

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

The Examining Authority's second round of written questions and requests for information (ExQ2) Issued on 15 June 2023

Response Submitted on Behalf of United Utilities Water Limited (U UW)

This submission sets out the response of U UW to the Examining Authority's second round of written questions and requests for information (ExQ2) issued on 15 June 2023. The relevant question and associated references are set out in black italic text with the response of U UW in blue italic text.

If you have any queries relating to this matter please do not hesitate to contact Andrew Leysens, Planning Manager at planning.liaison@uuplc.co.uk. Please can you also copy any future correspondence to [REDACTED]@uuplc.co.uk and [REDACTED]@uuplc.co.uk.

ExQ2	Question to:	Question
Q2.10.3	Environment Agency (EA)/ NRW/ United Utilities Water (U UW) FCC/ CWCC/ IPs	<ul style="list-style-type: none"><i>The Applicant acknowledges that details of indicative surface water drainage design for the Above Ground Installations (AGI) and Block Valve Stations (BVS) are included in the Outline Surface Water Drainage Strategy [CR1-111]. The strategy and the indicative drainage design would be developed at the detailed design stage and secured through Requirement 8 (Surface Water Drainage) in the draft DCO [REP3-005]. The surface water drainage plan for AGIs and BVSs would be submitted to and approved by the relevant planning authority, and, where applicable, the EA and/ or NRW and/ or the Lead Local Flood Authority.</i><i>Do IPs have any comments on that approach bearing in mind policy/ legislative changes which could be implemented?</i><i>Would the Sustainable Drainage Systems (SuDS) treatment methods implied satisfy the pollution control, amenity, and biodiversity requirements? If not, please state why not?</i> <p><i>In our accordance with our previous consultation responses we identified the need for any water arising from the proposed development to be managed by sustainable means. This continues to be our position. It is imperative that no surface water discharges to the existing public sewer.</i></p>

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		<p><i>We have reviewed the outline surface water drainage strategy Rev A (Document Reference Number D.6.5.13) and note that for those above ground installations which are located in England, there is no intention to connect surface water to the public sewer. As previously stated, we request that the applicant confirms that the extent of land covered by the Order would facilitate the necessary rights to allow the applicant to discharge to these alternative receiving bodies.</i></p> <p><i>We also note that each of the drainage strategies will be subject to further intrusive site surveys to confirm the topographies, condition of the development sites and feasibility of connections at detailed design stage.</i></p> <p><i>We note the Draft Development Consider Order (Document reference D.3.1 Rev G), which includes ‘Article 20 Discharge of Water’. This affords the applicant the right to discharge water to a range of receiving bodies including the public sewer. This specifically states (inter alia):</i></p> <p><i>‘(2) Any dispute arising from the making of connections to or the use of a public sewer or by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).’</i></p> <p><i>‘(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.’</i></p> <p><i>We also note Requirement 8 which states:</i></p> <p><i>‘8.—(1) No development of Work Nos. 1, 9, 20, 26, 36, 45, 48, 51, 53 and 55 may commence until, for that Work No, a surface water drainage plan for permanent works relevant to that stage, in accordance with the relevant part of the outline surface water drainage strategy has been submitted to and approved by the relevant planning authority or, where applicable, the Environment Agency and/or NRW and/or the Lead Local Flood Authority.</i></p> <p><i>(2) The surface water drainage system for each stage must be implemented in accordance with the approved details</i></p> <p><i>(3) No discharge of water under article 20 (discharge of water) must be made until details of the location and rate of discharge have been submitted to the relevant planning authority or, where applicable, the Environment Agency and/or Natural Resources Wales and/or the Lead Local Flood Authority.’</i></p> <p><i>We also note requirement 22 which states:</i></p>

ExQ2	Question to:	Question
		<p><i>‘22.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval under a requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of 56 days beginning with—</i></p> <p><i>(a) where no further information is requested under requirement 24, the day immediately following that on which the application is received by the authority;</i></p> <p><i>(b) where further information is requested under requirement 24, the day immediately following that on which further information has been supplied by the undertaker; or</i></p> <p><i>(c) such longer period as may be agreed in writing by the undertaker and the relevant authority.</i></p> <p><i>(2) In the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.’</i></p> <p><i>In addition we note requirement 24:</i></p> <p><i>‘24.—(1) Where an application has been made under requirement 22 the discharging authority may, subject to complying with the requirements of this paragraph, request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.</i></p> <p><i>(2) If the discharging authority considers further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the discharging authority must, within 10 days of receipt of the application, notify the undertaker in writing specifying the further information required.</i></p> <p><i>(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within 10 days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 10 days of receipt of such a request and in any event within 21 days of receipt of the application.</i></p> <p><i>(4) If the discharging authority does not give the notification mentioned in sub-paragraphs (2) or (3) or such longer period as may be agreed in writing by the undertaker and the relevant authority, or otherwise fails to request any further information within the timescales provided for in this paragraph, it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.’</i></p> <p><i>In interpretation of the above we note that:</i></p> <p><i>“discharging authority” means the body responsible for giving a consent, agreement or approval under this schedule;’</i></p> <p><i>We have a range of concerns with the above extracts which are summarised as follows.</i></p>

