



Cheshire West
and Chester

HyNet Carbon Dioxide Pipeline DCO - EN070007

Addendum to Written Representations (Biodiversity Comments)

26 April 2023



 Cheshire West
and Chester

1. Introduction

1.1 Cheshire West and Chester Council (**the Council**) is one of the host authorities for the for the Liverpool Bay CCS Limited's (**the Applicant**) HyNet Carbon Dioxide Pipeline DCO project (**the Project**)

1.2 The Council provided a Written Representation [REP1-061] at Deadline 1 (17 April 2023) of the Examination into the DCO within which comment on Biodiversity matters were reserved until Deadline 1A due to the late submission of biodiversity survey information by the Applicant.

1.3 This document is the Council's Addendum to its Written Representations [REP1-061] submitted at Deadline 1. At Deadline 1A the Council has also provided its Local Impact Report (LIR).

ES Chapter 9 [AS-025] reports the assessment of likely significant effects of the Project on biodiversity. Further to the Applicant's original submission in September 2022 the updated ES Chapter 9 includes additional survey data in respect bats and riparian mammals.

1.4 A summary of the Council's Written Representation and of the suggested changes and requests in the Council's Deadline 1 and 1A submissions is provided in Section 3 of this document.

2 Written Representation - Biodiversity

Surveys

2.1 As is highlighted the Council's Relevant Representation [RR-012] significant concern is raised by the Council in respect the supporting biodiversity surveys including their strategy / extent (absence of surveys beyond the DCO limits for barn owls and badgers), incomplete / missing survey data, as well as discrepancies in the provided survey data.

2.2 An updated ES Chapter 9 [AS-025] and additional survey data in respect bats and riparian mammals has been provided [AS-029-042 and AS-057-59] was accepted by the ExA as additional information on the 20 March 2023. On review of the scope of all the reported surveys, including the additional submission, the Council note that there remain incomplete surveys in respect Bats and Riparian

mammals in addition to the need for further clarifications on the survey strategy for other receptors including barn owls, fish and badgers, these are further detailed below.

- 2.3 With incomplete surveys the Council retains its concerns that the assessments of importance levels and value/sensitivity of receptors is not based on a complete data set and is therefore not robust.
- 2.4 It is explained in paragraph 9.5.29 of the Assumptions and Limitations section of ES Chapter 9 [AS-025] that surveys post DCO submission will be undertaken but only to corroborate the baseline data presented. With incomplete surveys it is considered unreasonable to be able to assume this to be the case. The Council also note that there is no indication of the percentage of surveys completed and yet to be completed, nor the area of the project covered by the surveys to date. The Council highlight that the quantity of survey for each species or habitat still to be completed and at which stage, should be provided.
- 2.5 The Council note that that land outside of the DCO limit has not been surveyed including, for example, Barn owl (who can be impacted by disturbance 100m from their nest site) and Badger surveys have not taken place as standard 30m from the NIB, as is the most basic level of survey.
- 2.6 Species populations depend on their ability to move around habitat features, through the landscape. This has not been assessed specifically, and the missing data means that this cannot be robustly assessed at this stage.
- 2.7 The Council also note that habitat connections have not been considered in the survey strategy, including in terms of the Cheshire West and Chester Ecological Network.
- 2.8 The Council note that there are several discrepancies between ES Chapter 9 [AS-025] and the various species-specific surveys reports, for example with bat roost potential trees, where the numbers do not match. It is also noted that CAWOS (Cheshire and Wirral Ornithological Society) were not consulted as part of the project.

Policy / Green Infrastructure

- 2.9 The policy considerations of the Planning Statement [APP-048] includes the policy text for CWAC Local Plan Part 2 DM44 including the relevant Ecological Network section of the policy, however, the Council note that there is no response to this in the Policy Assessment section of the table.

- 2.10 For any infrastructure project, and as discussed with the wider ‘HyNet Northwest’ project (for the creation of infrastructure to produce, transport and store low carbon hydrogen across the North West and Wales), which this Project forms one element of, the Ecological Network is an important consideration, due to the large-scale severance impacts such projects are likely to have, whether it be on a temporary or permanent basis. The significance of habitats lost in the Ecological Network is higher than those outside it. In addition, any compensatory habitats should be targeted to be located within the Ecological Network, to strengthen the network.

