



**Cyfoeth  
Naturiol**  
Cymru  
**Natural  
Resources**  
Wales

Ein cyf/Our ref: 20033913  
Eich cyf/Your ref: EN070007

Maes Y Ffynnon,  
Penrhosgarnedd,  
Bangor,  
Gwynedd  
LL572DW

ebost/email:  
northplanning@cyfoethnaturiolcymru.gov.uk  
Ffôn/Phone: 03000 65 4227

[hynetco2pipeline@planninginspectorate.gov.uk](mailto:hynetco2pipeline@planninginspectorate.gov.uk)

10/05/2023

Er sylw / For the attention of: Jake Stephens

Annwyl / Dear Jake,

**PIBLINELL CARBON DEUOCSID HYNET ARFAETHEDIG / PROPOSED HYNET  
CARBON DIOXIDE PIPELINE**

**CYFEIRNOD YR AROLYGIAETH GYNLLUNIO / PLANNING INSPECTORATE  
REFERENCE: EN007007**

**EIN CYFEIRNOD / OUR REFERENCE: 20033913**

**PARTHED: SYLWADAU CYFOETH NATURIOL CYMRU AR GYFLWYNIADAU A  
DDERBYNIWYD AR DDYDDIAD CAU 1**

**RE: NATURAL RESOURCES WALES' COMMENTS ON SUBMISSIONS RECEIVED AT  
DEADLINE 1**

Thank you for your Rule 8 letter, dated 27 March 2023, requesting Cyfoeth Naturiol Cymru / Natural Resources Wales' comments regarding the above.

The comments provided in this submission comprise NRW's response as a Statutory Party under the Planning Act 2008 and Infrastructure Planning (Interested Parties) Regulations 2015 and as an 'interested party' under s102(1) of the Planning Act 2008.

Our comments are made without prejudice to any further comments we may wish to make in relation to this application and examination whether in relation to the Environmental Statement (ES) and associated documents, provisions of the draft Development Consent Order ('DCO') and its Requirements, or other evidence and documents provided by Liverpool Bay CCS Ltd. ('the Applicant'), the Examining Body or other interested parties.

NRW wishes to raise the following matters with the Examining Authority regarding:

- 1) the proposed Protective Provisions for NRW's flood defence assets (Part 8 of the Draft DCO) and,
- 2) the Applicant's proposal to disapply byelaws associated with paragraphs 5, 6 and 6A of Schedule 25 of the Water Resources Act 1991.

## **1) Protective Provisions (part 8 of the Draft DCO)**

### *a) Access to NRW's flood risk assets during the construction phase*

1.1 As highlighted in NRW's written representations (see Section 3, paragraphs 3.3 to 3.4), there are a number of proposed temporary construction compounds within close vicinity of flood risk assets and main rivers. NRW requires ongoing access to carry out flood risk management works to these assets which protect people and properties from flooding. Our primary area of concern is the centralised compound located adjacent to the Hawarden Embankment (approximate grid reference: SJ 35015 66852). We are concerned that the siting of a compound at this location could affect our ability to access the Hawarden Embankment to undertake flood risk management works. This is a key flood defence structure on the river Dee main river, so unimpeded access to the embankment, and Beeches Drain outfall (just upstream of the proposed compound) will need to be provided. NRW notes that the proposed works area on the opposite bank could also affect its ability to access the Northern Embankment via its existing access route adjacent to Deeside House. NRW also notes that there are a series of equipment yards and localised compounds along the length of Chester Road in Sandycroft and Pentre, several of which appear to be close to main rivers. The siting of any temporary compounds should not affect NRW's ability to undertake flood risk management works along the length of the affected main rivers (in this case Sandycroft Drain South, Pentre Drain North and Pentre Drain South West). It is therefore essential that NRW has unimpeded access to these assets at all times, whether during the construction phase of the DCO proposed development or otherwise, for flood risk management works. It appears to NRW that the applicant's proposals in respect of the temporary construction compounds could compromise such access.

1.2 The Applicant is seeking to address NRW's concerns by including Protective Provisions within the DCO (see Schedule 10, Part 8 of the draft DCO) as follows:

*"For the protection of Natural Resources Wales*

*82. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Natural Resources Wales ("NRW").*

*83. The undertaker will permit access by NRW to its assets and landholdings within the Order Limits, through land of which the undertaker is in occupation during construction, on reasonable request.*

*In particular;*

(a) access to the bank and flood defences along the River Dee/Afon Dyford within the plots shown as 13-20, 13-21, 14-04, 14-05, 14-06, 14-07, 14-08 on the land plans will, where the undertaker is in occupation of those plots, be made available by the undertaker on request; and

(b) access over the plots shown as 14-11, 14-14a, 14-20, 14-21, 14-22 14-23, 14-24, 14-25, 14-26 and 14-27 on the land plans, will be maintained for NRW, or where interrupted by construction activity, will be made available to NRW on reasonable request. 84. The undertaker will consult NRW during development of detailed design regarding the proposed design in order to ensure that the proposed design would not prevent or unduly restrict NRW in accessing or maintaining any of its assets, including flood defences.

