

Christopher Butler  
The Planning Inspectorate  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

**Our ref:** SO/2023/123043/04-L01  
**Your ref:** EN070007 – Deadline 4  
**Date:** 20 June 2023

Dear Mr Butler,

**APPLICATION BY LIVERPOOL BAY CCS LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE HYNET CARBON DIOXIDE PIPELINE SCHEME**

**ENVIRONMENT AGENCY DEADLINE 4 (20<sup>th</sup> JUNE 2023) SUBMISSION:**

- **ENVIRONMENT AGENCY WRITTEN SUMMARY OF ORAL SUBMISSION FOR ISSUE SPECIFIC HEARING 1 (6<sup>TH</sup> JUNE 2023) AND RESPONSE TO THE EXAMINING AUTHORITY'S REQUEST**
- **ENVIRONMENT AGENCY WRITTEN SUMMARY OF ORAL SUBMISSION FOR COMPULSORY ACQUISITION HEARING (7<sup>TH</sup> JUNE 2023)**
- **ENVIRONMENT AGENCY WRITTEN SUMMARY OF ORAL SUBMISSION FOR ISSUE SPECIFIC HEARING 2 (8<sup>TH</sup> JUNE 2023) AND RESPONSE TO THE EXAMINING AUTHORITY'S REQUEST**

**NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT – HYNET CARBON DIOXIDE PIPELINE**

Thank you for the opportunity to provide representation in the Development Consent Order (DCO) Examination hearings for the Hynet Carbon Dioxide Pipeline Scheme.

Please find below the Environment Agency's (EA's) written summary of oral submissions for Issue Specific Hearing 1 (6<sup>th</sup> June 2023); Compulsory Acquisition Hearing (7<sup>th</sup> June 2023); and Issue Specific Hearing 2 (8<sup>th</sup> June 2023). We are aware the Examining Authority (ExA) has requested information from the EA under Issue Specific Hearing 1 and Issue Specific Hearing 2 which is provided below.

In addition to the above, we have taken this opportunity to provide a follow-on representation to our Deadline 3 response.

**Environment Agency Written Submission for Issue Specific Hearing 1 (6<sup>th</sup> June 2023)**

Thank you for requesting the EA's attendance to Issue Specific Hearing 1. We acknowledge the ExA has requested comments from the EA on the applicant's riparian enhancement proposals. Therefore, we have reviewed the Landscape and Ecological Management Plan [APP-229] submitted and have the following comments to make:

## Riparian Enhancements

The EA can confirm the proposed riparian enhancements at the East Central Drain; Finchetts Gutter Tributary; Backford Brook; and Friars Park Ditch are acceptable.

We are particularly supportive of the proposals to use a tussocky species-rich sward within the biodegradable fibre matting; the inclusion of willow whips; and reinstatement of natural bank forms and in-channel features for improved morphological diversity. In terms of the proposal for riparian planting (which is additional to the vegetation which would be reinstated from open cut crossings), we wish to emphasise that this should be a diverse mix of locally-native riparian trees and shrub species (ES ref. D-BD-048 of the Register of Environmental Actions and Commitments (REAC) [REP2-017]).

We note the commitment, under the REAC [REP2-017], to reinstate all channel and banks *'to mimic baseline conditions as far as practicable to ensure more natural bank forms and in-channel features and morphological diversity'* (ES ref. D-BD-048) impacted by the proposed construction of the pipeline. We would advise, in the event it is found not to be possible / practicable to reinstate habitats to former conditions, compensatory measures must be sought within the same Water Framework Directive (WFD) water body. We request this is acknowledged within the REAC [REP2-017] either within D-BD-048 or under a separate reference.

We advise the overall aim of the WFD is to enhance the status of all water bodies and their ecosystems. In line with this, it is strongly recommended that the applicant seeks opportunities for enhancement, where practicable and in addition to those already outlined, where trenched crossings are proposed on watercourses. All mitigation measures and enhancement proposals should be documented within the WFD assessment, including how the proposed measures contribute to the objectives of the [North West River Basin Management Plan](#) (RBMP).

## **Environment Agency Written Submission for Compulsory Acquisition Hearing (7<sup>th</sup> June 2023)**

The EA are the landowners of the River Gowy channel bed at Plots 6:01; 6:02; 6:10; and 6:11, as shown in the Land Plans [REP2-002], where we acknowledge the applicant is currently seeking permanent acquisition of Plots 6:01; 6:02; 6:10 and temporary possession of Plot 6:11 to facilitate the proposed development. We advise the ExA that we are currently reviewing the Heads of Terms provided by the applicant.

