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All Interested Parties and Statutory Parties

Your Ref:

Our Ref: EN070007

Date: 2 June 2023

Dear Sir/ Madam

**Planning Act 2008 – sections 89 and 123; and The Infrastructure Planning
(Compulsory Acquisition) Regulations 2010 – Regulation 6**

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

Procedural Decision following request to make changes to the application

We are writing to inform you of the Procedural Decision made by the Examining Authority (ExA) following the change request made by the Applicant dated 26 May 2023 (Examination Library references [CR2-001 to CR2-021]). All documentation referred to herein have been published under the 'Documents' tab on the [project webpage](#) of the National Infrastructure Planning website.

The Applicant's document entitled 'Change Request 2 Cover Letter' [CR2-016] provides a brief description of each of the changes proposed, but states "*A detailed description of each change and its justification can be found in the Notification of Intention to Submit a Change Request 2*" letter [AS-066]. The latter document was received by the Planning Inspectorate on 3 May 2023. Two changes have been prepared with the Applicant stating they have "*...been prepared to respond to ongoing consultation with landowners and Interested Parties.*" The Applicant also indicated it "*...anticipates the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 Regulation 4 will apply to the changes sought and consultation under those regulations will be required.*"

The ExA notes the Applicant's intended approach to the submission of the proposed changes and the further proposed consultation it intends to undertake should the Change Request be accepted. It was also noted that the proposed consultation broadly aligns with the requirements of Advice Note 16: 'Requests to change applications after they have been accepted for examination'¹. The ExA has reviewed the information provided and

¹<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-16/>

assessed the Applicant's request in line with paragraphs 109 to 115 of the DCLG Guidance 'Planning Act 2008: Examination of Applications for Development Consent'² and the Planning Inspectorate's Advice Note 16.

The proposed changes are briefly set out below, whilst a detailed description of each change and the Applicant's justification for each can be found in the Applicant's 'Notification of Intention to Submit a Change Request (2)' [[AS-066](#)].

- Change 1 – An Embedded Pipe Bridge option to cross the Alltami Brook, as an alternative to the Applicant's preferred trenched crossing approach, should its preferred option not be considered to be compliant with the Water Framework Directive.
- Change 2 – relates to two locations at or in close proximity to the 2 Sisters Food Group. The prospective amendments would see the addition of land to the Order Limits in one location (being an additional length of an existing maintenance track to the north/ north-east of Chester Road East), whilst removing a second area of land from the Order limits that includes a lorry turning circle used in relation to the operation of the 2 Sisters Food Group factory.

The Applicant's adopted approach to the proposed changes is considered to be correct. Whilst not all of the changes result in additional land being required, Change 2 involves an increase in the size of the Order limits, whilst Change 1 would require land take of the surface of land currently shown on the land plans for sub-surface acquisition only (ie permanent acquisition of land, rather than permanent acquisition of subsurface).

The ExA notes the Applicant's indication that the Changes have "*...been prepared to respond to ongoing consultation with landowners and Interested Parties.*" Whilst no new ownership interests appear to be affected, as Affected Persons identified against the additional land being included as a result of changes to the Order limits already appear in the Book of Reference. Irrespective of this, both changes have the potential increase in interference with landowners' rights. With this in mind, the ExA agrees with the Applicant and considers the proposed Changes trigger Regulations 5 to 19 (inclusive) of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations).

With regard to assessment of likely significant effects of the proposed Changes, the ExA notes the Applicant's document Environmental Statement (ES) Addendum Change Request 2 (ES Addendum 2) [CR2-017]. This document provides information regarding the likely impacts of the proposed design option (Change 1) and design change (Change 2), as detailed above, and the implications of these Changes in relation to the DCO Proposed Development assessments undertaken in the 2022 ES and ES Addendum Change Request 1 (ES Addendum 1) [CR1-124]. The ExA notes ES Addendum 2 does not duplicate the 2022 ES or the ES Addendum 1 and has been prepared to be read in conjunction with these documents. The Applicant indicates that the ES Addendum 2 [CR2-017] document was prepared to ensure that the environmental impacts of the proposed changes have been appropriately assessed, with any likely significant environmental effects identified.

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance-final_for_publication.pdf

Overall, the ES Addendum 2 [CR2-017] identified:

- an additional likely significant effect in terms of Change 1 related to visual amenity of recreational users of public right of way 414/39A; and
- an existing identified likely significant effect, being the removal of the 'Temporary loss of land and disruption to access to 2 Sister's Food Group', should be removed from Table 20.1 of ES Addendum 1 in regard to Change 2.

No other change in or new significant effects for any topics assessed in the ES were identified.

