has already provided a summary of its main concerns within our section 56 Relevant Representation dated 13th January 2023 [RR-008]. The Trust has now had an opportunity to consider the application in more detail and has developed its position. This document sets out in more detail the matters that remain of concern to the Trust:

1. The proposed compulsory acquisition of rights over land owned by the Trust
2. The draft Development Consent Order (DCO)
3. The lack of the protective provisions contained within Schedule 10, Part 2 of the draft DCO (as amended)
4. The Trust’s Third Party Works Code of Practice
5. Surface water drainage to the canal
6. Environmental Mitigation and the Outline Landscape Environmental Management Plan
7. The Construction Environment Management Plan
8. The Construction Traffic Management Plan

While the Trust does not object to the principle of the Project, it remains concerned that the DCO, if made, would interfere with the Trust’s ability to carry out its obligations as statutory undertaker for the waterways within the Order limits and as a navigation authority. Although the Trust has been in discussions with the Applicant about the effect of the proposals on its undertaking, no protection has been provided in the Order, as applied for, to address the Trusts concerns. The Trust therefore objects to the DCO on the grounds set out in this letter. The Trust believes it should be possible to resolve its concerns with the Applicant by negotiation, but reserves the right to appear at Hearing(s) and/or the Compulsory Acquisition Meeting if they are not resolved satisfactorily by that stage.

The Canal & River Trust

The Trust is the charity who look after and bring to life 2000 miles of canals & rivers. Our waterways contribute to the health and wellbeing of local communities and economies, creating attractive and connected places to live, work, volunteer and spend leisure time. These historic, natural and cultural assets form part of the strategic and local green-blue infrastructure network, linking urban and rural communities as well as habitats. By caring for our waterways and promoting their use we believe we can improve the wellbeing of our nation.

The Trust is a statutory undertaker for the purposes of s.127 Planning Act 2008 (“the 2008 Act”) and a statutory party for the purposes of s.88(3)(c) of the 2008 Act. The Trust has operational land, infrastructure and other interests affected by the works and powers proposed.

The Trust has a duty under the Trust Agreement with the Secretary of State for Environment, Food and Rural Affairs (28 June 2012) to operate and manage the waterways and towpaths for public use and enjoyment. Additionally, the Trust has a duty under s.105 of the Transport Act 1968 to maintain commercial and cruising waterways in a suitable condition for use by the public.

Additional Submissions by the Applicant

A number of additional submissions have been accepted by the ExA. The Trust have reviewed these submissions and has the following comments to make.

The notification of intention to submit a change request document [AS-060] sets out the following which may be relevant to the Trust:

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- Change 4 – Extension of Order Limit seeks to increase the width of work no.23 northwards. Presumably this would take the work further away from the canal and as such would not have any impact on our statutory undertaking.
- Change 14 – Seeks to reduce the order limit at Work no.18 to remove a section of the Shropshire Union Canal. Removing a section of canal has previously been raised by the Trust in our Relevant Representation and we welcome this change to the order limits. We note that reference is made to Work Plans [AS-012] and Land Plans [AS-010] being required to be amended, however we note that neither of the plans have yet been amended in respect of this change to the Order limits and both still show the red line between plots 8-02 and 8-06 including the Shropshire Union canal. These parcels of land are required temporarily in relation to Work No 18A and include a section of canal. It is understood that the Applicant will be correcting this during the course of the Examination process.

Amended Draft DCO Tracked [AS-017]

We welcome that Schedule 10 – Part 9 now includes reference to protection of the Canal & River Trust. We note that no provisions have been included and that the “*Content [is] under discussion*”. As set out within this letter the Trust has shared a version of protective provisions with the applicant, but no discussion has taken place in relation to these.