Consultation

- 2.11 The Council note that no meetings occurred involving both CWAC and NE.

Assessment of Likely Impacts and Effects (ES Section 9.9)

- 2.12 It is stated in Section 9.9 “A number of receptors have been scoped out of the assessment where impacts to the receptor is considered to be less than Moderate adverse.” It is not certain how this has been assessed, with the survey data still missing for species such as Bats, Otters and Water voles.

- 2.13 It is stated in Table 9.11 that there is only loss of three outlier Badger setts, whereas the drawings show main setts adjacent and within the NIB, so it is not clear how this conclusion has been reached.

Mitigation, Compensation and Enhancement (ES Section 9.10)

- 2.14 It is stated that “it is not possible to reinstate trees above or within 12 m either side of the Newbuild Carbon Dioxide pipeline. Where practicable, trees will be planted as close as possible to those lost, however, these are likely to form a mixture of replacement hedgerows and trees.” It is unclear if these areas have been classed as temporary loss or have been classed as permanent loss, if habitats cannot be replaced in the same location of at least 24m in width. This is especially important in LWS, woodlands and hedgerows. Again, there is no assessment of the impact of this at the landscape scale e.g. connecting up other woodlands around the area of impact.

Biodiversity Net Gain

- 2.15 It is noted that BNG is not currently a mandatory requirement but can be used as a general tool to demonstrate if a project is achieving adequate habitat mitigation and compensation. The BNG for this Project has been carried out on priority habitats only (rather than all habitats as a standard BNG calculation

would), so just a small proportion of the habitats likely to be impacted by the project. Even considering just Priority habitats, the project results in a 57.25% habitat unit loss, a 7.63% hedgerow unit loss and a 0% river unit result. In terms of the off-site information entered into the metric, this is based on potential scenarios, therefore the project is not achieving a net gain currently. It is noted that the CWAC Ecological Network has not been taken into account in the Strategic Significance columns, so losses could be greater than calculated.

- 2.16 In view of the general status of the legislation at this point in time the general approach to BNG is seen as reasonable, however, the Council do highlight that there is still no off-site solution presented to compensate for the losses as described above.

Landscape Environmental Management Plan (LEMP)

- 2.17 The Council note that the Outline Landscape Environmental Management Plan (OLEMP) [APP-] on which the final LEMP is to be based is very general. For example, a 3 for 1 replacement of woodland is referred to, but it is not clear what this means (trees or area). It is not clear why only woodland is referred to for replacement ratios and no other habitats (marshland, grassland etc). It is also noted that it is stated that the OLEMP does not address any off-site requirements needed for BNG. 5 year maintenance of habitats, extended to 10 years for woodland is referred to, however, as within the BNG metric, at least 30 years is required for woodland.

Survey Reporting and Monitoring Strategy

- 2.18 An addition to the submitted REAC the Council's position is that there should be a survey, reporting and monitoring strategy. This would include frequency, phases or stages of survey updates, reporting frequency and the authorities reported to. This could possibly include a working group of interested parties. The Council note that the updated REAC [AS-054] has only been updated in terms of survey data and has not taken on board any of the above requirements.

Local Wildlife Sites (LWS)

- 2.19 The impact assessments presented within ES Chapter 9 on Local Wildlife sites (LWS) have not been assessed in terms of the designations, with only general habitat mitigation and compensation alluded to. There is no indication of the percentage of LWS loss, nor any long-term plan to ensure the LWS quality habitat is reinstated (maximum long-term management in LEMP suggested is 10 years).