Bearing all of the above in mind, the ExA noted the Applicant's findings but does not consider any of the proposed changes are so substantial that they would constitute a materially different project. The proposed changes are not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for in October 2022. However, given Change 2 includes extending the Order limits; whilst Change 1 alters the type of compulsory acquisition sought (sub-surface interests only to full acquisition of land) to allow for the above ground bridge, both would have the potential to increase interference with landowners' rights. As such, the ExA considers this would trigger Regulations 5 to 19 of the CA Regulations. Irrespective of this, in accordance with Regulation 6 of the CA Regulations, the ExA considers the proposed Changes can be accepted into the Examination. In reaching this decision the ExA is satisfied that it complies with the requirements of Regulation 5 of the CA Regulations.

The ExA is satisfied that there is sufficient time within the Examination for the proposed changes to be properly and fairly examined including the opportunity for written submissions and any oral representations to be made at any hearings that are required, along with the procedural requirements of the CA Regulations. In accepting the proposed changes into the Examination, despite consent of all those with an interest in the land not been obtained, the ExA notes the Applicant submitted documents in compliance with Regulation 5 of the CA Regulations. However, the ExA would remind the Applicant of its obligations to notify the Affected Persons in accordance with the requirements of Regulations 7, 8 and 9 of the CA Regulations.

The ExA requests that this is carried out in accordance with the timescales contained within the Applicant's 'Notification of Intention to Submit a Change Request (2)' letter [AS-066] received on 3 May 2023 with the CA Regulations consultation running from **6 June 2023** and newspaper notices being published, no later than **8 June 2023** (first notice) and **15 June 2023** (second notice).

The ExA cannot stress enough the importance of meeting the above-mentioned timescales and, whilst ensuring the consultation still comply with the CA Regulations, the importance of submitting the Certificates of Compliance, as required by Regulation 9 of the CA Regulations, promptly after the close of the consultation period (ie as early as possible the day after the close of the consultation period) and significantly earlier than the 10 working days allowed.

Failure to submit the Certificates of Compliance promptly following the close of the consultation period is likely to result in the Hearings, currently scheduled in the Examination timetable for week commencing 7 August 2023 having to be cancelled and rescheduled. Should this occur, such rescheduled Hearings would be likely to result in the remaining Examination timetable having to be significantly reviewed.

In addition to the above, the ExA requests the Applicant submits:

- Consolidated versions, in the interests of accessibility and clarity, of the relevant ES chapters and appendices that incorporate the changes contained in the documents listed below:
 - the 2023 ES Addendum Change Request 2;
 - the 2023 ES Addendum Design Change Request 2 – Appendix A - Non-Technical Summary Addenda;
 - the 2023 ES Addendum Change 2 – Appendix B - ES Appendices Addenda;
 - the 2023 ES Addendum Change 2 – Appendix C – Figures;
 - the 2023 ES Addendum Change Request 1; and
 - the 2023 ES Addendum Change Request 1 – Appendix A - Technical Appendices Addenda (Rev A).

The consolidated versions, along with any update to the Habitat Regulations Assessment Report (most recent version [REP2-023], should be submitted in clean and track change versions by Deadline 4 (20 June 2023).

- In hard copy, submission of 2 coloured sets of the Land Plans and the Work Plans, at the correct size and scale. Please note hard and digital copies of these Plans, in colour and at the correct size and scale should be provided each time they are revised.

Next steps

It is now the Applicant's responsibility to publicise the proposed changes that incorporate additional land in accordance with the CA Regulations. The Applicant must advise the Case Team of its proposed schedule as soon as possible, so that an appropriate form for making Relevant Representations about the proposed provision for the Compulsory Acquisition of additional rights over land can be made available on the project webpage of the National Infrastructure Planning website.

Following completion of the Relevant Representation period, and if required, a revised Examination timetable, which addresses both Change Requests 1 and 2, will be issued under Rule 8(3) of the Infrastructure Planning (Examination Procedure) Rules 2010. As consultation in regard to Change Requests 1 and 2 will coincide, the ExA does not consider it an effective use of Examination time to issue separate revised Examination timetables. As such a single revised Examination timetable, if required, related to Change Requests 1 and 2, will be issued after the close of the Relevant Representation period related to Change Request 2. Such a revised Examination timetable would be likely to include relevant deadline(s) for Written Representations to be submitted, periods within which responses should be submitted and an indication of any necessary hearings.



Please note that the acceptance of the proposed Changes is made on the basis that all the processes can be completed in the required time prior to the close of the Examination and in accordance with any revised Examination timetable that may be published in due course. If this is not achieved, then we will not be in a position to take the change request into account in our recommendation report to the Secretary of State as it will not have complied with the relevant statutory procedures.

Yours faithfully

Christopher Butler

Christopher Butler
Lead Member of the Examining Authority

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