No change has been made to the matters we have flagged as of potentially being of concern to the Trust, namely Article 6 (limits of deviation); Article 19 (discharge of water); Article 21 (survey and investigate land); Part 5 powers of acquisition; Article 24 (compulsory acquisition of land); Article 31 (acquisition of subsoil); Article 34 (temporary use of land); Article 36 (statutory undertakers) and Article 39 (removal of hedgerows)

We note that Work No:19C now includes the creation of a temporary access (not permanent as previously drafted). We have no comment to make in relation to this change.

Work No.20 has now been expanded and works added to include at the Rock Bank BVS – CCTV, valves and associated paraphernalia. We have no comment to make in relation to this change.

We note that Work No.23B has now been corrected.

We have no further comments to make on the additional submissions.

1. Proposed Compulsory Purchase/Acquisition of Trust land

We refer to the Applicant’s Book of Reference {APP-030} and note that the Trust is listed as owner of 2 plots of land which would either be subject to permanent or temporary acquisition. The Order seeks to permanently acquire the subsurface of the canal, bank, verge, towpath and NCR5 lying to the east of Caughall Road (plot 8-03) in relation to Work No.18. This is held under our title CH569303. The Order also seeks temporary possession of land, woodland and track lying to the east of Liverpool Road (plot 9-06) in relation to Work No.23B, as amended in the draft DCO [AS-107]. This is held under our title CH503654.

The Trust **objects** to the Compulsory Acquisition of Trust Land. This is on the basis that there is not a compelling case in the public interest for compulsory purchase powers to be acquired in the manner sought by the Applicant. Such powers are intended to be used as a matter of last resort and the Applicant has failed to use reasonable efforts to voluntarily acquire the land and rights they require from the Trust. Based on the submitted Land Plans we also question the justification for the extent of our land they seek to acquire for a single pipeline crossing of the canal. We consider acquiring a right over a narrower section of subsoil at least 3.5m below the bed level of the canal would be sufficient for the pipeline. We appreciate that a degree of lateral movement in the pipeline might be required to allow for unforeseen matters during the works, however the width of the corridor seems excessive. We note that narrower corridors are provided for along the route including in relation to plots 16-14 and 17-39.

The Trust is a statutory undertaker which has specific duties to protect the waterways. Accordingly, we have a duty to resist the use of compulsory purchase powers which may negatively affect our land or undertakings. Alternatively, should any compulsory

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acquisition powers over the Trust's land be retained in the Order, such acquisition should only be with the consent of the Trust. As set out below, the Trust are further prejudiced in relation to this matter as the draft Order does not contain any protective provisions for the Trust to safeguard and protect our undertakings.

(a) The Applicant has failed to demonstrate that there is a compelling case in the public interest for the land/rights to be acquired

S122 of the 2008 Act states inter alia that an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.

As set out in more detail below, the proposed development has the potential to have an adverse impact on the Shropshire Union Canal, which is a waterway owned by the Trust. As noted above, the Trust has a duty under the Trust Agreement to operate and manage the waterways and towpaths for public use and enjoyment. Additionally, the Trust has a duty under S105 Transport Act 1968 to maintain commercial and cruising waterways in a suitable condition for use by the public.

If the canal is adversely impacted by any works related to the proposed development, then this could result in the Trust being required to undertake remedial works to ensure that they are not placed in breach of their statutory obligations, or their obligations under the Trust Agreement. The Trust considers that, through the DCO application, the Applicant should provide sufficient detail that sets out how that risk will be mitigated. As already stated there are no protective provisions contained within the DCO to provide sufficient comfort that the Trust will not be adversely affected by the works and/or will not be put at risk of breaching its statutory obligations. As currently drafted, the DCO does not do so.

The Trust's position is that, unless and until those issues are suitably addressed by the Applicant, a compelling case in the public interest for acquisition of rights and land to implement the scheme has not been made out. The use of compulsory purchase powers is not justified where the scheme has the potential to put owners/occupiers in breach of statutory obligations. That is particularly the case where the statutory obligations are to protect the interests of the public, as is the case with those obligations placed on the Trust.

