



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

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

Customer Services: 0303 444 5000
Email: hynetco2pipeline@planninginspectorate.gov.uk

To: The Applicant

Your Ref:

Our Ref: EN070007

Date: 14 September 2023

Dear Sir/ Madam

Planning Act 2008 – section 89; and the Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 17

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

Request for further information

The Examining Authority (ExA) is writing to request further information from the Applicant, under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), following receipt of submissions entered into the Examination at Deadline 7 (Tuesday 5 September 2023) and Deadline 8 (Tuesday 12 September 2023).

Rule 17 – Request to the Applicant for further information

Questions under Rule 17 of the EPR are set out in **Annex A** of this letter and seek clarification from the Applicant regarding some matters that the ExA considers to still be outstanding. They are only addressed to the Applicant and the ExA is not expecting any other Interested Party/ Parties to respond to this request for further information. The Applicant must respond by Deadline 9 (**Wednesday 20 September 2023**), which is a new deadline and explained in the ExA's Rule 8(3) letter [PD-029] that has been issued today separately.

Any other business

Queries regarding the content of this letter should be addressed to the Case Team using the details listed at the top of this letter.

Yours faithfully

Christopher Butler

Lead Panel Member Examining Authority

This communication does not constitute legal advice.

Please view our [Privacy Notice](#) before sending information to the Planning Inspectorate.

Questions under the Infrastructure Planning (Examination Procedure) Rules 2010 - Rule 17

All documents referred to in the questions below can be found using the Examination Library¹ accessed via the National Infrastructure Planning Project page for this Application, using the Examination Library References referred to in the Questions below:

	Question to:	Question:
1.	The Applicant	<p>The Examining Authority (ExA) would remind the Applicant of the provisions of Section 127 of the Planning Act 2008 and notes that a number of objections from Statutory Undertakers (SU) remain, including in relation to reaching finalised agreement on Protective Provisions (PP) and/ or related side agreements. In the absence of confirmation from relevant SUs in regard to:</p> <ul style="list-style-type: none"> i) withdrawal of outstanding objections; ii) agreeing finalised PPs; and/ or iii) reaching agreement with regard to any side agreements required, <p>the ExA is concerned about the status of PPs, the absence of written confirmation from Interested Parties (IP) agreeing those PPs, and a number of side and other agreements not being concluded. The ExA is concerned it will not have adequate information required to make a firm recommendation on the matter of serious detriment to SUs undertakings in its Recommendation Report to the Secretary of State.</p> <p>In the light of this concern the ExA would urge the Applicant to resolve these matters with SUs as a matter of urgency and would remind the Applicant that it will be unable to consider any matters resolved after the close of the Examination in its Recommendation Report to the Secretary of State. This would include any agreement as to PPs, side agreement, interface agreement or other relevant agreements received after the close of the Examination.</p>
2.	The Applicant	<p>The ExA notes that a number of negotiations related to: Compulsory Acquisition (CA) and Land Rights (Canal and River Trust (CRT) and 2 Sisters Food Group); Voluntary Commercial Agreements/ Voluntary Land Agreements (CRT and Welsh Government); Heads of Terms (CRT and Welsh Government); and PPs (Cadent Gas and Dwr</p>

¹ [Link to the HyNet Carbon Dioxide Pipeline Examination Library](#)

	Question to:	Question:
		<p>Cymru Welsh Water) appear to remain outstanding (This list is not intended to be exhaustive). It is also noted that other matters, including subsoil and other rights, as well as Basic Asset Protection Agreement and Voluntary Commercial Agreement; Internal Consultation (Technical Clearance); draft Development Consent Order (DCO) Articles; Property Agreement; and Framework Agreement are still 'Under Discussion' with Network Rail England and Wales and that the Statement of Common Ground with 2 Sisters Food Group also list a number of matters as agreed, subject to commercial agreement. These include: Consequential Losses; Compensation Claim Limit; Compensation Payment Limit; Public Liability Insurance; Pollution generation; NRW Permitting; Environmental Damage; and Contaminated Land.</p> <p>In regard to all of these matters, the Applicant is reminded that the ExA has continued to urge that such agreements/ matters should be concluded as early in the Examination process as possible and is disappointed to see that so many appear to remain outstanding when there is less than a week in the Examination remaining. As such the ExA urges the Applicant to:</p> <ul style="list-style-type: none"> i. resolve any outstanding matters, detailed above, where possible and prior to the close of the Examination; confirming to the ExA where such agreements have been concluded; or ii. provide a detail explanation as to why the Applicant has not been able to conclude such agreement(s).
3.	The Applicant	<p>The ExA request the submission of final and completed (signed and dated) versions of the Statements of Common Ground (SoCG) between the Applicant and British Pipeline Agency; Cadent Gas; Encirc Limited; Environment Agency; Essar Oil (UK) Limited; Exolum Pipeline System Ltd; Health and Safety Executive (HSE)*; National Grid Electricity Transmission; National Gas Transmission; and United Utilities.</p> <p>In the absence of each SoCG listed above being submitted the ExA requests a detailed written explanation be submitted by the Applicant as to why it has not been possible to submit the final and completed (signed and dated) versions of the relevant SoCG(s).</p> <p>*The ExA notes the Applicant's comments concerning the HSE and the difficulties experienced in endeavouring to discuss a SoCG with it. However, it also considers that with less than a week remaining in a 6-month Examination</p>

