



**Canal &
River Trust**

Making life better by water

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your Ref EN070007

Our Ref HYCO-EIA071

Monday 11th September 2023

hynetco2pipeline@planninginspectorate.gov.uk

Dear Sirs

Proposal: Application by Liverpool Bay CCS Limited for an Order Granting Development Consent for the HyNet Carbon Dioxide Pipeline Project (“the Application”)

Canal & River Trust (the Trust) Submission for Deadline Eight, (Unique Reference: HYCO-EIA071).

Trusts response to Deadline 7 matters

As set out within the Applicants update on the DCO Drafting document [REF D.7.62] at section 6, the only outstanding matter in the protective provision with the Canal & River Trust is regarding restricting the use of compulsory acquisition powers. The Trust consider that this should be via suitable voluntary land rights. We note that the Applicant suggests that as a voluntary agreement has not yet been concluded, that this demonstrate why these powers are required to deliver the project. The lack of a voluntary agreement being in place is not due to lack of effort on behalf of the Trust and we are still hopeful that such agreement can be reached with the applicant.

The Draft Development Consent Order Revision I [REF D.3.1] at Part 7 includes protective provisions for the Canal & River Trust which are agreed with the Trust apart from the deletion of two parts of section (83) which would include two further paragraphs which would read:

The undertaker must not exercise any power conferred by article 34 (temporary use of land for carrying out the authorised development), article 35 (temporary use of land for maintaining the authorised development) or article 39 (felling or lopping of trees and removal of hedgerows) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust or for the purpose of clearing trees over the pipeline.

The undertaker must not exercise any power conferred by article 24 (compulsory acquisition of land), article 26 (compulsory acquisition of rights), 31 (acquisition of subsoil or airspace only) or 36 (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway.

We respectfully request that the ExA considers the inclusion of these criteria to safeguard the Trust's position as landowner and for the reasons set out below in our closing submissions to the Examination.

Canal & River Trust

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Statement of Common Ground (SoCG)

The Canal & River Trust and applicant agreed a SoCG on 4th September 2023. The applicant provided the ExA the latest version of the SoCG with the Canal & River Trust, as part of their Deadline 7 submissions.

The ExA will note that the SoCG does include some matter related to the land rights which are agreed, but subject to a caveat in relation to the land agreement being finalised.

ExA Third Written Questions

The Trust have reviewed the response to the Third Written Questions, we have no comment to make on these as they are not relevant to the Trust's statutory undertakings.

Closing Submissions of the Canal & River Trust

The only outstanding matter at this stage remains the compulsory acquisition power of the Trust's land and that instead we consider that a voluntary land agreement should be agreed. Despite ongoing negotiations, a land agreement has not been concluded or Heads of Terms agreed. Both the Trust and the applicant have been keen to get this matter resolved and reach a voluntary agreement in relation to the land rights sought. The Trust are currently awaiting a further offer from the applicant/response to the terms offered. Our land agents have been chasing a response from the applicant as this matter is now urgent given the impending close of the examination.

As set out by the Canal & River Trust at the Compulsory Acquisition Hearing 1 (CAH1) held on 7th June 2023 and the written summary provided at Appendix A to our Deadline 4 submission, we object to the compulsory acquisition of Trust land and in the absence of a voluntary agreement being in place, this objection remains. (For ease of reference these comments have been included below in Appendix A to this letter).

As set out within the written summary at Appendix A, paragraph 8 *"a suggested solution in the event that the long lease and temporary possession licence are not agreed with the Applicant prior to the making of the Order - is to include within the Trust's protective provisions in Schedule 10.....a provision which makes the Applicant's compulsory acquisition powers subject to the Trust's reasonable consent. Similar provisions are already contained within the draft Order in respect of electricity, gas, water and sewerage undertakers (see Sch 10, paragraph 4), National Grid (Electricity) (see Sch 10, paragraph 19), and National Grid (Gas) (see Sch 10, paragraph 33)."*

It would appear that the Applicant is willing to agree to a requirement for the Trust's consent to exercise certain limited powers in respect of the Shropshire Union Canal, as set out at paragraph 6.4 of the DCO Drafting document [REF D.7.62], however the Trust seeks to ensure that its consent is required in respect of all of those powers cited above and as set out at paragraphs 6.2 and 6.3 of the DCO Drafting document.