(b) The Applicant has failed to comply with guidance issued by the Department for Communities and Local Government, "Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land" (September 2013) (as amended) (the 'Guidance')

Paragraph 8 of the Guidance states:

"The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate."

Paragraph 25 of the Guidance states inter alia:

"Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail."

The Trust considers that the Applicant has failed to comply with the above paragraphs of the Guidance. The Trust has made it clear to the Applicant from the outset of the pre-submission consultation in relation to the proposed Order that compulsory acquisition powers would not be acceptable to the Trust and that we were open to the possibility of entering into a voluntary agreement to transfer rights and/or land for both temporary and permanent works. The Trust has been clear that such an agreement would need to ensure that any requirements that the Trust has as a statutory undertaker are suitably addressed. Those requirements are more difficult to address where rights/land are acquired compulsorily through a DCO. The Trust made it clear that use of compulsory acquisition powers would not be acceptable to the Trust. As a statutory undertaker, the Trust has no option but to resist the use of compulsory purchase powers that it considers may negatively affect its land or undertakings, and ability to comply with its statutory duties and obligations.

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Notwithstanding this, the applicant has progressed with including such powers and has failed to meaningfully engage with the Trust to reach a private agreement. This is inconsistent with the approach advocated by the 'Guidance'. which states, at paragraph 25, that *"as a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail,"*

One of the key concerns of the Trust is that the Applicant agree to abide by the "Code of Practice for Works affecting the Canal & River Trust" (the CoP). The applicant has shown a willingness to sign up to the CoP and indeed has submitted the application forms to the Trust in relation to Work No.18. We are however concerned that if the Order is made without such a provision to comply with the CoP in relation to all canal related works that this requirement might be bypassed. If the Trust was entering into an agreement to grant rights voluntarily over land that it owns, then its standard practice is that the party carrying out the rights must abide by the CoP. This ensures that the Trust is able to verify that any works will not negatively affect the continued safety of navigational users of waterways under its control during and after the works. The use of the compulsory acquisition powers bypasses any requirement to agree to the CoP, which would usually be agreed through a voluntary negotiation.

Initial approaches were made by the Applicant to the Trust's utilities division on the acquisition of rights, Heads of Terms and ownership on the 22nd July 2022. The Trust responded to these on 23rd August 2023 setting out that the Heads of Terms were not in a form which could be executed and required further discussion (further requests also made from the Trust on 15th September 2022; 21st November 2022; 14 December 2022 in order to advance these discussions). A letter was sent to the Trust's Chief Executive dated 28th November 2022 in relation to the terms. The Trust responded on 15th December 2022 setting out that the proposed terms were not acceptable but stated the willingness to hold a virtual meeting to discuss and progress. Only limited further discussions have been held with the applicant to try and reach an agreement on commercial terms.

The Trust considers that the applicant has failed to take practicable measures to reach a voluntary agreement with the Trust. The Trust considers that the DCO, as drafted, fails to strike an appropriate balance between the scheme and the Trust's interests as landowner and statutory undertaker.

The Applicant's proposals indicate that a surface water drainage discharge to the canal may be formed as part of these works (discussed in more detail below). It is noted that no formal agreement has been reached thus far regarding the discharge of surface water to the Trust's waterway. We welcome further information from the Applicant regarding their proposals.

The Trust have yet to receive full detailed information from the Applicant as to how the temporary possession of the Trust's land would be used, and for what duration, to support the delivery of the scheme. In addition, the details provided to date do not give a clear explanation of the practical implications that the use of CPO powers would have for the Trusts access rights, fishing rights, management of the waterway etc. As outlined above, we observe that plot 8-03 appears widely drawn, and query whether this area is in excess of what would be required to deliver the scheme. It is understood that the pipeline crossing here would be a significant distance below the bed level of the canal and as such far more limited rights could be agreed than those requested via the DCO. The Trust remains open to discussing acquisition of rights voluntarily with the Applicant.