- 2.20 LWS are referred to in table 9.11 [AS-025] when considering the Likely Significant Effects during construction, but no further analysis other than “temporary” impacts during construction; no detail of the sensitivity, replaceability, quality of the habitat and percentage impact on each LWS as a whole, has been made.
- 2.21 In addition to the identified impacts in Table 9.11 [AS-025] the Council raises the need to consider impacts from permanent losses of trees within the planting exclusion zone over the pipeline and the resulting impacts upon the connectivity between LWS and habitats.
- 2.22 *Protected Species Considerations – Bats*
- 2.23 There remains to be no indication of the percentage of missing survey data on Bats. No analysis has been made of the confirmed roost locations nor of impact of habitat loss (BLE prefer to emerge into dark corridors straight from the roost and hedgerow/tree losses may impact on roost success of any species) around these locations due to the works. Foraging and commuting impact at a population (landscape) scale has not been considered in any detail. It should also be noted that it is not confirmed which trees require removal at this stage, so any resulting impact is not clear.
- 2.24 Within ES paragraph 9.5.39 [AS-025] the Council note that certain roost types have been assumed in trees and buildings that have potential. Further detail is required to explain the logic of this, in terms of which buildings were assumed to have roosts and why certain roost types and sizes were assumed. The updated surveys have been completed in this respect, however, the above general comments still stand, with additional queries, as below.
- 2.25 In relation to bat roosts identified in the Appendix Bat Activity Reports [AS- 029 / 030 / 057 / 058]: the Council note that the numbers of trees and buildings in the DCO limits are now lower (e.g. trees subject to aerial inspection) than previously recorded. This may be because these are now not affected by the project. The Council ask for clarification on this matter.
- 2.26 It is noted from the above surveys that five buildings and thirty-one trees are now assumed as having roosts due to no access being available for survey. It is not clear how the species and type of roost been assumed, or if potential for hibernation roosts been considered? The Council ask for clarification on this matter.

Protected Species Considerations – Bat Foraging/Commuting

- 2.27 The Council note that the updated / further surveys and analysis [AS- 031-038 / 059] report that fewer hedgerows are to be affected when compared to the surveys provided in the original submission [APP-098-105]. The updated surveys state that there are now 102 (previously 82) Poor hedgerows, 144 (previously 250) Good hedgerows and 45 (previously 23) Excellent hedgerows. The Council note that this equates to a loss of approx. 86 hedgerows from the original surveys, clarification is requested on this matter.
- 2.28 Updated ES Chapter 9 [AS-025] states that “Surveys have been completed on 32 of the 45 ‘Excellent’ hedgerows, 10 of which met the existing Defra thresholds”. However, paragraph 4.1.3 of Appendix 9.4 (Bats and Hedgerows Assessment) [AS-031] states “Modified DEFRA Local Scale surveys are due to be conducted for the 45 ‘Excellent’ hedgerows. To date, 32 ‘Excellent’ hedgerows have been subject to two initial surveys, 10 of which met the relevant thresholds and require a further four survey visits prior to construction. The initial two surveys for the remaining 13 ‘Excellent’ hedgerows will be completed prior to construction along with any further surveys required for hedgerows which meet the threshold, in addition to the remaining surveys required for the 10 hedgerows to date which have met the threshold.” These seem to be conflicting statements, again highlighting that not all surveys have been completed and therefore raising doubt on the robustness of conclusions of level of impacts.
- 2.29 As with the watercourse data, there is no indication of the percentage coverage of the total hedgerows impacted that the surveys have covered so far. It is stated that “the 10 hedgerows which have met the existing Defra thresholds, plus the remaining 13 Excellent hedgerows which were unable to be surveyed are currently precautionarily assessed Important FCRs.” This is seen as a reasonable approach, although seems again to conflict with the numbers quoted in the Appendix 9.4 report. An updated survey progress table, as presented in the last meeting with the Applicant, showing the percentage, lengths and numbers of hedgerows surveyed, would be useful to clarify the information, as well as a timetable for further, or updated surveys.

Protected Species Considerations – Riparian Mammals

- 2.30 The Council highlight that it is not clear why some watercourses with Water vole burrows were only classed as suitable for foraging/commuting Water vole, rather than breeding populations. The phrase “suitable for burrowing water vole” is used, however, it is not clear what this refers to. These should be classed as breeding at this stage, unless further surveys demonstrate otherwise. There is no assessment of connectivity required and severance of

watercourse that the project is likely to cause, thereby missing impacts on the populations present.

