

Date
8 June 2022

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Mr G Leigh
Secretary of State for Business, Energy &
Industrial Strategy
c/o Gareth Leigh
Department of Business, Energy & Industrial
Strategy
Energy Infrastructure Planning
BY EMAIL ONLY



Dear Mr G Leigh

**HyNet North West Hydrogen Pipeline (the Project)
Request for Section 35 Direction (Request)
Planning Act 2008 (the Act)**

Cadent is writing further to:

1. its request dated 16 May 2022 (the **Request**) that the Secretary of State for Business, Energy & Industrial Strategy (**BEIS**) grants a direction under Section 35 of the Act that the Project is of national significance and is to be treated as an infrastructure proposal for which development consent is required; and
2. BEIS' letter dated 31 May 2022 (the **BEIS Letter**) requesting further information in respect of the Spurs, which form part of the Project.

The Spurs

The Spurs will be connections from the Pipeline to an identified point at the boundary of industrial customers' premises, usually located partially outside of and partially within a "street" as defined in the New Roads and Street Works Act 1991. The main elements of the Spurs are shown hatched in black on Figure 1.

As set out in the Request, the Spurs will not have a pressure of more than 7 bar gauge and no individual spurs will be more than 40km in length. Therefore, they would not meet criteria 1 or criteria 3 of the test within section 20 of the Planning Act 2008.

However, the Spurs form an integral part of the Project. The primary objective of the Project is to connect low carbon hydrogen infrastructure to end-customers to help decarbonise industry. The Spurs achieve this by transporting hydrogen through the remainder of the Pipeline to connect to end-customers.

In respect of the:

1. Western Corridor, the main element of the Spurs shown on Figure 1 comprises the following:
 - a. an approximate distance of 3.5km; and
 - b. provision of hydrogen to approximately two potential industrial customers;
2. Southern Corridor, the main element of the Spurs shown on Figure 1 comprises the following:
 - a. an approximate distance of 7.5km; and
 - b. provision of hydrogen to one potential industrial customer;
3. Eastern Corridor, the main element of the Spurs shown on Figure 1 comprises the following:
 - a. an approximate distance of 1km; and
 - b. provision of hydrogen to approximately three potential industrial customers; and

4. Northern Corridor, the main element of the Spurs shown on Figure 1 comprises the following:
 - a. an approximate distance of 12km; and
 - b. provision of hydrogen to approximately five potential industrial customers.

In relation to each connection to an industrial customer, there will also be above ground infrastructure to connect each industrial customer’s apparatus to the Spurs.

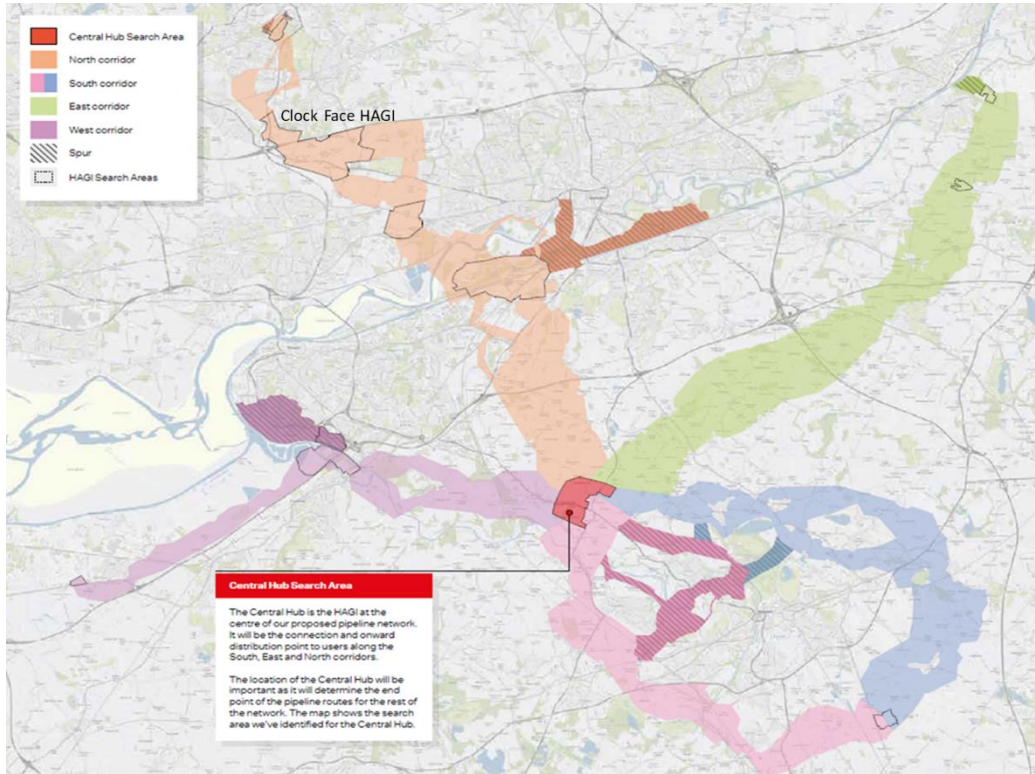


Figure 1: Project Corridors (Note: the South corridor will follow the blue or pink route)

National Significance of the Spurs

As set out in the Request, the Government has identified the deployment of hydrogen and the delivery of a low carbon hydrogen economy as a key objective for decarbonisation, and has identified the need for new green growth clusters in traditional industrial areas. The Government’s policy objectives were set out in detail in the Request.

