

HyNet North West

APPLICANT'S COMMENTS ON SUBMISSIONS RECEIVED AT DEADLINE 2

HyNet North West Carbon Dioxide Pipeline

Planning Act 2008

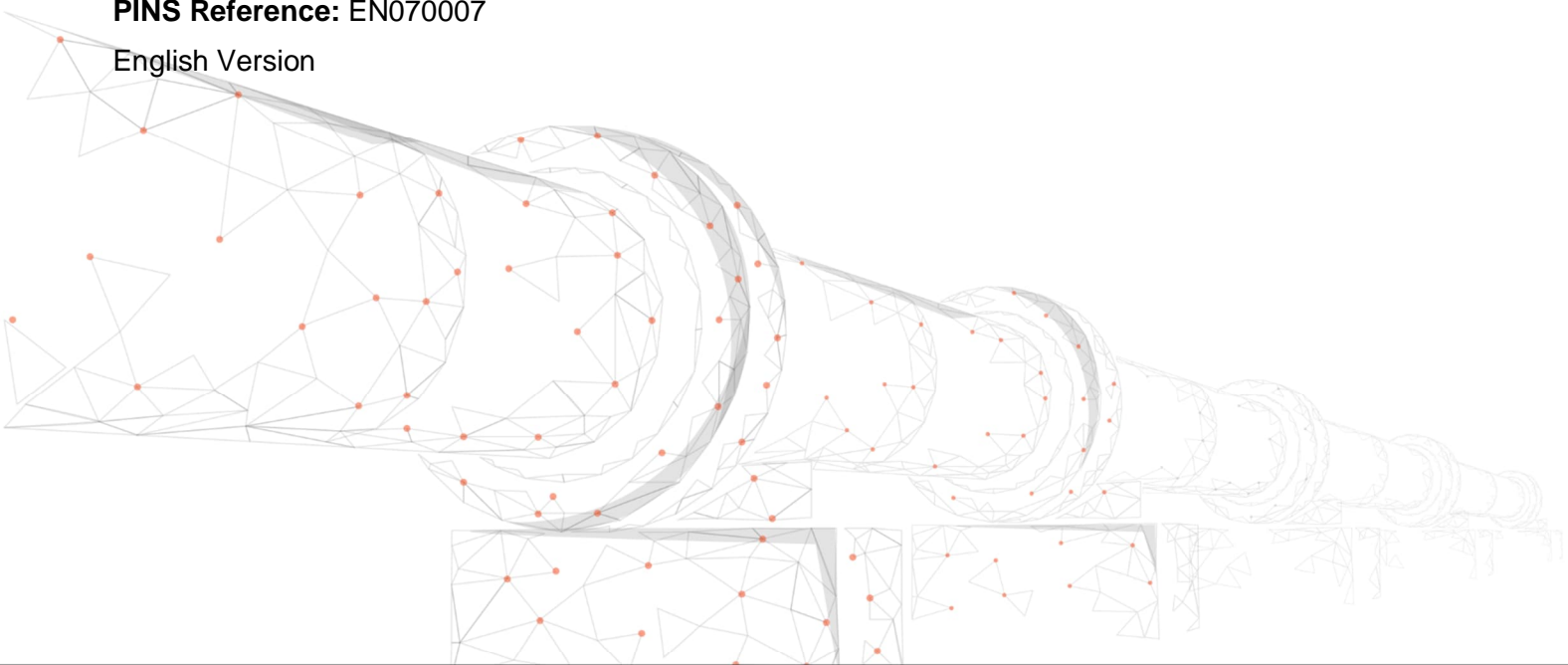
The Infrastructure Planning (Examination Procedure) Rules 2010 Rule 8(1)(c)

Document Reference Number D.7.21

Applicant: Liverpool Bay CCS Limited

PINS Reference: EN070007

English Version



REVISION: A

DATE: May 2023

DOCUMENT OWNER: WSP

PUBLIC

QUALITY CONTROL

| | | | | | |
|---------------------------|---------------|-----------------|---------------|-----------------|-------------------|
| Document Reference | D.7.21 | | | | |
| Document Owner | WSP | | | | |
| Revision | Date | Comments | Author | Approver | Authoriser |
| A | May 2023 | Deadline 3 | Various | AV | AH |