### Compulsory Acquisition and Temporary Possession of Land under the Environment Agency's Ownership

We would welcome further discussions with the applicant on the contents of the proposed agreement for the permanent / temporary acquisition of the aforementioned plots, particularly to ensure the granting of such rights does not include stipulations that may impact the EA's statutory obligations (i.e. securing access rights for the EA).

We would highlight, for the applicant's awareness, there is an aspiration for the restoration of the River Gowy to be delivered as one of the WFD mitigation measures (Action ID: 35564) under the North West RBMP. Therefore, provisions made under the Heads of Terms should not impact the potential future delivery of this action. The applicant must make suitable provisions and actions to support and alter the pipeline route / depth to ensure any potential future works on the River Gowy are achievable. This is to ensure the proposed constructions works / operational development do not

jeopardise the attainment of 'good status' in future under the WFD.

### Environment Agency as an Identified 'Occupier or Reputed Occupier' of Plots

Where the EA has been identified as holding an interest in land as an 'occupier or reputed occupier' in the Book of Reference [REP3-014], as also raised in our Deadline 3 submission [REP3-045], the applicant has clarified [REP2-038] that this is as a result of the proximity of the plots to designated 'main rivers'. We are satisfied the applicant has identified the need to obtain a Flood Risk Activity Permit (FRAP), under the Environmental Permitting (England and Wales) Regulations 2016, as included in the 'Other Consents and Licences' Document [REP1-011] and therefore, we have no further comments to make on this matter.

We would advise the applicant, under Table 2.1 of the 'Other Consents and Licences' document [REP1-011], a bespoke Flood Risk Activity Permit (FRAP) may not be required for 'all' temporary or permanent works on / near a 'main river' / flood defences structure / floodplain. Further to this, FRAP [exemptions](#) and [exclusions](#) will be dependant on the scale and nature of the proposed works and whether they meet the necessary conditions.

Therefore, we advise the wording within the 'Other Consents and Licences' document [REP1-011] is revised to acknowledge a FRAP will be obtained, where required (additional advice provided in our Deadline 1 submission [REP1-062], and register for an exemption where applicable, whilst acknowledging exclusions for certain works may apply in line with EA (and Natural Resources Wales for the Wales section of the scheme) guidance. For example, Table 2.1 [REP1-011] identifies '*smaller scale works e.g. within or on existing structures, signage, fences, works carried out in an emergency*' as falling under a FRAP exclusion. However, this will be dependent on whether this meets the specific conditions / stipulations for an exemption and therefore, may still require a FRAP.

### **Environment Agency Written Submission for Issue Specific Hearing 2 (8<sup>th</sup> June 2023)**

With regards to Issue Specific Hearing 2 on the Draft Development Consent Order [REP-003] produced by the applicant, please see below the EA's written summary of our oral submission and additional comments for the ExA's consideration:

#### Part 2 Principal Powers - Article 6

The EA raised in their Deadline 1 Written Representation submission [REP1-062], concerns with the vertical 'limits of deviation', in so far as this relates to the depth of the pipeline at watercourse crossings / flood defence structures given the intention to refine the depth of the pipeline at the detailed design stage. We are aware the applicant has indicated, under the Applicant's Responses to Written Representations [REP2-041] Deadline 2 submission, the depth of the pipeline will be no less than 1.2m from the top of the pipe to the channel bed / base of the flood defence structure unless agreed by the EA.

Whilst the applicant has suggested [REP2-041] this could be secured through a set of Protective Provisions, given the pipeline depth will be determined at the detailed design stage and our concern lies with ensuring the detailed design / pipeline depth is informed / supported by refined environmental assessments (i.e. (but not limited to) assessment of ground conditions; WFD; ecology), we would suggest that this is secured under a

DCO requirement. Please see further comments below under ‘Schedule 2 Requirements – Part 1 (Requirements) Requirement 4 (Scheme Design)’.

#### Schedule 2 Requirements – Part 1 (Requirements) Requirement 4 (Scheme Design)

We note Requirement 4 establishes matters for the detailed design stage of the proposed development in line with the general arrangement plans supplied. We would request, either as part of draft Requirement 4 or a separate Requirement if preferred, that wording is included to recognise that the depth / layout of the pipeline at watercourse / flood defence crossings are informed and supported by a refined WFD Assessment, with specific regard to hydromorphology / ecology, and site-specific ground investigation / assessment. It is recognised that the current ground investigation reporting is limited, where the applicant intends to undertake additional investigation / assessment at the detailed design stage.

It may also be found, following on from site-specific / detailed assessment work, that a depth of 1.2m from the top of the pipe to the channel bed may not be sufficient to ensure there is no detrimental impact on watercourses / flood defence structures or to ensure any potential future works / improvements to watercourses (i.e. WFD mitigation measures) where identified are not hindered. We advise this can only be determined once such detailed assessments are undertaken and greater understanding of site conditions is realised.

