

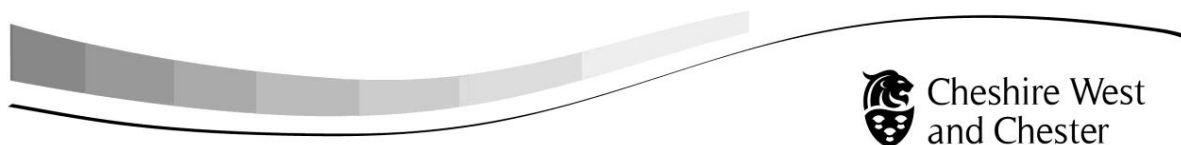


HyNet Carbon Dioxide Pipeline DCO

Written Submission of case put orally at Examination hearings held on 6 June 2023, 7 June 2023 and 8 June 2023

Cheshire West and Chester Council

Submitted at Deadline 4 – 20 June 2023



INTRODUCTION

This document summarises the case made orally by Cheshire West and Chester Council (**the Council**) being one of the host authorities for the HyNet Carbon Dioxide Pipeline DCO (**the Project**) promoted by Liverpool Bay CCS Limited (**the Applicant**) at the Hearings held on 6 June 2023, 7 June 2023 and 8 June 2023.

Michelle Spark (**MS**), Partner at Brabners LLP represented the Council at the Hearings.

ISSUE SPECIFIC HEARING 1

MS was joined by Ben Greenwood, Senior Planning Officer (**BG**) and Laura Hughes, Natural Environment Officer (**LH**).

2.1 Agenda Item 2 – Assessment of Alternatives & Cross Topic Issues

The Examining Authority (ExA) advised the Hearing that comments were raised in written representations by the Council in relation to cumulative impacts assessed in the Environmental Statement and more particularly the ExA referred to representations in REP-160 and advised that more may have been added since. The ExA referred to the Encirc application and asked the Council to confirm the implications of the route.

BG confirmed that the Encirc application was currently being determined by the Council. The DCO boundary or the access cuts across the expansion area for NCIRC. BG believed the affected area was the HGV storage and parking area as well as access routes. The Council has raised this as an issue.

The ExA asked whether the application had been determined or approved and BG confirmed that the application was currently being determined and estimated that a decision would be made over the next couple of months. The ExA asked for the Council to advise the ExA when the application had been determined and BG confirmed that he would update the ExA.

2.2 Agenda Item 3 - Biodiversity

The ExA and the Applicant then discussed Biodiversity Net Gain being offered at 1% in the absence of legislation. The ExA asked for the Council's view and LH confirmed that the Council considered that the 1% was a proportionate approach given the absence of mandatory requirements.

The ExA also asked the Council if it was satisfied with the opportunities available to the Ecological Network and LH responded that she was in dialogue with the Applicant regarding suitable sites and priority habitats. Those submitted at Deadline 3 are

located very close to the pipeline route and there is very limited benefit there and with the wider network.

The ExA asked for LH to give some insight as to the Ecological Network's aims and LH responded that Policy DM44 identifies policies to enhance the value of the assets and contribute to the Ecological Network and requires no natural assets. The ExA asked if there was a particular area identified on a plan and LH advised that this was available online. The ExA asked for a copy of DM44 to be submitted into the Examination at Deadline 4 and the LH confirmed she would provide a copy.

The ExA asked if there were any comments by either the Environment Agency or the Councils as to the possibility of other schemes being considered for watercourse enhancement and attenuation such as Park Gate Road or Hermitage Road. The Council confirmed that it did not have an expert at the hearing and would therefore need to come back to the ExA at a future deadline.

COMPULSORY ACQUISITION HEARING 1

3.1 Agenda Item 3

The ExA invited the Council to comment on its objections, issues and updates on voluntary agreements.