ExQ2	Question to:	Question
		<p>a) UUW notes that Requirement 8(1) only specifies a selection of Work Nos., namely Work Nos. 1, 9, 20, 26, 36, 45, 48, 51, 53 and 55. UUW does not consider it appropriate for Requirement 8 to only relate to parts of the Order. This is because Article 20 grants power to discharge water in relation to the entire Order. Therefore we request that Requirement 8 similarly relates to the entire Order. It should be amended so that it is clear that all proposals for the discharge of water are subject to the controls of an amended Requirement 8, which is considered in more detail below.</p> <p>b) Requirement 8(3) states no discharge of water shall be made until details have been submitted. This should be revised so that 'submitted to' is replaced with 'submitted to, and approved in writing by,'.</p> <p>c) Article 20 (2) states that any dispute shall be determined as if it were a dispute under s106 of the Water Industry Act 1991. Within England it is pertinent to note that Article 32 of the Flood and Water Management Act 2010, which would amend s106 of the Water Industry Act 1991 via the implementation of Schedule 3) is not yet implemented. Therefore at the current time, the Local Planning Authority, Lead Local Flood Authority and Environment Agency have no role in the consideration of applications under s106 of the Water Industry Act in England. As a result, applications under s106 are solely a matter for determination by the relevant sewerage undertaker. We therefore request that Requirement 8(1) and 8(3) also name the relevant sewerage undertaker as a body responsible for giving approval.</p> <p>d) The scope of decisions under s106 of the Water Industry Act in England are currently limited to a consideration of the mode of construction and the condition of the proposed drain or sewer. It does not permit the relevant wastewater undertaker to request that the management of surface water is undertaken in accordance with sustainable drainage principles. In particular, the relevant wastewater undertaker in England is not able to:</p> <ul style="list-style-type: none"> i) specify an alternative receiving body that is more preferable than the public sewer for the management of surface water; ii) specify the point of connection; iii) control the rate of discharge; iv) require the drainage to be controlled via a sustainable drainage system; or v) refuse a connection on sustainable drainage grounds. <p>On this basis, s106 of the Water Industry Act (insofar as it relates to England) is a wholly inappropriate basis on which applications for the determination of surface water drainage proposals should be solely determined. In effect it would</p>

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		<p><i>afford the applicant a free right to discharge surface water to public sewer which would be in direct conflict with the aspirations to manage surface water sustainably and to progressively reduce the spills from storm overflows as set out as an obligation in the Environment Act 2021.</i></p> <p><i>We therefore request that further thought is given to the drafting of Article 20 and Requirement 8. We request that the relevant wastewater undertaker is afforded power to refuse permission for the connection of surface water to a public sewer, or grant permission for the connection or alteration, subject to such conditions as they think fit, and any such permission may in particular specify the mode, the point of connection, the rate of discharge and the size of any attenuation necessary. Requirement 8 should also be clear that UU Water shall be entitled to refuse any connection where the hierarchy for managing surface water has not been reasonably investigated and / or sustainable drainage has not been incorporated within the proposed surface water drainage to the satisfaction of UU Water.</i></p> <p><i>e) We are concerned that there is a conflict between the timescales outlined in Article 20(9), which specifies 28 days; and Requirement 22(1), which specifies 56 days.</i></p> <p><i>f) We are also concerned that the timescales specified in Requirement 24 are insufficient. In particular 10 days is insufficient time to allow an application to be assessed in detail to determine if additional information is required noting that the determination of additional information would necessitate a detailed review of the application. As such we would request a longer period of time than 10 days for review of the application to determine if additional information is required.</i></p> <p><i>g) Within Requirement 8, there is clear scope for confusion in determining who would be the ‘discharging authority’ and who would be the ‘requirement consultee’. This is because it may be necessary to challenge the hierarchy for managing surface water and therefore the receiving body for managing surface water could be subject to change during determination. For example, the discharging authority for connection to a sewer is the wastewater undertaker. However, the discharging authority for connection to an ordinary watercourse is the Lead Local Flood Authority and the discharging authority for connection to a main river would be the Environment Agency.</i></p> <p><i>In conclusion Article 20 and Requirements 8, 22 and 24 need to be redrafted and therefore we wish to register a position of OBJECTION to the drafting of these elements of the Order as currently worded.</i></p> <p><i>We also wish to note the following matters relating to the Requirements of the draft Order.</i></p>