	Question to:	Question:
		period, the ExA would urge the Applicant to continue to seek to complete a SoCG with the HSE.
4.	The Applicant	<p>The ExA notes the SoCG completed by the Applicant with Natural England (NE) [REP8-022], especially the reference in Table 2.1 (Record of Engagement in relation to the DCO Proposed Development) on the 31 August 2023 where it is stated NE "...provided the Applicant with a copy of the Letter of No Impediment (LONI) with caveats." and Table 3.3 (Issues related to the DCO Proposed Development - Biodiversity) at NE 3.3.9 (Licencing and Permits) that confirmed the same. In the light of this, please direct the ExA to where within the submitted evidence a copy of NE's LONI has been provided; or enter a copy of NE's LONI into the examination; or provide a detailed explanation as to why it is not possible to enter that document into the Examination.</p>
5.	The Applicant	<p>National Highways Deadline (DL) submissions [REP7-316] and [REP8-046] have been noted by the ExA, as have Cheshire West and Chester Council's (CWCC) Written Representations [REP7-306], [REP8-041], [REP8-041a] and [REP8-042], Flintshire County Council's (FCC) DL8 submission [REP8-044] and the Applicant's 'King's Counsel Opinion on National Highways Submissions' [REP8-038] and its '...Final Position Statement' [REP8-037], especially Appendix 2 (Revised dDCO schedule 3 to include tunnelled crossings as street works) of the latter document. Should the ExA reach the conclusion that the tunnelling works beneath the Strategic Road Network (SRN) are street works can the Applicant confirm:</p> <ol style="list-style-type: none"> <li data-bbox="598 1377 1428 1646">i. Appendix 2 (Revised dDCO schedule 3 to include tunnelled crossings as street works) of the Applicants is revised Final Position Statement' [REP8-037] covers all of the parts of the SRN required, as set out in the submissions of National Highways [REP7-316] and [REP8-0046]; CWCC [REP7-306], [REP8-041], [REP8-041a] and [REP8-042]; and FCC [REP8-044]. <li data-bbox="598 1668 1428 1937">ii. If the ExA accepts the inclusion of tunnelled crossings as street works, whether any of the Articles or other Schedules (excluding Schedule 3, Part 1) in the draft DCO would need to be updated as a result of the inclusion of the additional specific roads within the SRN being included within Schedule 3, Part 1 of the draft DCO? <p>In the event of Articles or other Schedules in the draft DCO needing to be updated pursuant to ii. above, please</p>

	Question to:	Question:
		provide the wording to update those Articles or other Schedules or update the draft DCO accordingly.
6.	The Applicant	The ExA notes the 'Applicant's update on the DCO drafting' document [REP7-294], especially in regard to the position of ongoing discussions with Exolum concerning PPs. The Exolum's DL8 submissions [REP8-050] and [REP8-051], which set out its position on PPs, and highlights an area of disagreement at paragraph 3.1 related to preventing the acquisition of Exolum's premises and interests in land. However, it also points out that equivalent wording appears in other PPs at Schedule 10 of the draft DCO [REP7-013], highlighting examples at Part 3, Paragraph 20; Part 4, Paragraph 36; and Part 5 Paragraph 52. The ExA notes that the current draft DCO (Applicants Preferred Version) [REP8-0005] appears to exclude paragraph 3.1 of the draft PPs provided by Exolum with its DL8 submission and would ask why, in the light of the inclusions of similar wording in other PPs as highlighted above, the Applicant considers similar wording not to be acceptable or appropriate in relation to Exolum's PPs.
7.	The Applicant	The ExA requests the Applicant provides a written update regarding the status of any section 111 agreement(s), being completed under the Local Government Act 1972 and any Planning Performance Agreements being prepared, between FCC and CWCC.
8.	The Applicant	It is noted that FCC, in its DL8 submission [REP8-044], references the completion of a section 106 (s.106) agreement under the Town and Country Planning Act 1990. It would appear that the s.106 agreement being referenced relates to the draft Biodiversity Net Gain Agreement being competed between it and the Applicant under s.111 of the Local Government Act 1972 and the land to be acquired by the Applicant related to that agreement. Can the Applicant elaborate on this matter further and the relevance of the s.106 agreement to this National Infrastructure submission, including whether such an agreement would meet the planning tests related to the use of such agreements and whether it is anticipated that a copy of the completed s.106 agreement is to be entered into the Examination.
9.	The Applicant	Appendix 2 to the Applicant's 'Cover Letter DL7' [REP7-001] is noted, as is Appendix 1 to the Applicant's 'Cover Letter DL8' [REP8-001]. However, during the CA Hearing 2 the ExA noted the Applicant's reference to

	Question to:	Question:
		<p>Crown consent also being required from the Crown Estate. Please can the Applicant:</p> <ol style="list-style-type: none"> I. confirm the outstanding Crown consent(s) required from the Crown Estate has now been obtained, entering a copy of that Crown consent into the Examination; or II. provide a full and detailed explanation, in writing, as to why it has been unable to obtain the outstanding Crown consent(s) and why it has failed to do so within the 6-month Examination period.
10.	The Applicant	Despite limited previous engagement from the HSE, it has made a submission at DL8 [REP8-045]. The ExA seeks a full and considered written response from the Applicant to the HSE's DL8 submission.
11.	The Applicant	The ExA draws the Applicant's attention to the representation made by the Environment Agency at DL8 [REP8-043] and seeks the Applicant's full and considered written response to this submission.
12.	The Applicant	The ExA notes the Applicant has advised that Shell have confirmed that they no longer wish to proceed with a SoCG. Please direct the ExA to where in the submission documents Shell have provided written confirmation of this or provide such evidence.