MS advised that her instructions were that there have been limited negotiations in regard to the Compulsory Acquisition and Temporary Possession of the Council's land. MS confirmed that the Council had received Heads of Terms but that the Council would welcome further engagement in relation to the land sought and how that interacted with the Council's operational land as well as the current use and/ or aspirations for the land affected. In a nutshell MS advised that the Council would welcome an offline discussion with the Applicant to progress matters.

The Applicant confirmed that the parties do need to have a discussion. The Applicant believes that there are a couple of points that could easily be clarified, especially the interaction with streets and highways.

The ExA asked for those discussions to take place as soon as possible. The Examination is closing in September and if matters are not resolved before then, they cannot be taken into account. It is within the Applicant's best interest to do so.

ISSUE SPECIFIC HEARING 2

Agenda Item 2 – Articles and Schedules of the draft DCO

The ExA asked the Council to confirm it had concerns regarding the definition of commencement and the 4 items which were excluded from that definition which the Council had concerns with. MS confirmed that she had sought clarification and the concern is in relation to whether fencing will be permanent or not. The ExA then asked the Applicant to confirm and the Applicant advised that the fencing would be for the

period of construction and that the Applicant could not give a guarantee on amphibian and reptile fencing as these are subject to European Protected Species Licences. The ExA asked the Applicant to confirm at Deadline 4 whether all issues raised by the Council were temporary or permanent in nature.

The ExA asked MS to confirm if there were any issues now with Article 6 – Limits of Deviation as the Council had reserved its position previously. MS confirmed that the Council had no further comments.

The ExA asked if there were any questions as to the benefits of the order, applications and modifications of legislative provisions. MS confirmed that the Council had made a number of representations as to the disapplication of the land drainage consent and had suggested that protective provisions were necessary in regard to interference with ordinary watercourses. MS confirmed that this issue could be dealt with later in the Hearing but that the issue had been raised in multiple submissions.

The ExA asked if MS was content to deal with the issue when discussing Requirement 8 and she confirmed that she was.

The ExA raised an issue regarding timescales in Article 10, 11, 15 and 18 in relation to time periods for approvals. The Council had previously sought a 70 day approval period with the Applicant offering 42 days. MS confirmed that so long as there were discussions prior to the formal applications coming forward, the Council could accept 42 days. MS confirmed that it was usual when applications are made under a DCO that there are discussions between the local authority and the Applicant in any event, the Applicant confirmed this is the case. There is going to be some potential work done in advance of the applications being formally submitted and so based on that offer from the Applicant that the work is front loaded, the Council is happy.

The ExA asked the Applicant to confirm if it was happy for pre-consultation to be included in the documentation and the Applicant confirmed that it was not as it would inflate the time period. MS confirmed that she was content that no pre-consultation was included in the DCO and that the Council and the Applicant would discuss this offline particularly in relation to highways issues.

The ExA specifically asked the Council to confirm whether or not it operated a street permit scheme and MS introduced James Orme, Network Commissioner for the Council who relied that it did. MS confirmed that the Council would need notice of works coming forward but that this could be picked up in ongoing discussions and confirmed that this did not need to be included in the order but that the Council would like an alternative mechanism. The Applicant confirmed that it would pick this up with the Council.

The ExA asked the Council to confirm in relation to its role as Lead Local Flood Authority (**LLFA**) what outstanding information was sought. MS confirmed that the Council would look again at the information provided and the Outline CTMP and revert at the next deadline as to the information missing.

The ExA had a discussion on protective provisions and MS confirmed that these were being discussed with the Applicant and that an updated draft was provided yesterday in relation to Part 7 for the benefit of the highway authorities. The ExA asked MS to confirm that the Council was looking for separate protective provisions for the LLFA and MS confirmed that this would be best deferred until the discussion on Requirement 8. The clarity from that discussion provided by the Applicant may repeat the need for protective provisions or delete it altogether.