- 2.31 With specific references to the revised ES chapter 9 [AS-26] and supported by Appendix 9.6 Riparian Mammal Surveys [AS-039-042]:
- 2.32 It is stated that presence of Otter/Water vole has been assumed in some watercourses, due to access restrictions for second survey. There is no basis for assumed presence on some watercourses and not others and this should be clarified.
- 2.33 The Council ask that an updated survey progress table, as presented in the last biodiversity meeting between the Applicant and the Council, showing the percentage, lengths and numbers of watercourses surveyed, and the lengths to be surveyed to complete to accepted survey standards would be useful to clarify the information, as well as a timetable for further, or updated surveys.
- 2.34 Within table 9.11 [AS-025] It is noted that the riparian mammal Likely Significant Effects (LSE) during construction has increased from minor adverse significant (not significant) to Moderate adverse significant (significant) and then from negligible to minor adverse in Table 9.13 Summary of Residual Effects. The Council ask that clarification be made in this respect.

Protected Species Considerations – Great Crested Newts (GCN)

- 2.35 There is a discrepancy of GCN presence within the Red Risk Zone around Chester Zoo, with 6 ponds reported, 5 ponds reported elsewhere and on mapping (Figure 9.2.3 - Presence/Likely Absence Results Overview), 7 ponds in the LSE assessment, with a further 5 having precautionary presence assumed (Table 9.11). It should be noted that publicly available data for GCN from planning application shows GCN presence in 10 ponds within the Red Risk Zone at Chester Zoo, which has not been used in this analysis. There is no indication of the terrestrial habitat mitigation and compensation required for GCN within the Red Zone.
- 2.36 There is no indication of procedure when it comes to applying to Natural England for District Level Licence and which authorities the Impact and Conservation Payment Certificate will be provided to.

Protected Species Considerations – Badgers

- 2.37 In Table 9.3 of Chapter 9 [AS-025], there is no indication that 30m from the works area was surveyed for Badger setts, as is standard. As previously

recommended bait-marking or territory studies have not been undertaken for Badgers, to assess any potential severance impacts on the Badger population as a whole. As above, Badgers being a large mammal rely on being able to forage over extensive areas in a rural environment. The Badger report states that some locations 30m from the NIB were surveyed, due to the area of works reducing, however, this was only on an ad-hoc basis and not due to habitat suitability. Cameras were deployed at the three Main setts found so far, whereas it may have been more useful to camera-trap at setts which showed some activity, to ascertain if they were small Main setts or not. It is stated in Table 9.11 that there is only loss of three outlier Badger setts, whereas the drawings show main setts adjacent and within the NIB, so it is not clear how this conclusion has been reached.

- 2.38 The Council ask for clarification of sett numbers and that all areas surveyed 30m from the works has been undertaken.

Protected Species Considerations – Barn Owls

- 2.39 Three features were found to contain evidence of barn owl. The Barn Owl Survey reports [APP-108] states that barn owl evidence of a potential roost site was recorded at T472 (SJ35006 66638) and barn owl were recorded nesting within; BOB3 (SJ35043 66642); and T465 (SJ 41653 71153). This does not align with the mapping in the report which shows two occupied nest sites and two temporary rest sites. It should also be noted that it is not confirmed which trees require removal at this stage, so the impact is not clear.

- 2.40 Within the amended Chapter 9, Table 9.12 (Design and Mitigation Measures and their Delivery Mechanisms) [AS-025] states that a worst-case scenario for barn owl presence has been applied to one location, however, this is not discussed in any of the previous sections. The Council would therefore ask that this be clarified before the residual effects can be accepted.

Protected Species Considerations – Breeding/Wintering Birds

- 2.41 Four transects were undertaken in CWAC (3, 4, 5 and 7), with distribution skewed to take in the Mersey Estuary due to the importance of wintering birds. It is not clear if this meant that habitats that would have been ideally surveyed for breeding birds were missed. The Council ask that the reasoning for the choice of transect locations is provided.

Fish

2.42 The Council note that the logic for survey locations and types is not clear and it is requested that this be clarified by the Applicant.