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		<p>Foul Water</p> <p><i>Requirement 8 solely relates to the discharge of water. It affords no control over the discharge of foul water. As such, a further requirement should be introduced with affords the wastewater undertaker the power to determine applications for foul water discharge and that such applications should allow the wastewater undertaker to grant permission for the connection or alteration of foul water proposals, subject to such conditions as they think fit, and any such permission may in particular specify the mode, the point of connection, the rate of discharge and the size of any attenuation necessary. This is critical to ensure that any foul water proposals, including any proposals for hazardous materials, are not detrimental to wastewater infrastructure and the local environment. For example, we may not wish to see foul drainage proposals connect with small wastewater treatment works as this could be detrimental to the environment.</i></p> <p>No Detriment to Watercourses and Associated Outfalls</p> <p><i>There is nothing which would allow a more detailed assessment of the impact on watercourses within the Requirements. As noted in previous consultation responses, we are concerned that any works to watercourses could have a detrimental impact on our outfalls and therefore any proposals to amend a watercourse must be assessed in detail to ensure no detriment to the outfalls of a wastewater undertaker. We therefore request that a new Requirement is included in the Order which ensures that any works to watercourses first require detailed approval and that the wastewater undertaker is a consultee in such proposals to ensure that there is no detriment to our outfalls or the hydraulic performance of our sewers.</i></p> <p>Approval of Levels</p> <p><i>In the event of any change in land levels along the route of the pipe, there is nothing in the Order which would ensure that this is assessed in detail to understand and manage any impact on flood risk or existing drainage systems. For example, changes in the levels of land can affect the exceedance paths from existing drainage systems, the structural integrity of sewers and the hydraulic performance of our assets. Therefore the applicant should be required to secure approval for the detail of any changes in levels and demonstrate that there is no acceptable impact on flood risk, exceedance paths, hydraulic performance of existing drainage assets or the structural integrity of water and wastewater assets.</i></p>
Q2.10.4	Drainage/ Water environment	<ul style="list-style-type: none"> <i>The Applicant indicates the current drainage proposal follows the Simple Index Approach suggested by The SuDS Manual CIRIA C753 in order to evaluate the water quality. The scheme is referred to as being designed so the total pollution mitigation index has exceeded the pollution hazard index. The Applicant has also provided details in the submitted Outline Surface Water Drainage Strategy [CR1-111].</i>

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	EA/ NRW/ UUW/ FCC/ CWCC/ IPs	<ul style="list-style-type: none"> • Is the approach indicated adequate given any existing uncertainties in gauging surface and ground water conditions? <p><i>Such matters would ultimately be assessed at the detailed design stage. The need to ensure that any pollution is mitigated and most appropriately managed highlights the need for sufficient provision within the Order via amended Requirements to control and manage the detailed design of both surface water and foul drainage proposals.</i></p>
Q2.15.2	National Strategy Applicant/ FCC/ NRW/ EA/ IPs	<ul style="list-style-type: none"> • The ExA acknowledges that on 10 January 2023 the UK Government published the ‘Sustainable Drainage Systems Review’ and have accepted the recommendation to make SuDS mandatory for new developments in England and will progress with the implementation phase. The Government has indicated it will devise regulations and processes for the creation of SuDS systems through the implementation of Schedule 3 to the Flood and Water Management Act 2010. Implementation of the new approach is expected during 2024 and therefore any outcomes/ implications to the DCO development should be addressed at this point. • The overarching aim is to reduce the risk of surface water flooding, pollution and help alleviate the pressures on traditional drainage and sewerage systems, reducing the overall amount of water that ends up in the sewers and storm overflow discharges. • The ExA asks would new drainage mitigation, relevant to the DCO scheme and its future management, be in line or made in line with the policy/ legislative changes to be implemented? Explain your reasoning why either way. <p><i>We wish to highlight that there have been a number of delays to the implementation of Schedule 3 of the Flood and Water Management Act 2010 in England. As such, Article 20 and Requirements 8, 22 and 24 need to be redrafted to ensure that any control over the management of surface water can be exercised regardless of its implementation. As is noted above, control over the management of surface water is part of the overarching aim of central government to reduce the risk of flooding, pollution and help alleviate pressure on public sewerage systems.</i></p> <p><i>We also request that the Order includes an additional requirement regarding the approval of foul water drainage proposals. This is critical to ensure the approach to foul drainage is also controlled and managed.</i></p>
Q2.20.1.	Applicant/ Welsh Water (WW)/ IPs	<ul style="list-style-type: none"> • Utility services beneath the DCO area are referenced to include WW pipework. Although there are submissions of minimum depth restrictions to 1.2 metres, as per the Statement of Reasons [REP2-008]. How would such measures ensure access for standard water pipe maintenance or in the event of emergencies, such as water leakage? <p><i>For the avoidance of any doubt, and assuming the minimum depth restrictions as indicated above, could the parties confirm whether water pipes would be located above or below the Applicant’s pipeline?</i></p>

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		<i>This is a matter for consideration by the applicant in liaison with UUW as part of the detailed design of the proposals and emphasises the need for appropriate Protective Provisions, which ensures access to all water and wastewater pipes can be secured for maintenance, repair, replacement, enlargement and any other necessary works.</i>