TABLE OF CONTENTS

| | |
|--|----------|
| 1. INTRODUCTION..... | 1 |
| 1.1. Purpose of this document..... | 1 |
| 1.2. The DCO Proposed Development..... | 1 |
| 2. APPLICANT’S RESPONSE | 2 |

TABLES

| | |
|---|----|
| Table 2.1 – Applicant's Comments on Submissions Received at Deadline 2 from Cheshire West and Chester Council (CWCC) [REP2-046]..... | 3 |
| Table 2.2 – Applicant's Comments on Submissions Received at Deadline 2 from National Highways [REP2-049]..... | 22 |
| Table 2.3 – Applicant's Comments on Submissions Received at Deadline 2 from Stephens Scown LLP on Behalf of Stephen and Catherine Oultram [REP2-052]..... | 26 |
| Table 2.4 – Comments on the Responses to Deadline 2 Submissions – Canal and River Trust [REP2-048] | 28 |
| Table 2.5 – Comments on the Responses to Deadline 2 Submissions – Natural Resources Wales (NRW) [REP2-053]..... | 30 |

1. INTRODUCTION

1.1. PURPOSE OF THIS DOCUMENT

- 1.1.1. This document has been prepared on behalf of Liverpool Bay CCS Limited ('the Applicant') and relates to an application ('the Application') for a Development Consent Order (DCO) that has been submitted to the Secretary of State (SoS) for Energy Security & Net Zero (ESNZ) under Section 37 of the Planning Act 2008 ('the PA 2008'). The Application relates to the carbon dioxide (CO₂) pipeline which constitutes the DCO Proposed Development.
- 1.1.2. This document provides the Applicant's response to Written Representations submitted at Examination **Deadline 1**.

1.2. THE DCO PROPOSED DEVELOPMENT

- 1.2.1. HyNet (the Project) is an innovative low carbon hydrogen and carbon capture, transport and storage project that will unlock a low carbon economy for the North West of England and North Wales and put the region at the forefront of the UK's drive to Net-Zero. The details of the project can be found in the main DCO documentation.
- 1.2.2. A full description of the DCO Proposed Development is detailed in Chapter 3 of the 2022 Environmental Statement (ES) (as submitted with the DCO application) **[APP-055]**. The previously submitted ES is hereafter referred to as the '2022 ES'.
- 1.2.3. Following the Preliminary Meeting on 20 March 2023 and the Applicant's submission of its Notification of Intention to Submit a Change Request **[AS-060]** on 21 March 2023, the Applicant submitted Change Request 1 on 27 March 2023. The Applicant's Change Request 1 was accepted by the ExA on 24 April 2023 and includes '2023 ES Addendum Change Request 1' **[CR1-124 to CR1-126]** and ES Addendum Chapter 3 provides an update to the description of the DCO Proposed Development **[APP-055]** resulting from the proposed design changes and clarifications to assessments.
- 1.2.4. The Applicant submitted its Notification of Intention to Submit a Change Request (2) on 09 May 2023 **[PD-018]**.

2. APPLICANT'S RESPONSE

- 2.1.1. This chapter provides the Applicant's comments on submissions received at Deadline 2.
- 2.1.2. The Applicant has not responded to the following submissions made at Deadline 2, as no substantive comments were made by the Interested Parties (IP's) that require further comment from the Applicant at this time:
- Cheshire West and Chester Council – Deadline 2 Submission – Cover Letter **[REP2-045]**
 - Flintshire County Council – Deadline 2 Submission **[REP2-047]**
 - Turley on behalf of Peel NRE – Deadline 2 Submission **[REP2-050]**
 - J Bradburne Price & Co – Deadline 2 Submission **[REP2-052]**
- 2.1.3. The Applicant notes that some IPs above have reserved the right to make future submissions.

