

## **Deadline 2 - Written Submission submitted by National Highways Limited**

### **Planning Inspectorate Reference Number: EN070007**

### **Application by Liverpool Bay CCS Limited for an Order Granting Development Consent for the HyNet Carbon Dioxide Pipeline Project**

## **1 Introduction**

1.1 This further written submission is National Highways Limited's formal written response to the Deadline 1 submissions in respect of the application by Liverpool Bay CCS Limited for an order granting development consent for the HyNet Carbon Dioxide Pipeline (DCO) in respect of Liverpool Bay CCS Ltd's ("Applicant") application for a Development Consent Order ("Order") which seeks powers to enable the installation of a new build carbon dioxide ("CO<sub>2</sub>") pipeline from the Ince AGI in Cheshire to Talacre Beach in North Wales to transport CO<sub>2</sub> produced and captured by future hydrogen producing facilities and existing industrial premises in North West England and North Wales for offshore storage ("Scheme"). National Highways respectfully asks the ExA to consider National Highways' further submissions in respect of the Deadline 1 responses.

1.2 The Applicant seeks development consent for the authorised development described in Schedule 1 of the DCO (Authorised Development). National Highways submitted a section 56 representation on 12th January 2023 and provided a written representation on 17<sup>th</sup> April 2023.

1.3 National Highways has been asked by the ExA to agree a Statement of Common Ground with the Applicant (SoCG). The current position on the SoCG is being submitted by the Applicant at Deadline 2.

1.4 National Highways has already set out its key objections to the Scheme and does not wish to reiterate those at this stage. This Written Submission purely expands on the representation submitted at Deadline 1 and responds to points submitted by the Applicant at Deadline 1.

## **2. New Roads and Street Works Act 1991**

2.1 It is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public money and resources that the Authorised Development proceeds in consultation and agreement with National Highways and with the appropriate protections for National Highways in place.

2.2 As set out in the Deadline 1 response, National Highways is of the view that the installations under the highway could be achieved via the New Roads and Street Works Act 1991 (NRSWA) therefore negating the need for compulsory acquisition. NRSWA specifically refers to tunnelling/boring under the highway (section 101). National Highways contends that parliament intended for street works to be undertaken pursuant to this Act. Its provisions are comprehensive and well established and seek to protect both the undertaker and the street works authority. It is also supported by a code of practice.

2.3 s105 NRSWA 1991 defines “in” (the highway) as “in a context referring to works, apparatus or other property in a street or other place includes a reference to works, apparatus or other property under, over, across, along or upon it...” The element of the Scheme which is ‘under’ the SRN would therefore fall within NRSWA and can accordingly be consented in this way without the need for compulsory acquisition of the freehold of the SRN plots.

2.4 In the case of Thames Water Utilities Ltd v London Underground Ltd it was held that major transport works by London Underground as part of the Jubilee Line works were street works. The case also made clear that NRSWA was to operate as a complete code – “The aim of the 1991 Act was to introduce for the first time a complete code for street works...”. (Douglas Brown J). This further emphasises that Parliament did not intend property law to regulate a street works situation. The Applicant has not provided any justification as to why Parliament’s intention should be discarded.

2.5 As NRSWA facilitates the proposed Scheme without the need for compulsory acquisition, National Highways contends that the Applicant has not made out the case for compulsory acquisition concerning these works.

### **3 Compulsory Acquisition**

3.1 National Highways has already set out its position with regard to compulsory acquisition and maintains that the case has not been made out by the Applicant. In respect of those plots which are within the SRN in particular, National Highways objects on the grounds that the works could and should be carried out under NRSWA. National Highways submits that there is no compelling case in the public interest for the compulsory acquisition of the Plots in which National Highways has an interest and that the Secretary of State cannot conclude that the permanent acquisition of land forming the SRN and the creation of new rights and restrictions over all of the Plots can be created without serious detriment to National Highways’ undertaking.

3.2 National Highways is making enquiries with the Applicant as to the full extent of all 35 Plots in which National Highways has an interest and is clarifying exactly what the Applicant is seeking to acquire and the true impact it has on National Highways with a view to reaching agreement wherever possible.

### **4. Response to Applicant’s Submissions**

4.1 National Highways does not agree with the Applicant’s opinion that the Scheme is beyond the scope of the highway. Any underground works create a risk to the ground above and given it is a busy motorway, it is of public importance to ensure that adequate protections are in place. National Highways is under a duty to preserve its statutory duties and protect its own legal position and must preserve and maintain the integrity of the SRN and the Scheme could affect the integrity of the highway irrespective of whether or not the powers sought are in respect of the highway itself or not. In any case, National Highways contends that the extent of the highway isn’t the issue, it is the potential for the Applicant to affect the highway and interfere with the highway use. Notwithstanding this, the position with regard to NRSWA is separate to that in that section 105 refers to ‘in’ and ‘under’ [the highway]. National Highways

contends that it is difficult to know at this stage whether the Scheme will interfere with the highway despite the trenchless technology which is proposed. It cannot therefore be contended that there will be no interference with the highway.

4.2 The Applicant submitted at Deadline 1 that they did not see that "...CA of sub-surface rights at depth below the highway which does not interfere with the use of the highway can constitute serious detriment." 91.19.54). National Highways does not agree with this position as nothing has been provided to evidence that the works will not interfere with the SRN itself regardless of the fact that the works will be "below" the highway.

## **5. Protective Provisions**

5.1 Discussions are ongoing with the Applicant with regard to the form of protective provisions required by National Highways.

## **6. Conclusion**

6.1 National Highways has registered to speak at the Compulsory Acquisition, Open Floor and DCO hearings and is happy to provide further information in respect of this and previous submissions should it assist the ExA.

National Highways

10 May 2023