84. The undertaker will consult NRW during development of detailed design regarding the proposed design in order to ensure that the proposed design would not prevent or unduly restrict NRW in accessing or maintaining any of its assets, including flood defences”.

1.3 NRW has concerns with this proposal. Under s.165 of the Water Resources Act 1991 NRW is empowered to access land to carry out flood risk management works. The provisions of the DCO cannot override these powers and NRW does not require separate permission under the DCO to exercise its powers under s165 of the WRA 1991. NRW therefore advises that there should be no physical impediment to access for flood defence assets. Accordingly, the DCO should ensure this as a matter of design/construction.

1.4 NRW understands that the applicant proposes to finalise the detailed plans for the construction compounds post-consent at which stage a construction contractor has been appointed. Should the ExA be satisfied with this approach, NRW requires that the following is incorporated into the DCO in order to address NRW’s concerns:

- 1) Requirement 5 of Schedule 2, Part 1 (Construction Environmental Management Plan) should be amended to require NRW’s approval prior to the construction stage insofar as access to flood risk assets is concerned.
- 2) There should be a commitment in the Outline CEMP which states that the developer/contractor/operator (as appropriate) will ensure that uninhibited access to the flood defence assets maintained managed by NRW will be ensured during the construction phase. The wording could be as follows:

*“We will ensure works within the temporary construction compounds and associated access routes are designed to ensure that NRW’s access to the flood risk assets that it maintains manages is not prohibited and we will work with NRW to agree suitable access arrangements. This includes compounds 30D (Wood Farm Centralised Compound) and 31A (River Dee Centralised Compound) and the associated permanent and temporary access routes. No construction works will be carried out without NRW’s written approval”.*

- 1.5 Alternatively, the applicant is advised to consider whether a “Construction Flood Risk Asset Access Management Plan” should be prepared and incorporated into the CEMP, subject to consultation with and approval of NRW.
- 1.6 NRW considers that such commitments should also be reflected in the Register of Environmental Actions and Commitments (REAC).
- 1.7 It should also be noted that in the event that the construction compounds are within 16m of the Hawarden and Northern Embankments of the river Dee main river, they would require an environmental permit (a Flood Risk Activity Permit (FRAP)) under the Environmental Permitting Regulations 2016 for which NRW is the consenting authority. Therefore, the location of such compounds would be considered in the determination of any such application and subject to NRW’s approval.

*b) Permanent rights corridor*

- 1.8 This concern relates to the operational phase of works and the implications that the pipeline could have on NRW’s ability to undertake flood risk management works on the Hawarden and Northern Embankments in the future (see NRW’s written representations: Section 3, paragraph 3.5).
- 1.9 The legal position in respect of access for the purposes of flood risk management works is as set out above. Accordingly, it should be noted that the applicant’s proposed permanent rights corridor would not override the provisions of the WRA 1991 and would not preclude NRW from entering any such land for the purposes of exercising its flood risk management functions. Therefore, the same concerns in respect of design / construction of the pipeline apply and the applicant should seek to avoid any potential access impediment at this stage.
- 1.10 These concerns were raised in our Written Representations (Section 3, para 3.5). However, the requested information has not yet been provided.

## **2. Disapplication of byelaws**

- 2.1 Article 8 of the draft DCO provides for the application and modification of legislative provisions. Under Article 8(1) (a) the applicant is seeking to disapply ‘*in relation to the construction of any work or the carrying out of any operation for the purpose of or in connection with, the construction of the authorised development or any maintenance of any part of the authorised development —*  
  
*a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(a);’*
- 2.2 The legislative basis for Article 8 of the draft DCO is section 150 of the Planning Act 2008 (‘Section 150’) (‘Removal of Consent Requirements’) which provides as follows (emphasis added):

*(1) An order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision.*

*(2) "The relevant body" is the person or body which would otherwise be required to grant the prescribed consent or authorisation*

- 2.3 NRW is a 'relevant body' under Section 150 (2) and therefore its consent is required in order for the provisions to be dis-applied. NRW's consent is therefore required for Article 33 to remain in the Development Consent Order.
- 2.4 Under the *Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015*, Regulation 5 and Part 1 of Schedule 2 such prescribed consent includes 'A consent under byelaws made under paragraphs 5, or 6 of Schedule 25 (byelaw-making powers of the appropriate agency)'.
- 2.5 Further, the ExA asked relevant Statutory Undertakers for their comments in regard to the disapplication of the provisions set out in Article 8(1).
- 2.6 NRW has not been provided with the required information in relation to the consents and authorisations identified in Article 8. At the present time, NRW is not in a position to grant consent under Section 150 and cannot agree to the inclusion of Article 8(1) (a).

Please do not hesitate to contact Chris Jones ( [REDACTED]@[cyfoethnaturiolcymru.gov.uk](mailto:cyfoethnaturiolcymru.gov.uk)) should you require further advice or information regarding this submission.

Yn gywir / Yours sincerely,

**Chris Jones**

Uwch Gynghorydd, Cynllunio Datblygu / Senior Advisor, Development Planning  
Cyfoeth Naturiol Cymru / Natural Resources Wales