The Spurs are an important element of the Project and ensure that the national policy objective of decarbonising industry are achieved by the Project through connections to industrial customers.

Reason for the Request

The Project delivers a critical component of the Government’s hydrogen and decarbonisation strategy. It is vital that the Project, which forms part of a track 1 cluster, is delivered in the 2020s to meet the Government’s objectives. Without the Project, the wider HyNet scheme cannot be deliverable.

Given the linear nature of the Project, it is likely that Cadent would need to promote one, or more, separate compulsory purchase orders to ensure that it would be able to compulsorily acquire the land, and rights over land, required to deliver the Spurs if they were not consented pursuant to the Act and if powers of compulsory acquisition were not granted in respect of the Spurs.

The Project would also benefit from a well-defined and clear consenting process so that it can be delivered efficiently in the 2020s, supporting wider decarbonisation targets. Therefore, Cadent has included the Spurs in its Request.

Request

We request that the Secretary of State provides a direction for the Project to be treated as development for which development consent is required pursuant to Section 35(1) of the Act.



We request that the direction issued by the Secretary of State confirms, pursuant to Sections 35ZA(3)(b) and 35ZA(5) of the Act, that:

1. an application for a consent or authorisation mentioned in section 33(1) or (2) of the Planning Act 2008 for the Project is to be treated as a proposed application for which development consent is required;
2. the provisions of or made under the Act apply in their entirety to the Project;
3. the energy National Policy Statements apply to the Project, and that any application should be determined in accordance with Section 104 of the Act; and
4. to the extent that any consultation carried out by the applicant prior to the date of a Section 35 direction complies with the requirements of Part 5 of the Act (or any legislation made under that Part), those consultation requirements shall be treated as having been complied with notwithstanding that the consultation was carried out prior to the date of the direction.

Alternative methods for consenting the Spurs are appended to the end of this letter.

Conclusion

The Project forms a crucial part of the wider HyNet scheme; it forms part of a priority Track 1 cluster project within the Government's industrial decarbonisation strategy. As set out, the Project is of national significance and will play a crucial role in achieving the Government's objectives of transitioning to a low carbon hydrogen economy.

By progressing the entirety of the Project, including the Spurs, through the Act, it would provide the certainty of a single, unified consenting process with a fixed timescale for determination. It will reduce the potential need to apply for separate consents from different local planning authorities and a separate screening opinion from BEIS, and it will also remove the potential requirement to make one (or more) separate compulsory purchase orders in respect of the Spurs.

The entirety of the Project will benefit from being assessed comprehensively at the same time, through the same clear process and in a consistent manner by the same decision maker, avoiding duplication of work and reducing the burden on the various local planning authorities. The EIA process would also be streamlined, and it will also simplify the consideration of any likely significant environmental effects for the Project, by ensuring the Project is considered comprehensively by a single decision maker.

Cadent is content for this to be achieved through the Spurs being delivered as associated development if a Section 35 direction is made in respect of the remainder of the Project.

Yours sincerely,

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HyNet North West Hydrogen Pipeline
Cadent

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Consents Manager
HyNet North West Hydrogen Pipeline
Cadent



ALTERNATIVE METHODS TO GAIN CONSENT FOR THE SPURS

Associated Development Status of the Spurs

The Spurs may be consented as associated development pursuant to Section 115 of the Act.

There is detailed Government guidance on what may constitute associated development for the purpose of the Act in the Ministry of Housing, Communities and Local Government Guidance “Planning Act 2008: associated development applications for major infrastructure projects” (26 April 2013) (the **AD Guidance**).

The AD Guidance sets out four core principles of “associated development”, which include that the associated development should have a “direct relationship” with the principal development, be “subordinate” to the principal development, be necessary for reasons other than as a source of additional revenue and be proportionate to the nature and scale of the principal development.

On the assumption that a Section 35 direction is made for the remainder of the Project, the Spurs associated with the remainder of the Project:

1. have a direct relationship with the Project because they are necessary either to convey the hydrogen to industrial customers;
2. are subordinate to the Project, because they are connections to the remainder of the pipeline forming part of the Project;
3. are necessary to allow the purpose of the Project to be achieved and so are not included for additional review or to provide cross-subsidy; and
4. are considered to be proportionate to the scale of the Project itself.

Therefore, the Spurs would all properly capable of being consented as associated development in the event that the Secretary of State makes a Section 35 direction for the Project but does not include the Spurs within the Section 35 direction.

Current Consenting Status of the Spurs

In consenting terms, without the benefit of the Section 35 direction and if not consented as associated development, the Spurs would be consented through Class A(a) of Part 15 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (the **GPDO**). This would be subject to environmental screening pursuant to The Public Gas Transporter Regulations - Pipeline Works (Environmental Impact Assessment) Regulations 1999 (the **PGT EIA Regulations**). The PGT EIA Regulations require a separate screening request to be submitted to BEIS in certain circumstances. Article 3(12) of the GPDO provides that the Spurs would continue to be permitted development, even to the extent that they comprised EIA development. Cadent would preserve its permitted development rights in any development consent order (**DCO**) in respect of the Project.

In land terms, without the benefit of the Section 35 direction and if not included within any DCO, Cadent may need to prepare one or more compulsory purchase order pursuant to the Gas Act 1986 (the **Gas Act**) in respect of any element of the Spurs which are not within a street as defined by NRSWA. In respect of any elements of the Spurs which are within a street as defined by NRSWA, then Cadent would have the benefit of street works powers through the Gas Act.