Table 2.1 – Applicant's Comments on Submissions Received at Deadline 2 from Cheshire West and Chester Council (CWCC) [REP2-046]

| Ref | The Councils Relevant Representation Comment [RR-012] | The Applicant's Response at DL1 [REP-042] | CWACC Response | Applicant's Comments |
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| 2.1.1 | <p>This Relevant Representation of Cheshire West and Chester Council provides an initial comment and issues relating to the content and scope of the application including the Local Plan Policy context, Environmental Assessment and the proposed requirements and provisions of the Draft Development Consent Order. Further to this representation, as a Host Authority, the Council will be providing a Local Impact Report (LIR) and, if necessary, a Written Representation (WR) at the forthcoming examination.</p> | <p>The Applicant looks forward to receiving the LIR as part of the examination. The Applicant is in regular communication with CWAC and will continue engagement to resolve the issues described in the Relevant Representation.</p> | <p>The Council's Local Impact Report (LIR) and Written Representations (WR) (including addendum) have been submitted at Deadline 1 and 1A [REP1-061; REP1A-004; REP1A-02].</p> | <p>The Applicant acknowledges CWCC's response and has no further comments.</p> |
| The Planning Statement and Policy Context | | | | |
| 2.1.2 | <p>The submitted application and associated Planning Statement identifies the Local Development Plan within the Borough of Cheshire West and Chester (CWAC). A number of inconsistencies are noted in the identification of policies including an omission of Neighbourhood Plans as well as the full consideration of a number of Local Plan Policies including economic policies for the projects impact on existing businesses / operations including future expansions (standoffs / restrictions to the pipeline) and ecological network implications of Policy DM 44.</p> <p>Please note a more detailed consideration of the Local Development Plan will be provided as part of the examination within the Councils LIR.</p> | <p>The Applicant has reviewed and updated the Planning Statement [APP-048] as required and it is submitted at Deadline 1.</p> <p>The Applicant would refer CWAC to Table B4 in Appendix B to the Planning Statement [APP-048] which provides a detailed appraisal of policy compliance against Cheshire West and Chester Local Planning Policy, including compliance with Policy DM 44. The Applicant is engaging with the CWAC to gain an understanding of what information is not provided so that they can address any inconsistencies and provide further detail on relevant Local Plan policies as required.</p> | <p>Paragraph 5.3 of the Council's LIR [REP1A-02] identifies the missing Local Development Plan (LDP) Policies within the Applicant's policy considerations / assessment in table B4 of the Planning Statement [APP-048]. The Council notes the inclusion and consideration of these previously missing Policies (STRAT4; STRAT11; EP6; DM2 and DM37) within table B4 of the revised Planning Statement (Rev B) submitted at DL1 [REP1-013]. This resolves the Council's concern in respect the identification of relevant policies of the LDP.</p> <p>In respect the consideration of LDP Policy DM44 (Protecting and enhancing the natural environment), whilst correctly identified, as is outlined in paragraph 2.9 of the Council's Addendum WR [REP1A-004], the Council highlights that the consideration of 'contributions towards the boroughs ecological network' remains absent from the</p> | <p>The Applicant welcomes CWCC's view that all relevant policies of the LDP have been identified.</p> <p>The Applicant acknowledges CWCC Local Plan (part 2) Policy DM44 and the role of ecological networks, as well as the importance of contributing positively towards these to ensure adherence to this policy. It is acknowledged that a large % of the Order Limits within England covers areas within the ecological network, predominantly due to the 'core areas' occurring over a relatively widespread footprint, together with several instances of 'corridors and stepping stones' (comprising existing Local Wildlife Sites and/or priority habitat).</p> <p>The DCO Proposed Development has undergone several revisions of the Order Limits and re-evaluated construction impacts to attempt to reduce impacts to priority habitat wherever possible, to ensure adherence to the mitigation hierarchy. This will be further explored during development of the detailed design of the DCO Proposed Development. This in turn ensures that any severance impacts are kept to a minimum, particularly in cognisance that the DCO Proposed Development will predominantly result in short term, temporary, and localised impacts. An example of this is through commitments to remove a maximum of 15m of hedgerow (per hedgerow crossing) to facilitate construction of the pipeline and</p> |