The ExA may also be aware that in July 2023 the Government announced a new funding settlement for the Canal & River Trust, spanning from 2027 to 2037, to follow our current grant agreement. Whilst we welcomed the further long-term commitment to the nation's historic waterways, the amount awarded represents a steep reduction in funding of over £300 million in real terms over a ten-year period. As a charity, such a reduction in funding will have devastating consequences on our canals and the people and wildlife who rely on them. Given this recent funding announcement the Trust can ill-afford any unnecessary uncertainty in relation to our land and assets and the associated costs/risks of assessing compensation if rights are not agreed voluntarily.

We hope that the ExA will consider the position of the Canal & River Trust when reaching his decision in relation to the land rights and, in the absence of a voluntary agreement, then a requirement for the Trust's consent to exercise such powers in respect of the Shropshire Union Canal be inserted into the final DCO as per the two additional paragraphs identified above.

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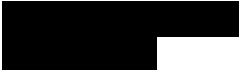
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Please do not hesitate to contact me with any queries you may have in relation to the above matters.

Yours sincerely,

Tim Bettany-Simmons MRTPI
Area Planner & Special Projects

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<https://canalrivertrust.org.uk/specialist-teams/planning-and-design>

Appendix A

Appendix A - Written Summary of the Canal & River Trust's (the Trust) Oral Submissions made at the Compulsory Acquisition Hearing 1 (CAH1) held on 7 June 2023

- (1) The Trust raises no objection to the principle of the Applicant obtaining a long lease the necessary subsoil to lay the pipeline (Plot 8-03) or a licence permitting the temporary possession of part of the canal bank adjacent to the A41 (Plot 9-06). The Trust recognises that a crossing beneath the canal is necessary, and that the length of canal within the Order Limits is proportionate. The Applicant acknowledges that has reduced the width of Plot 8-03 following the Trust's DL1 response.
- (2) However the Trust maintains an important objection to the inclusion of compulsory acquisition powers in respect of Plots 8-03 and Plot 9-06 with regard to the extent to which the Applicant can demonstrate a compelling case to include compulsory acquisition provisions. Specifically, paragraph 25 of the September 2013 'Guidance related to procedures for the compulsory acquisition of land' confirms as follows:

Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.
- (3) Although the Applicant and the Trust have begun some discussions over the terms of the long lease and accesses licence, and indeed revised Heads of Terms were received by the Trust on 5 June 2023 (on the eve of the compulsory acquisition hearing), the Trust considers that meaningful attempts to acquire land by negotiation have not yet been made by the Applicant, and that negotiations cannot be said to have failed.
- (4) The point not just as a matter of principle. Having its land acquired compulsorily rather than by way of agreement has significant practical consequences for the Trust.
- (5) The Trust is both a statutory undertaker and also a registered charity, and as a consequence has significant internal and external reporting requirements for disposal of land or rights, and which are made materially more difficult if such reporting is undertaken 'after the event', for example following the making of a general vesting declaration.
- (6) The valuation of rights / land acquired is complex for canal assets, and in cases where only the subsoil if to be acquired is comparatively low value compared with (say) developed or developable land. While ensuring fair and best value for any disposal of land or rights is essential to the Trust, of equal importance is the need to protect Trust assets within the terms of the relevant lease / licence. The Trust is experienced in negotiating and securing such protections in appropriate legal documents, and which are not achieved where land or rights are acquired through a GVD.

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- (7) The Trust has unfortunately experienced a recent example of negotiations in respect of a voluntary agreement not being prioritised by a promotor during the DCO examination process, despite heads of terms being substantially agreed. The Order was then made prior to the agreement being completed, and the promoter subsequently then ended negotiations and proceeded to acquire the necessary rights via the making of a GVD. This process resulted in abortive costs and significant wasted personnel time on the part of the Trust.
- (8) The Trust's suggested solution - in the event that the long lease and temporary possession licence are not agreed with the Applicant prior to the making of the Order - is to include within the Trust's protective provisions in Schedule 10 (which remain under discussion between the Applicant and the Trust) a provision which makes the Applicant's compulsory acquisition powers subject to the Trust's reasonable consent. Similar provisions are already contained within the draft Order in respect of electricity, gas, water and sewerage undertakers (see Sch 10, paragraph 4), National Grid (Electricity) (see Sch 10, paragraph 19), and National Grid (Gas) (see Sch 10, paragraph 33).
- (9) In those circumstances the Trust would be subject to the requirement to act reasonably, and in the event the Applicant considered otherwise the matter could be dealt with under the Order's arbitration provisions.

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