The Trust is a statutory undertaker which has specific duties to protect the waterways. Accordingly, we have a duty to resist the use of compulsory purchase powers which may negatively affect our land or undertakings. Alternatively, should any compulsory acquisition powers over the Trust's land be retained in the DCO, such acquisition should only be with the consent of the Trust. The protective provisions for the Trust should make this clear. It would also be entirely reasonable and logical that any permanent acquisition or temporary occupation of land forming part of the Trust's statutory undertaking requires the consent of the Trust.

As the Trust owned land related to the waterway is registered as Infrastructure Trust Property (plot 8-03) then the separate consent of DEFRA would also be required. We would advise that the timeframe for obtaining such DEFRA consent can take between 3-6 months.

2. The draft Development Consent Order (DCO)

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Notwithstanding the significant concerns with the draft Order insofar as it relates to the permanent or temporary acquisition and use of our land, the Trust also has significant concerns in terms of other aspects of the Order. There are a number of provisions within the draft DCO which will impact on the Trust and the interests it seeks to protect and promote as owner and operator of the Shropshire Union Canal and associated infrastructure.

Article 6 (limits of deviation)

The Trust objects to article 6 due to the potential implications of sub-paragraph (b) which would allow the power to *deviate the pipeline works vertically upwards to a limit of not less than 1.2 metres below the surface of the ground (except where ground conditions make compliance with this upwards limit impracticable in which case the upwards limit is 0.452 metres below the surface of the ground)*;

The Trust has significant concerns in terms of Work No.18 insofar as it relates to the crossing of the Shropshire Union Canal. The power to deviate under 6(b) could in theory result in the pipeline being installed through the canal, or otherwise threatening the structural integrity or stability of the canal structure. This would be totally unacceptable to the Trust as it would significantly hinder and likely prevent navigation of our waterway and potentially the safe usage of the towpath and therefore interfere with our ability to meet its statutory obligations.

The Trust considers that the wording of the Order should be amended so that the power to deviate vertically under 6 (b) should not apply to Work 18 and to be limited to a level to be agreed with the Trust (likely as least 3.5m below the bed level of the canal) so that it does not interfere with our undertakings.

Article 19 (discharge of water)

As set out below the separate consent of the Trust would be required to discharge surface water to the canal. As drafted this power would potentially circumvent this requirement which would not be acceptable to the Trust. We would need to review the quantity, quality and flow rates etc to ensure that the canal has capacity to accept increased flows; the discharge would not hinder safe navigation (by means of velocity etc); would not impact water quality and would be acceptable in all other regards. As drafted the powers to not include any reference to the Trust owned waterway nor that our express consent would be required.

Article 21 (Power to survey and investigate land)

The Trust objects to article 21 in terms of the power to survey and investigate land. Notwithstanding subparagraph 21(3) which requires notice to be served on the Trust at least 14 days before entry onto our land for carrying out of such surveys or investigation we have concerns in terms of how such works would be carried out. This is exacerbated by the lack of protective provisions for the Trust and our requirement to safeguard our assets and interests.

In practice we would have concerns that only notice is required, as opposed to consent being required to carry out such surveys or investigations on our land. This could be problematic for the Trust, if for example, the applicant were to leave apparatus which interferes with our undertakings, closes our navigation or makes trial holes which could undermine the structural integrity of our assets.

Part 5 Powers of Acquisition and Article 24 (compulsory acquisition of land);

As set out in the section above the Trust objects to this power to compulsory acquire Trust owned land, for the reasons as already set out. These will not be reiterated here.

Article 26 (compulsory acquisition of rights and restrictive covenants)

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The Trust objects to this power to be able to acquire rights over Trust owned land or impose restrictive covenants upon the land. Such rights and/or restrictive covenants could prevent the Trust from carrying out our statutory duties or interfere with our ability to meet our statutory obligations. These powers should be disapplied in relation to land owned by the Trust.

