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To The Applicant

Your Ref:

Our Ref: EN070007

Date: 26 June 2023

Dear Sir/ Madam

The Planning Act 2008 – Section 89

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

Notice by Applicant of intention to submit a request for changes to the application

Thank you for your letter dated 20 June 2023 [REP4-270] giving notice of Liverpool Bay CCS Limited's Notification of Intention to Submit a Change Request (3) (NISCR3) for changes to the application. It has been published on the National Infrastructure Planning website and can be found using the above link. NISCR3 sets out:

- the Applicant's Proposed Development changes, including a description of, and justification for, the changes;
- no potential changes will be required to the Environmental Statement (ES), as demonstrated by an Environmental Technical Note (ETN) to be submitted with the formal Change Request (CR).
- details the Applicant's proposed consultation approach.
- the Applicant's indicative timescales for introducing the changes; and
- the additional material the Applicant intends to submit as part of the material CR Application.

The letter purports to be notification of a CR in accordance with Step 1 of the recommended procedure in the Planning Inspectorate's 'Advice Note 16: Requests to change applications after they have been accepted for examination (AN16)'. The Applicant's NISCR3 [REP4-270] describes the proposed changes to the scheme and indicates that a CR will be submitted at Deadline 5 (Tuesday 4 July 2023) in the

Examination Timetable. The Applicant seeks advice from the Examining Authority (ExA) in regard to the above matters, allowing them to decide how to progress the material CR application.

The Applicant has not commented on the materiality of the proposed changes, either individually or when taken together, and ultimately it is for the ExA to decide whether or not the proposed changes are material once the formal request is submitted. However, the ExA notes the proposed changes include:

- removal of the Temporary Logistics and Construction Compound (Work No. 41A);
- removal of the Temporary Working Area (Work No. 41D); and
- the extension of the Temporary Access (Work No. 41B) to meet the Carbon Dioxide Pipeline Works (Work No. 41), to take account of the removal of the above works.

The Applicant states the effect of the above proposed changes will result in the removal of land from the Order Limits (specifically land parcels 18-08, 18-09, 18-12 and the partial removal of parcel 18-13), with no new land being impacted.

The ExA considers the NISCR3 [REP4-270] provides a clear description of the proposed change and sets out the Applicant's rationale and need for making the changes detailed in that document. The ExA also considers that the proposed changes are unlikely to give rise to new or materially different likely significant effects, but requires further information, likely to be included within the ETN, to reach a final opinion in this regard.

In terms of 'additional land', the ExA notes the Applicant's assertion that the proposed changes do not require the inclusion of "additional land" (as defined in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010) (CA Regs). However, should this not be the case and 'additional land' is included, then in the absence of the landowner consent, the CA Regs would be engaged, and the information prescribed by Regulation 5 of the CA Regs and clarification that the procedural requirements of the CA Regs can be met within the remaining statutory six-month Examination stage will be required.

Consultation

The ExA notes the Applicant confirms that there would be no new affected persons created as a result of the proposed changes and that the affected landowner of the compound area, for which removal is sought, has specifically requested this change be sought as part of ongoing engagement. Indeed, the proposed changes result in the removal of land interests subject to compulsory acquisition. As such the Applicant does not consider there to be a requirement to consult on or publicise the proposed changes under either the CA Regs or the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

On the basis of the limited information provided to date, the ExA does not necessarily disagree with the Applicants conclusions regarding consultation. However, in any formal CR submission the Applicant must provide justification as to why any person under section

42(1)(a) to (d) is not affected by the proposed changes and has not therefore been consulted. Bearing all of the above in mind the ExA reserves its position in regard to this matter until the formal CR application has been submitted.

Should such consultation be required, the Application would need to:

- engage all those persons identified in the Planning Act 2008 under section 42(a) to (d) who would be affected by the proposed changes (giving a minimum of 28 days), including any section 42 persons not originally consulted on the application but who may now be affected by the proposed changes.
- consider whether or not persons not already participating in the Examination (and not falling within section 42) might need an opportunity to comment (such as persons living or commercial entities operating outside the Order limits); and
- whether or not any newspaper notices or site notices are necessary to inform these persons about the proposed changes.

When submitting the formal CR it is recommended that the Applicant submits a statement that confirms no new persons (affected by the changes) under section 42(1)(a) to (d) have been identified who need consulting. Should any new persons affected by the proposed changes be identified, the Applicant is advised, as part of any formal CR submission to:

- provide a list of persons (affected by the changes) identifying any new persons (ie those who were consulted in relation to the proposed change but not in relation to the original application);
- identify (within the above list) those section 42(1)(d) persons who are “affected persons”, meaning those persons over whose land Compulsory Acquisition powers will be exercised. It is noted that if the procedure under the CA Regs is to be followed the Applicant will also need to submit a request for additional land and identify the additional Affected Persons;
- provide justification as to why any person under section 42(1)(a) to (d) is not affected by the proposed changes and has not therefore been consulted;
- provide copies of any newspaper notices or site notices or justification as to why such general publicity is not required to ensure fairness, using case law as necessary to support the Applicant’s position; and
- appends as an annex comprising any consultation responses received.

If the ExA decides to accept the changes (whether or not material) into the Examination, all Interested Parties will have an opportunity to make representations on the changed application in writing or orally at hearings as the Examination progresses. Nonetheless, if the ExA is not satisfied with the extent of non-statutory consultation undertaken by the Applicant the ExA may request that further non-statutory consultation is carried out to safeguard the interests of and/ or inform those potentially impacted by the changes who are not already involved in the Examination.

Next steps

The Applicant is asked to ensure therefore that the CR which is intended to be submitted at Deadline 5 responds fully to the points made above. Additionally, without prejudice to any view as to the materiality or merits of the proposed changes to the application, the ExA may wish to understand more about the nature of the changes and their impacts. As such the ExA may seek to ask questions about these proposed changes at the forthcoming hearings scheduled for August 2023. The ExA may also feel it necessary to prepare further written questions in regard to these proposed changes.

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 CR 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

Lead Panel Member (Examining Authority)

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