3 Summary of Written Representations (DL1 and DL1A)

3.1 A summary of the suggested changes and requests set out in the Addendum Written Representation are provided in the table below:

Topic	Summary of suggested changes and requests / Issues
Local Development Plan – Economic	The sterilisation of part of a site safeguarded for employment
Heritage	Inclusion / need for of heritage management plan as part of the CEMP
Mineral Safeguarding	Inclusion / need for of mineral safeguarding plan as part of the CEMP
Trees	The loss of any ‘veteran’ trees is unacceptable
Biodiversity - Surveys	There remain to be incomplete surveys in respect Bats and Riparian mammals in addition to the need for further clarifications on the survey strategy for other receptors including barn owls, fish and badgers.
Biodiversity- Surveys	Habitat connections have not been considered in the survey strategy, including in terms of the CWAC Ecological Network.
Biodiversity - Consultation	The Council note that no meetings occurred involving both CWAC and NE.
Biodiversity - Assessment of Likely Significant Effects	With the incomplete surveys it is not certain how this has been assessed - survey data still missing for species such as Bats, Otters and Water voles.
Biodiversity - Mitigation / enhancement	Where there is permanent loss and or agricultural land use prevents reinstatement. It is requested that this is pursued further with the landowner, or further evidence provided to evidence why this is not possible (EG Ince AGI)
Biodiversity - BNG	There is no off-site solution presented to compensate for losses
Biodiversity - Landscape Environmental Management Plan	The OLEMP is too general. For example, a 3 for 1 replacement of woodland is referred to, but it is not clear what this means (trees or area). It is not clear why only woodland is referred to for replacement ratios and no other habitats (marshland, grassland etc).
Biodiversity – Landscape	The OLEMP does not address any off-site requirements needed for BNG, and does not give provision for 30 year management required for woodland.

Environmental Management Plan	
Biodiversity - Survey Reporting and Monitoring Strategy	Requirement for a survey, reporting and monitoring strategy
Biodiversity - Local Wildlife Sites	when considering the Likely Significant Effects during construction no further analysis other than “temporary” impacts during construction has been provided and no detail of the sensitivity, replaceability, quality of the habitat and percentage impact on each LWS as a whole, has been made.
Biodiversity - Local Wildlife Sites	There is no indication of the percentage of LWS loss, nor any long-term plan to ensure the LWS quality habitat is reinstated (maximum long-term management in LEMP suggested is 10 years).
Biodiversity - Local Wildlife Sites	need to consider impacts from permanent losses of trees within the planting exclusion zone over the pipeline and the resulting impacts upon the connectivity between LWS and habitats.
Biodiversity - Bat survey	There is no indication of the percentage of missing survey data on Bats.
Biodiversity - Bat survey	No analysis has been made of the confirmed roost locations nor of impact of habitat loss
Biodiversity - Bat survey	Foraging and commuting impact at a population (landscape) scale has not been considered in any detail
Biodiversity - Bat survey	Further detail is required to explain the logic of in terms of which buildings were assumed to have roosts and why certain roost types and sizes were assumed
Biodiversity - Bat survey	Clarification in relation to the numbers of identified bat roosts
Biodiversity - Bat survey	Clarification of how the species and type of roost have been assumed, or if potential for hibernation roosts been considered
Biodiversity - Riparian Mammals	Clarification of the phrase “suitable for burrowing water vole”.
Biodiversity - Riparian Mammals	Clarification is needed of number of surveys undertaken for Water Voles
Biodiversity - Riparian Mammals	Clarification of the basis for assumed presence of otters / water voles on the non-surveyed watercourses.
Biodiversity - Riparian Mammals	Provision of an updated survey progress table

Biodiversity - Riparian Mammals	Clarification of the reported LSE and Residual Effects
Biodiversity - GCN	Clarification of discrepancy of GCN presence within the Red Risk Zone around Chester Zoo. Use of publicly available data for GCN not applied
Biodiversity - GCN	Clarification of procedure when it comes to applying to Natural England for District Level Licence
Biodiversity - Badger	Clarification of extent of surveys (30m buffer)
Biodiversity - Badger	Clarification on numbers of sett lost within the DCO limits
Biodiversity - Barn owl	Clarification in respect numbers of roots and nesting sites.
Biodiversity - Barn owl	Clarification of the application of 'worst case' scenario impacts for barn owls.
Biodiversity - Breeding / Wintering Birds	Clarification in respect the reasoning behind choice of survey transects.
Biodiversity - Fish	Clarification and reasoning behind identification of survey locations and confirmation of the number and percentage of watercourses surveyed.
Land Contamination	Inclusion of validation / verification requirement in the OCEMP
Cumulative Impacts	Clarification / justification of assessment of cumulative effects and use of holistic approach to mitigation