Article 29 (Private rights)

The Trust objects to this power to be able to cease any existing rights relating to Trust owned land. The Shropshire Union Canal is the subject of private fishing rights and we would not want these to be lost due to the development. Similarly, we would not want any other existing rights or covenants associated with our land to be overridden by the Order.

Article 31 (acquisition of subsoil);

The power seeks to compulsorily acquire rights in relation to subsoil or airspace. For the reasons as set out above the Trust objects to this power relating to our land interests as such powers could prevent the Trust from carrying out our statutory duties or interfere with our ability to meet our statutory obligations. These powers should be disapplied in relation to land owned by the Trust.

Article 34 (temporary use of land);

As set out in the section above the Trust objects to this power to temporarily acquire Trust owned land, for the reasons as already set out. Any use or occupation of our land should be subject to the separate agreement of the Trust.

The Trust would also want to be consulted on the details for the restoration of our land following the completion of works.

Article 36 (statutory undertakers)

As set out within this letter the Trust do not currently have protective provisions (Schedule 10) included for the benefit of the Trust. We would object to any powers within the order to allow for new rights or restrictive covenants to be imposed on our land or the ability to extinguish any rights. Such powers could prevent the Trust from carrying out our statutory duties or interfere with our ability to meet our statutory obligations. These powers should be disapplied in relation to land owned by the Trust.

Article 39 (removal of hedgerows)

The Trust objects to this power within this order, insofar as it relates to any canalside vegetation/ hedgerow, which based on this power would be able to be removed. The canalside hedgerows (no.77 and 78) are rated as 'good' and 'important hedgerow' within Appendix 9.4 Bats and Hedgerows Rev B Part 7 [AS-038]. The canalside hedgerows provide an important ecological function as a wildlife corridor as well as contributes to the character of the canal corridor. Given the canal crossing is intended to be carried out via horizontal directional drilling, with the launch and reception pits set some distance from the canal, there appears to be no clear rationale or reason why the canalside hedgerows should be required to be removed.

3. Draft Protective Provisions

The draft DCO [APP-024] as submitted did not contain any specific protective provisions for the Trust as a statutory undertaker. The Trust noted within our Relevant Representation [RR-008] that other statutory undertakers had been afforded protective provisions within the Order under Schedule 10.

The amended draft DCO [AS-016/AS-017] does now at least include the Canal & River Trust, at Schedule 10 Part 9, however no provisions have been included. To aid the Examination we have provided the Applicant with a set of protective provisions which would resolve and satisfy our principal concerns. The protective provisions have been adapted from the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (made 7 December 2022), being the most recent NSIP to be examined and which contains provisions relevant to the Trust land and assets. A copy of these are appended to our Deadline

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One letter at Appendix C. The Trust reserves the ability to add to and amend the draft protective provisions as part of the examination process as may be required. It is disappointing that no progress has been made in relation to the protective provisions for the Trust despite us providing a set of provisions which had been recently examined.

The Trust is very willing to engage with the applicant upon the wording of parts of the DCO, including the protective provisions contained in Schedule 10, Part 9. Whilst the Trust is encouraged by the proposed inclusion of protective provisions within the amended Order [AS-016/AS-017], until we see the content of these and what the Applicant is seeking to include and until any concerns are suitably addressed, then the Trust's position is that the DCO should not be granted.

The Trust would wish to make further representations in relation to the protective provisions for the Trust when these are made available by the applicant.

4. Compliance with the Trust's Code of Practice

The Code of Practice (CoP) is designed to safeguard the Trust's assets and to deal with the nuances of developing adjacent to a 200-year-old waterway heritage asset, which are not built to modern engineering standards. These features have an inherent fragility and the extent to which development adjacent to or over them may affect their stability can reach far beyond any narrow waterway corridor. Ensuring that development is appropriately located and controlled on land adjacent to the Trust's waterway network is crucial to limit the potential for failure of its infrastructure and the associated economic, environmental and social consequences of this. Therefore, in order to ensure that the construction works will not result in a danger to navigational safety, the Trust requires that any consents given to the works adjacent, under and over its waterways abide by the Code of Practice.

