



**Canal &
River Trust**
Making life better by water

John Wheadon
Head of Energy Infrastructure Planning Delivery
Department for Energy Security and Net Zero
3-8 Whitehall Place
London
SW1A 2AW

Your Ref EN070007

Our Ref HYCO-EIA071

14 February 2023

By email only
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) – response to the Secretary of State's request for further information, dated 31 January 2024.

As set out previously, the only outstanding matter within the protective provisions remains the issue of limitations to be placed upon the applicant's power to compulsorily acquire the Trust's land. The Trust's position remains that such powers should be restricted. The Trust remains willing to enter into voluntary land arrangements in a manner which safeguards its assets while enabling the timely delivery of the applicant's project.

The Secretary of State has asked for an update as to whether a voluntary land agreement and protective provisions at schedule 10, part 7 of the DCO have been agreed and whether the Trust can now withdraw its objection. A voluntary land agreement has not been agreed with the applicant to date, and as a result the Trust maintains and reiterates its objection to the DCO. Furthermore, for the reasons given below, it is the Trust's view that the applicant has not taken reasonable steps to acquire the Trust's land and rights by agreement. Therefore in the circumstances, compulsory acquisition is not a measure of last resort and accordingly there is no compelling case in the public interest for such compulsory acquisition powers.

Voluntary Land Agreement

The Trust has been seeking to engage with the applicant to negotiate and agree heads of terms since August 2023. The applicant had not engaged in any meaningful way (beyond exchanging outline heads of terms) until a meeting that took place on 19 December 2023. At that meeting, the applicant provided a set of revised heads of terms that was unacceptable to the Trust. Further correspondence with the applicant has indicated that agreement can now be reached in respect of a number of the issues, however, there remain key issues upon which the applicant is unwilling to agree and we have provided below examples of the unacceptable nature of the heads of terms and the Trust's reasons as to why such terms are unacceptable in order to assist the Secretary of State with their decision making process:

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Fradley Junction, Alrewas, Burton-upon-Trent, Staffordshire DE13 7DN
T 0303 040 4040 **E** canalrivertrust.org.uk/contact-us **W** canalrivertrust.org.uk

1. The applicant, contrary to paragraph 1.4.9 of the funding statement provided to the Secretary of State (in which it confirmed that funding of the land assembly arrangements would be backed by a parent company guarantee from Eni UK Limited), is not prepared to provide such a parent company guarantee directly to the Trust.
2. The applicant is not prepared to agree that the Trust's consent is required in the event that the applicant wanted to novate or assign the land agreements. Such consent is necessary in order to confirm the covenant strength of any assignee or novatee, and to confirm the use of the pipeline. The Trust has offered compromise provisions to ensure such consent can be deemed if not provided within a specified period of time, such provisions having been previously agreed in respect of similar large infrastructure projects. The Trust is therefore of the view that such requests are entirely reasonable in the circumstances.

In taking the above positions, the Trust has its national role at the forefront of its decision making. The Trust is not just any landowner, but holds a unique position as both a statutory undertaker and a registered charity responsible for the management and maintenance of the canal and waterway network, being significant national infrastructure, on behalf of the nation and the UK Government. Such responsibilities mean that the Trust needs to secure suitable protections for the Trust's assets in every dealing with the waterway network, such protections potentially going beyond the factors that the Secretary of State may take into account when considering the funding of the scheme or consent to transfer the benefit of the DCO. These concerns as a registered charity and a statutory undertaker govern and amplify the need for the Trust's positions outlined above, which have been accepted on a number of previous schemes.

It is the Trust's position that not only has the applicant failed to take into account the Trust's unique status, but furthermore that it is taking a position that would be commercially unacceptable to many landowners. As such, the applicant has not taken reasonable steps to acquire the land voluntarily, and, in accordance with guidance, given that "*authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail*", a case for the compulsory acquisition of the land has not been satisfactorily established.

The Secretary of State may be aware from the Trust's previous submissions 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 the Trust 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. Given this funding cut and the remit of the Trust as custodian of significant national infrastructure, the Trust can ill-afford any unnecessary uncertainty in relation to its land and assets and the associated costs and risks of assessing compensation if rights are not agreed voluntarily. The position taken by the applicant to date (as summarised above) only serves to evidence that voluntary land agreements are essential in order to fully protect the nation's waterways.

Concluding comments

The Trust maintains and reiterates its objection to the DCO. In the absence of a voluntary agreement, the Trust seeks the inclusion of the following sub-paragraphs in the Development Consent Order at paragraph 83 of Part 7 (For the Protection of the Canal & River Trust) of Schedule 10:

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.

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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.

Yours sincerely,

Tim Bettany-Simmons MRTPI
Area Planner & Special Projects

@canalrivertrust.org.uk

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

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