#### Schedule 2 Requirements – Part 1 (Requirements) Requirement 5 (Construction Environmental Management Plan)

As raised in the EA’s previous deadline submissions [REP1-062] [REP3-045], we have highlighted that insufficient ground investigation and associated assessment work has been undertaken to inform potential considerations required under the Construction Environmental Management Plan (CEMP) and associated management plans, forming the Annexes of this document.

Of note, is the potential presence of emerging contaminants (i.e. Per and Polyfluoroalkyl Substances (PFAS)) which may require specialist remedial techniques dependant on the nature / scale, if found, and consideration of additional permits / consents that may be required. In addition, the draft DCO seems to be based on the assumption that the site investigation works and limited assessment undertaken to date is sufficient (see additional comments under ‘Schedule 2 Requirements – Part 1 (Requirements) Requirement 9 (Contaminated Land and Groundwater)’).

We would highlight that it is essential that there is recognition that the findings from the additional ground investigation / assessment work intended to be undertaken (as recommended in the applicant’s Ground Investigation Report [APP-135 to APP-137] and an action under the REAC [REP2-017] ES ref. D-LS-020) informs the CEMP and associated management plans. We advise that this assessment work will influence the technical matters / considerations that will need be addressed under the CEMP (i.e. (but not limited to) the Material Management Plan; Waste Management Plan; Soil Management Plan; Dewatering Management Plan; Groundwater Management and Monitoring Plan and Surface Water Management and Monitoring Plan).

Therefore, given the above, it is pertinent that there is recognition that the additional ground investigation / assessment, to be undertaken, inform the forthcoming CEMP and associated documents under DCO Requirement 5. We would advise considering a requirement to update the REAC under this DCO requirement, to ensure additional

measures / actions that may be required based on the findings of the forthcoming detailed site-specific assessment work are captured and presented in the CEMP at the detailed design stage.

### Schedule 2 Requirements – Part 1 (Requirements) Requirement 9 (Contaminated Land and Groundwater)

The EA hold an interest in DCO Requirement 9 (Contaminated Land and Groundwater) due to our role on ensuring the protection of 'controlled waters'. We have the following comments to make for the ExA's consideration on the current wording of DCO Requirement 9:

We do not agree with the current wording that has been suggested for DCO Requirement 9 (Contaminated Land and Groundwater) as the wording supports a position whereby the majority of the ground investigation work will be undertaken after the detailed design stage of the project and (*'in the event that contamination is found at any time when carrying out the authorised development'*). We would refer to our previous deadline submissions [REP1-062] [REP3-045] where we have outlined the inadequacy of the information provided to date in regards to informing the detailed design stage, where it has been recognised by the applicant that additional site investigation / assessment work is required [REP2-041].

We advise that we require the majority of the intrusive ground investigation and assessment work to be carried out prior to the detailed designed stage to ensure such information on local environmental conditions are fully understood and to assist in informing the detailed design stage of the project (please see further comments under Schedule 2 Requirements – Part 1 (Requirements) Requirement 4 (Scheme Design)). Without this information in detail, we are unable to advise the project team on a number of environmental issues ranging from, but not limited to; risk; appropriate pipeline layout (inc. depth) groundwater and surface protection; waste and soils management; contamination, including possible remediation solutions.

Gathering this information after the detailed design phase could lead to delays in the project as we ask for further information, assessment, and where necessary remediation to ensure that controlled water receptors are adequately protected. This should be looking to address information gaps or gather additional, detailed, information on problems which had been previously identified from the work that has been undertaken in the Phase 1 Preliminary Risk Assessment [APP-117 to APP-120] and Ground Investigation Report [APP-135 to APP-137].

The current wording of Requirement 9 does not provide any scope for the above and reads as though a definitive understanding the pipeline corridor conditions has already been established and all relevant risks to controlled waters have been assessed. If this is the case, contrary to the applicant's recognition that additional site investigation / assessment work is required (i.e. as recommended in the Ground Investigation Report [APP-135 to APP-137] and identified as an action within the REAC [REP2-017] ES ref. D-LS-020), we would suggest that this is possibly based on the current insufficient ground investigation / assessment work undertaken to date and assumptions made in the Phase 1 Preliminary Risk Assessment [APP-177 to APP-120].

We advise whilst Phase 1 Preliminary Risk Assessments / desk studies do provide some indication of historic land uses or contamination issues, or potentiality of both, equally, they have their limitations as not all contamination issues are recorded, and some historic (and current) land uses are withheld due to the sensitivities surrounding

their use. Such studies provide initial context / understanding of site conditions which provides a steer as to where additional site investigation / assessment work is required. Once sufficient site investigation / assessment work has been undertaken, this will inform requirements for any remedial works, where necessary (in addition to assisting in determining where permits / consents may need to be obtained and providing supporting information for the CEMP / associated Annexes).