The CoP is critical to the Trust, as it specifically deals with waterway structures and the nuances of protecting the rights of our users, boaters, anglers etc. Based on the details provided through the application, there is insufficient clarity on what standard would be applied for the Trust to comment on how that might impact the structural integrity of the canal and impact its users. The Trust would normally deal with these matters via the CoP on a site-by-site basis and would need to ensure that measures are in place to safeguard assets and our users.

Through the CoP, developers engage with the Trust's engineers. The Trust's engineers are specialists in canal engineering and the protection and safeguarding of our specialist waterway assets. It is essential that the proposals incorporate appropriate measures to protect the structural integrity of our waterways and their users both during and after construction for all temporary and permanent works affecting our waterways. Engaging with the Trust's engineers ensures the appropriate measures are taken.

The Applicant has agreed with the Trust that any works that interface with our waterways would be carried out in accordance with the CoP and indeed application forms have already been provided to the Trust in relation to Work No.18 in December 2022 (albeit only the crossing under the canal). The CoP will also need to apply to site investigations on our land as well as any works alongside the canal and the possible use of our land for access associated with the works. As with previous DCOs authorising works affecting the Trust's land or assets, the Trust requires an express obligation obliging the Applicant to have regard to the CoP in the detailed design, construction and approval of the relevant works.

In terms of Work 18, relating to the pipeline crossing of the canal, we welcome that this would be undertaken via trenchless techniques. Submission document APP-055 (ES Chapter 3, Description of DCO proposed development), paragraph 3.6.61: sets out that trenchless techniques *include "Horizontal Directional Drilling (HDD), Auger Boring Guided (GAB) and Unguided (UAB) and Micro-Tunnelling are three types of trenchless installation techniques that are most likely to be utilised by the Construction Contractor(s) once the Detailed Design has been completed"*. From prior discussion with the Applicant, it is understood that the underground canal crossing would be installed using horizontal directional drilling with the launch pit and reception pit set well away from the canal corridor. We look forward to reviewing the technical drawings in accordance with the mechanisms to be contained in the protective provisions in relation to these works in due course and in terms of the launch and reception areas for the canal crossing, ensuring appropriate measures are put in place to protect and safeguard our assets.

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5. Surface water drainage to the canal

Notwithstanding the provisions of Article 19 of the draft DCO, any arrangements regarding discharge of water both into the Trusts waterway and potential effects on the Trust's Infrastructure from use of culverts beneath the canal will need to be satisfactorily resolved. In terms of surface water discharge to the canal, a composite agreement to cover all discharges to our waterways and any Trust owned culverts would be required. We do not currently have an omnibus type agreement in place with the applicant for these. The Trust is not a land drainage authority, and such discharges are not granted as of right. Any discharges to our waterways would be subject to internal review within the Trust including in terms of hydrology, heritage and environment to consider quantity, quality and design of outfalls. The works to construct and install the surface water discharge to our waterways must comply with the Code of Practice.

Any surface water drainage to the canal (either permanent or temporary) would require oil interceptors and maintenance plans as part of any application to discharge to our waterways in order to safeguard the canal environment and our users. The Trust would not accept any new or amended discharges to our waterways where untreated sewage is likely to be present. Where an altered or new discharge enters a canal pound, the pound (distance between locks) needs to be assessed as to its ability to manage the increased flow. This may require improvements to lock bypass weirs, or new waste weirs, or extensions to existing ones, before it can be accepted by the Trust.

If new/altered discharges are to be culverted under the canal, then the condition of these culverts need to be assessed in terms of their capacity to accept the amount of water. The existing culverts cannot be assumed to have sufficient capacity or be in an acceptable condition to accommodate additional flows. Failure of a culvert under the canal could cause significant damage or a potential catastrophic breach of the canal.