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| | | | <p>assessments. This will need to be addressed by the Applicant.</p> <p>The Council would advise that the Ince Neighbourhood Plan was submitted for examination on the 3rd April 2023. Any relevant emerging policies should be identified and given due weight in the policy considerations.</p> | <p>replace this within 1 year of impacts occurring (as captured by mitigation item D-BD-032 of the OCEMP [REP2-021] secured by Requirement 5 of the dDCO [REP1-004]).</p> <p>Where impacts do persist on priority habitats, a BNG offsetting strategy is proposed (refer to the BNG Strategy Update [REP2-042] and as submitted at Deadline 3, and this will target areas within the ecological network wherever possible. To this end, the Applicant is working with CWCC to identify suitable sites to provide this priority habitat.</p> <p>If these areas are successfully identified as falling within the ecological network (as led by CWCC), then the DCO Proposed Development will provide a significant positive contribution towards this policy, specifically point 11 which aims to "increase the size, quality or quantity of priority habitat within core areas, corridors or stepping stones". Due to the negative multipliers inherent within the biodiversity metric (which are more heavily weighted for priority habitats), considerably larger areas of this habitat will be created to offset the extent of habitat lost, in order to achieve at least 1% BNG. A full assessment of the DCO Proposed Development against the policy DM44 will be made at Deadline 5 following completion of the updated BNG assessment with confirmation of the BNG offsetting strategy. Discussions between CWCC and the Applicant are ongoing with consideration of the Ecological Network and emerging Local Nature Recovery Strategy raised and included within those discussions.</p> <p>The Applicant notes the Ince Neighbourhood Plan was submitted for examination on the 03 April 2023; the Applicant included a compliance assessment of relevant policies of the Plan at Appendix B of the Planning Statement (Rev B), submitted at Deadline 1 [REP1-013], and subsequent revision [REP2-015]. The Applicant will continue to monitor the status of the draft plan through its examination.</p> |
| | The Environmental Statement | | | |
| 2.1.3 | The Council has previously provided comment and recommendations on the scope and content of the Preliminary Environmental Impact Report (PEIR). There are ongoing | Responses from the Applicant to CWAC's comments and recommendations on the initial scope and content of the PEIR can be found in Appendix 1.3 of the 2022 ES [APP- | The Council's LIR has been submitted at Deadline 1A [REP1A-02]. | Please refer to the Applicant's Response to Local Impact Reports (LIR's) [REP2-040]. |

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| | discussions between the Councils internal services and the applicant in respect to the content of the submission stage Environmental Statement. The Councils position, as it stands on, specific matters including raised issues are provided below. Please note, as above, a detailed response in respect the Local Impacts of the project will be provided as part of the examination. | 076] and the HyNet DCO Consultation Report [APP-031] , respectively. The Applicant will continue to work proactively with CWAC. | | |
| Chapter 8 – Cultural Heritage | | | | |
| 2.1.4 | <p>Whilst the Councils Conservation officer is in general agreement with the overview of heritage impacts and assessments in Chapter 8 it is asked that individual Heritage Impact Assessments are provided to provide a true impact of AGIs and BVSs.</p> <p>In addition, it is also requested that further detail is provided of how any harm resulting from AGIs and BVSs can be mitigated against including planting and materials.</p> | <p>The impacts on heritage assets caused by all aspects of the DCO Proposed Development, including AGIs and BVSs, are included in Section 8.9 of Chapter 8 of the 2022 ES [APP-060] and within Sections 11 and 12 of the Historic Environment Desk-Based Assessment, Appendix 8.1 [APP-084].</p> <p>It should be noted that only significant impacts are reported in the 2022 ES [APP-060], with effects not considered to be significant reported in Appendix 8.1 [APP-084]. For example, effects on the Chester Canal Conservation Area caused by the Rock Bank BVS are reported in paragraphs 12.2.1 to 12.2.3, effects on Thornton-le-Moors Conservation Area caused by Stanlow Above Ground Installation (AGI) are reported in paragraphs 12.2.4 to 12.2.5, and effects on The Willows, a Grade II listed building, caused by the Mollington BVS, is reported in paragraphs 12.3.4-12.3.6 of Appendix 8.1 - HEDBA Part 1 Rev A [APP-084]. The introduction to Chapter 8 of the 2022 ES [APP-060] explains the assets which were scoped out.</p> | <p>As is detailed in the Council's LIR [REP1A-02] the reasoning for the absence of individual heritage impact assessments at this stage is accepted. However, as is highlighted in the paragraph 2.3 of the Council's WR [REP1-061], it is noted that any further requirement for mitigation to be directed by further Heritage Impact Assessments is not specified within the OLEMP or the Register of Environmental Actions and Commitments (REAC) [AS-054] nor directly provided for in the wording of the draft DCO Requirements.</p> <p>For this reason, the Council's position remains that further heritage assessments including appropriate mitigation should be provided for within the OCEMP or specifically required within the DCO Requirements.</p> | Please refer to the Applicant's Response to Local Impact Reports (LIR's) [REP2-040] and the Applicant's Response to Written Representations [REP2-041] . |