Further to this, we note DCO Requirement 9 does not currently include provision for the submission of a validation plan, alongside any remediation strategy(s) required, to establish how the applicant / undertaker will demonstrate the remedial works have been successful and detailed in any subsequent verification reporting (i.e. monitoring requirements / compliance criteria). Therefore, we advise the inclusion of the requirement to submit a validation plan within DCO Requirement 9.

We agree with the stance that the applicant should request approval from the relevant authority, where advice from the EA may be sought / required from a 'controlled waters' perspective, on any verification report(s) required to demonstrate the success of any remedial work(s). This is to ensure the applicant / undertaker has complied with the validation plan established as part of the remediation strategy and an opportunity to rectify any issues identified as part of the verification process.

In virtue of the above, we believe the current wording of DCO Requirement 9 is contrary to good practice as described in the Land Contamination Risk Management (LCRM) Guidance Document by the EA (2021). We note during Issue Specific Hearing 2, the ExA requested the EA to provide the LCRM Guidance Note to enable consideration of this information as part of the DCO Examination Process which is available here: <https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm>. We would request the ExA / applicant to consider as part of any future revision of the draft DCO, alternative wording for DCO Requirement 9 that follows the framework provided in LCRM.

We wish to highlight to the ExA that under the 'Verification Report' section of the LCRM, undertakers of remedial works are required to identify regulators or other organisations that need to be consulted on the verification report (including Local Authorities and the EA): <https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm/lcrm-stage-3-remediation-and-verification#remediation-and-verification-reporting-requirements>.

#### Schedule 2 Requirements – Part 1 (Requirements) Additional EA Commentary

In addition to the above DCO Requirements, where the EA provided oral representation as part of Issue Specific Hearing 2, we have the following additional comments for the ExA / applicant to consider on other Requirements included within the draft DCO:

- DCO Requirement 16 – Restoration of Land

As highlighted in our commentary above, 'under Environment Agency Written Submission for Issue Specific Hearing 1 (6<sup>th</sup> June 2023)', we are aware of the applicant's intention to mimic baseline conditions 'as far as practicable' where proposed works impacts channels and banks (REAC [REP2-017] ES ref. D-BD-048). We would request provision is included in the REAC to ensure where reinstatement to baseline condition is not 'practicable' and where 'such other condition', as in the current wording of DCO Requirement 16, is implemented, that compensatory measures for watercourses / flood defence structures

impacted by proposed trenched crossings may be necessary.

Therefore, we would advise the ExA that the EA hold an interest in DCO Requirement 16, in so far as this relates to the reinstatement of watercourse / flood defence structures where trenched crossings have been proposed. We would request the applicant provides clarity on the definition of '*such other condition*' and consideration of compensatory measures in the event reinstatement to baseline conditions is found to not be feasible.

As above, we would also request the applicant seeks enhancements, where possible, as part of the reinstatement proposals where trenched crossings on watercourses are proposed.

- DCO Requirement 18 – Decommissioning Environmental Management Plan

We note the undertaker will be required to submit a Decommissioning Environmental Management Plan (DEMP) prior to the end of the operation of the proposed pipeline under DCO Requirement 18. We raised in our additional Deadline 1 submission [REP1-084] that there may be concerns with the pipeline being left in-situ in the absence of limited ground investigation / assessment work undertaken to date. In addition, we note the decommissioning proposals have been 'scoped-out' of the current WFD Assessment [APP-165]. However, given the details of such proposals are only high-level at this stage, we recognise that there would be limited value in undertaking such an assessment in the absence of the final details.

We would, however, request additional wording is considered within DCO Requirement 18 to ensure the DEMP is supported by a WFD Assessment, where necessary, to demonstrate decommissioning proposals (i.e. whether the pipeline remains in-situ as currently proposed or is potentially removed in sections) are WFD compliant and would not result in a detriment to WFD classification or hinder objectives to attain 'good status'.

#### Schedule 10 – Protective Provisions

The applicant has acknowledged receipt of the EA's preferred Protective Provisions where the disapplication of the North West Region Land and Drainage Byelaws (enforced through the Water Resources Act 1991) is being sought through the draft DCO. We would request further discussion with the applicant or confirmation the draft EA Protective Provisions provided are acceptable and subsequently reflected in any further revision to the draft DCO.

--

Should you have any queries, or wish to discuss the matters raised in this letter, then please do not hesitate to contact me.

Yours sincerely

**Ms Anne-Marie McLaughlin**  
**Planning Advisor**

Direct e-mail [REDACTED]@environment-agency.gov.uk

End