The Trust would not accept any silt laden or potentially contaminated surface water from dewatering of excavations from the construction works or discharge from wheel washing etc. The Trust would however consider the acceptance of clean surface water from above ground installations to the Trust owned canal. As set out above, the Trust is not a land drainage authority and such discharges are not granted as of right but would be the subject of the separate agreement with the Trust. Any flows would need to be attenuated and result in no net increase in flows. We would also need to be satisfied that there would be no net increase in flows as a result of the works to any watercourses which are culverted underneath the canal.

The submission documents show that the drainage for the Rock Bank Block Valve Station (BVS) (Work No.20) would appear to connect to a 'canal ditch' which would appear to have an outfall to the canal next to bridge 134. Clarification has been sought from the Applicant in relation to this drainage, but has not been forthcoming. The route and direction of the ditch flow are unknown, but it appears that the ditch discharges to the canal. If this is the case then the surface water discharge would need to be reviewed and a discharge licence will be needed.

The Trust have a record of a number of culverted watercourses passing beneath the canal which the route of the pipeline crosses, this includes Backford Brook (culvert 12), which is managed by the Environment Agency, by development associated with Work No.23. There is another culvert recorded just to the west (culvert 13). There is a further culvert (no.11) under the canal recorded just to the west of the A41 highway bridge crossing of the canal (bridge 133). There would also appear to be a number of drainage ditches/field drains which may enter the canal here. These will all need to be reviewed and protective provisions included to ensure our statutory undertaking is safeguarded.

6. Environmental Mitigation and the Outline Landscape Environmental Management Plan

Work No.57G relates to the creation of environmental mitigation north of the Shropshire Union canal and would include woodland planting. It is essential that any tree planting here is offset from the canal by a minimum of 5m to ensure that the roots of the trees do not interfere with the clay lining of the canal and cause leakage or undermine the stability of the canal.

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Tree root barriers or similar may be required to be installed. We would also wish to be consulted on the native species mix to be provided here.

In terms of the Outline Landscape Environmental Management Plan (LEMP) [APP-229] the Trust would wish to be consulted further on the specific and detailed landscaping to be provided in the vicinity of the canal corridor to ensure that such planting is appropriate to the setting of the canal conservation area and would not impact the structural integrity of the canal.

In terms of Biodiversity Net Gain [APP-231] it is not entirely clear whether there will be any waterway credits to be spent. In principle if there are we would welcome further discussions with the Applicant in terms of any enhancement to the canal corridor here.

The Arboricultural Impact Assessment [APP-115/116] shows that a number of trees within the vicinity of the canal corridor may be removed to facilitate the works. Any tree removal within 5m of the canal corridor would need to be carried out under supervision of the Trust to ensure that the waterway infrastructure would be safeguarded. The tree roots should be retained in situ and treated to prevent regrowth as opposed to being grubbed out/removed.

The Trust would welcome a requirement for the applicant to consult with the Trust in relation to any canalside landscaping/planting as part of the Schedule 2, Part 1 Requirements 11 (Landscape and Ecological Management Plan).

7. The Outline Construction Environment Management Plan

A high level generic Construction Environment Management Plan (CEMP) [APP-225] was submitted with the application documentation. This has now been superseded by an updated CEMP [AS-055/AS-056] to take into account additional biodiversity survey dates. We welcome that both versions of the document states that the contractors will engage with the Trust to minimise impacts to the canal (table on page 61). However, it will be important that the Trust is fully engaged on these measures and given sufficient time for review of the CEMP and subsequent detailed CEMP's.

All CEMPs relating to works with the potential to affect the canal will need to be robust and comprehensive and include specific canal protection measures. They will need to include aspects of how materials, fuels, chemicals and wastes will be stored and where; measures for the prevention of dust generation and windblown litter and debris; measures to prevent run off into the canal and culverts (e.g. of silty water, contaminated water, fuels and chemicals); pollution response emergency procedures (including training of individuals, reporting as well as the physical mitigation and incident clean up); measures to be taken to ensure noise and vibration from drilling would not affect canal/towpath users; details of any planned water abstractions and /or discharges from or which may impact upon the canal and details of any oil interceptors and the steps to be taken if any unknown contamination is encountered during the works. We note that the Outline Soil Management CEMP sets out that stockpiles will be set away from ditches and watercourses by a minimum of 10m. We welcome that stockpiles will be a minimum of 10m away from watercourses but it will also be important that dust suppression is deployed and stockpiles are sheeted to prevent generation of dust and silty water affecting watercourses and the canal corridor.