4.2 Agenda Item 3 – Schedule 2 of the draft DCO - Requirements

The ExA then moved onto Schedule 2 to the DCO – the Requirements Schedule. In particular there was discussion with regards to the definition of stages and these not being approved by the local authorities. The Applicant confirmed that this was a deliberate decision and BG confirmed that the Council had raised this issue in its written representations in the Examination. BG confirmed that the Council team had reviewed and discussed the need for the Council to approve the stages but that it had arrived at a point where it did not need to approve but the Council did require a definition of a stage and where it starts and finishes. The Applicant committed to defining a stage.

The ExA then raised the issue of ‘self approval’ in Requirement 4. MS advised that the Council would come back to the ExA on this point once the point was re-examined.

The ExA raised a point on Requirement 3 regarding the Council’s request for the stages to specifically relate to the Works. The Applicant confirmed and the Council agreed that if stages were defined this point is superseded.

A discussion ensued over Requirement 8 and the concern regarding the content of the Outline Surface Drainage Strategy – APP-241. The LLFA’s position is that this is a high-level strategy and there is concern that any works required to the ordinary watercourse would not be necessarily included and the reference to the surface water drainage plan is only for permanent works and does not include temporary works. The Council was hoping for further clarity from the Applicant as to why protective provisions would not be required. The Applicant confirmed that it is high level as there are no detailed plans. MS confirmed that she appreciated that the application was not at detailed design stage but that the LLFA was stuck between a rock and a hard place. MS confirmed that discussions would need to be taken offline as to whether an amendment to Requirement 8 is required or otherwise. MS confirmed that the Council would take the discussions offline.

The ExA then moved onto Requirement 9(5) and asked for clarification from the Applicant whether there was a need to agree the verification report with the Council. The Applicant’s position was that it did not as it was unnecessary and would cause further delay. Steve Holmes from the Council confirmed that verification reports would typically be used where the local authority could not investigate by their own means as to whether the Requirement had been complied with. If you cannot do see that it has or has not been complied with then a verification report is necessary.

The ExA moved onto Requirement 11(2(C) and the comments from the Council previously raised regarding stages to include the Works. The Council and the Applicant confirmed that this had already been dealt with in previous discussions.

The ExA then moved to Requirement 13 and construction hours and the ExA confirmed that the Council had consented to the definition of emergency subject to Requirement 13 (3) (c) being removed.

The ExA then moved to a discussion on Requirement 16 and the restoration of land whereby the BG on behalf of the Council confirmed that an aftercare scheme would be important as despite the land being returned to agricultural use, this would not be the same agricultural use due to the change in soil. The Applicant confirmed that a soil management plan would address this issue.

The ExA discussed Requirement 20 and asked the Council to explain why it was seeking a 16 week turnaround rather than 56 days. MS confirmed that the Council is content to accept 56 days based on the amendments made to revision E in the current draft DCO. MS also confirmed that the Council was happy with the deemed approval process now that the draft DCO had been amended.

The ExA discussed Requirement 23 and the time period of 20 days being put forward by the Applicant as being too short to consult with multiple statutory bodies. MS confirmed that it still believed that a 20 day period was too short and the Council would have preferred a longer period, however, with the additional text included whereby a longer period can be agreed between the parties and the fact that the period for approval had been extended from 42 to 56 days then the Council was happy with the drafting.

The ExA moved to Requirement 24(2) and again time periods were discussed and the need for the Council to request further information from the Applicant in only 10 days. The Council's position is that this is not required at all and this time period should be removed from the draft DCO. MS noted that there had been updates to cross references in the drafts and that the Council would clarify its position at Deadline 4.

The ExA asked the Council to clarify the mention of additional resource provided to the Council to allow work to be undertaken in advance of formal submission and how this would be secured. MS confirmed that this was offered by the Applicant in a meeting and the Applicant confirmed that it had offered a planning performance agreement for non-statutory engagement to allow the Council to do work in advance of formal submissions to discharge requirements.

The ExA raised a further issue regarding securing the BNG and whether this would be through a s106 or deed. MS confirmed that she had only just received the document and therefore could not comment at this time. MS also confirmed in response to the ExA's question that the Council was not seeking to secure community benefits.