dDCO - Definition "commence"	Operational development needs to be excluded from definition.
dDCO - Limits of deviation	Council reserves its position on this.
dDCO - Drainage	Additional information required before Council can agree to the disapplication of the Land Drainage Act 1991 (Article 8) or the provisions within Article 19.
dDCO - Highways, Street Works, Traffic	Where works are being carried out on highways for which the Council will be responsible for, details of the proposed works should be submitted to and approved by the Council in advance.
	Where the Council's approval or consent is required, there should be an obligation to take any comments into account.
	The timescales provided for considering requests for approval are too short and the triggers for calculating the timescales need to be clear and consistent throughout the DCO.

dDCO - Acquisition of Land	The Council has had limited contact from the Applicant regarding land acquisition. The Council reserves its position on this.
dDCO - Temporary Use of Land	The provisions set out in Article 34 are not clear as they appear to allow permanent works to be carried out and retained on land which is identified as being “temporary use”. Where land is being used temporarily, the land should be reinstated or where works are being left in place, the approval of the landowner should be required. There should be no permanent work on temporary land (unless agreed).
dDCO - Time limits (requirement 2)	At least 14 days advance notice of the commencement of development should be provided.
dDCO - Submission of plans/schemes (e.g. Requirements 3, 8, 17)	Where requirements provide for details, schemes, plans etc to be submitted to the relevant authority, the requirement should provide for these details, schemes, plans etc to be approved in writing and thereafter for the development to be carried out in accordance with those approved details.
dDCO - Scheme Design (Article 4)	The wording “in general accordance with” should be replaced with “substantially in accordance with”.
	A definition for “environmental effects” is required.
	A mechanism for determining whether an amendment is “material” needs to be included.
dDCO - CEMP (Requirement 5)	Details to be covered by the CEMP need to be broader and include additional necessary information.
dDCO - Contaminated land and Groundwater (Requirement 9)	Requires the inclusion of a validation report and details being approved by the relevant authority.
dDCO - LEMP (Requirement 11)	Details regarding ecology and landscaping need separating out into two separate requirements.
	Details regarding heritage measures need to be included within the LEMP.
	A definition for “existing features” is required.
dDCO - Ecological surveys (Requirement 12)	This needs to be widened to include European sites, international sites and nationally protected habitats and species. Mitigation, compensation and obtaining appropriate licences if required, should also be stipulated.
dDCO - Construction hours (Requirement 13)	Any proposed out of hours construction should be included within a scheme to be approved by the relevant authority.

	The definition “emergency” needs to be amended or deleted.
	The wording “outside the Order limits” in the “non-intrusive activities” definition needs to be deleted.
dDCO - Restoration of Land (Requirement 16)	Reinstatement should be on a phase by phase/section by section basis and not delayed to the end of the Project.
dDCO - PCEMP (Requirement 17)	“Operational and maintenance management” and “decommissioning” should be covered in separate requirements.
	Details of restoration and aftercare to be provided should be included in the requirement with the relevant planning authority to approve.
dDCO - Amendments (Requirement 19)	The timescale should be 16 weeks with a provision to agree an extension of time.
dDCO - Applications (Requirement 21)	The timescale should be 16 weeks with a provision to agree an extension of time.
	The deemed approval process should not be included within this requirement.
dDCO - Multiple authorities (Requirement 22)	The timescale should be 40 days with a provision to agree an extension of time.
dDCO - Further information (Requirement 23)	If a “requirement consultee” needs to be consulted, additional time is required or the timescales imposed in Article 23(2) should be removed.
	Timescales for requests from requirement consultees should be extended to 35 days from receipt of the request.
	Requirement 23(4) should be removed.
dDCO - Protective provisions (Sch 10, Part 7)	The Council reserve the right to comment on the protective provisions for local highway authorities.