The route of the pipeline crosses a number of watercourses which appear to be culverted under the canal, this includes Backford Brook, which is managed by the Environment Agency, by development associated with Work No.23, as well as other culverts and field drainage ditches which flow toward the canal. During the works such watercourses could be at risk of siltation during any land clearance and construction works associated with the pipeline. The culverts flow north to south to discharge on the towpath side and as such any silt from the works on the offside could block the culverts, which would be of concern to the Trust and measures will need to be taken to prevent this and protect these watercourses.

The Trust would welcome a requirement for the applicant to consult with the Trust in relation to any canalside CEMP's to protect our watercourses and any watercourse which might flow into or under our assets, as part of the Schedule 2, Part 1 Requirements 5 (Construction Environment Management Plan).

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8. The Construction Traffic Management Plan

As set out within our Relevant Representation [RR-008] The details set out that access to the Chorlton Lane Compound via the canal crossing Pretty Bridge (Bridge 134 Caughall) over the canal has been discounted due to the bridge having a 3.5T weight limit. As confirmed at paragraph 7.2.14 of the Outline Construction Traffic Management Plan [APP-224]. We welcome that Figure 17-4 Construction Traffic Route Sheet 2 of 8 [APP-214] also shows that both construction routes CC CTR2 and CC CTR3 would be directed to avoid crossing the canal in this location to access the construction compounds. Subject to this being the final routing then this would be acceptable to the Trust. But in the absence of a firm assurance, within the protective provisions (or similar) that the canal bridge will not be used, then this remains a concern to the Trust.

The Trusts concern about the use of existing canal bridges and land adjacent to the canals as part of the construction routes or to access construction compounds for the proposed work and their potential to affect the fabric of the Trust's infrastructure. The Trust has concerns regarding loading on the bridges and our assets and if necessary, the applicant will need to indemnify the Trust for effects on use of these bridges beyond the weight limit or following any strengthening works agreed between the parties.

The Trust would welcome a requirement for the applicant to consult with the Trust in relation to the final construction traffic management plan, insofar as it relates to the crossing of our waterway, as part of the Schedule 2, Part 1 Requirements 6 (Construction Traffic Management Plan).

9. Landscape and Visual Impact

Within our Relevant Representation [RR-008] the Trust reserved its position in relation to the Landscape and Visual Impact Assessment pending a full review. As set out previously there would be some temporary localised impacts associated with the construction works but given that the crossing of the canal would be underground and carried out via a horizontal directional drilling technique then the impact on the immediate environs of the waterway and towpath hedgerow should be limited (subject to the hedgerows along the canal being retained). The mitigation planting and landscaping to be undertaken should also reduce the long-term visual impacts associated with the works.

The Trust are satisfied that any Landscape and Visual Impacts associated with the works in relation to the canal corridor can be appropriately mitigated and as such the Landscape and Visual Impacts associated with the works are no longer of concern to the Trust.

Concluding Remarks

The Trust considers that its objections and concerns are capable of being addressed by the Applicant. In the event that the issues are not satisfactorily resolved, then the Trust confirms that it would wish to take part in any Hearing(s) and/or the Compulsory Acquisition Meeting that is fixed to consider these issues.

The above comments are given without prejudice to any further matters which may be raised by the Trust at a later stage as more details emerge.

Please do not hesitate to contact me with any queries you may have in relation to the above matters.

Yours sincerely,

Tim Bettany-Simmons MRTPI
Area Planner & Special Projects

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