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| | | Mitigation measures for impacts caused by the construction of the AGIs and BVSs are defined in paragraph 8.10.8 of Chapter 8 of the 2022 ES [APP-060]. This states "Permanent impacts to the setting of the historic assets will be mitigated through the planting of vegetative screening around upstanding aspects of the proposed AGI and BVS installations to reduce the impact of the visual intrusion within the landscape." As stated in the Outline Landscape and Ecological Management Plan [APP-229], the detail of the planting and materials will be produced by the appointed construction contractor during the detailed design stage. | | |
| 2.1.5 | In respect to archaeology, whilst in general agreement with the assessments undertaken, the Archaeological Planning Advice Service for the Council identify that the outline Written Scheme of Investigation (WSI) for archaeology does not include a maintenance and watching brief to deal with areas that cannot be trenched or where there are suspicions that the trenching might not have fully defined the archaeological potential. Without this inclusion in the outline WSI concern is raised by the Council as to the potential for impacts on currently unidentified archaeology. | Methodology for strip, map and sample (which is broadly the same methodology as watching brief) is included in Section 3.3.1 to 3.3.9 of the Outline Archaeological Written Scheme of Investigation [APP-223]. It is proposed that this could be applied for those areas where trial trenching is not possible or in areas of higher archaeological potential. | As is outlined in the Council's LIR [REP1A-02], whilst the preferred position is for a watching brief to be used for areas where trial trenching is not possible, in view of archaeological potential the Council accepts that the proposed methodology for strip, map and sample outlined in Section 3.3.1 to 3.3.9 of the Outline Archaeological Written Scheme of Investigation (OWSI) [APP-223] can be acceptably applied. | The Applicant acknowledges CWCC's response and has no further comments. |
| Chapter 9 – Biodiversity | | | | |
| 2.1.6 | It is understood that the project is considered as a whole, across both England Wales, however, in considering local impacts within CWAC, in most instances, it has not been possible to assess impacts, as all analysis has been done at the project-wide level. To allow the assessment of local biodiversity | The Applicant has undertaken the EIA with regard to the relevant guidance and case law, which requires assessment of 'the project'. NPS EN-1 at 4.2.1 sets out that what is required is "an assessment of the likely significant effects of the proposed project on the environment" (emphasis added), not sub-divisions thereof. | Although presenting some difficulties in its ability to assess and pinpoint individual impacts, the Council acknowledges the reasoning behind the 'project wide' considerations and confirm that this approach is acceptable. | The Applicant acknowledges CWCC's response and has no further comments. |

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| | impacts in CWAC it is asked that any impact assessments be split out (HyNet identified Sections 1-7). | <p>There is no requirement under that to break the assessment down into local authority areas, and to do so could result in confusing or misleading levels of effects being reported.</p> <p>The NPSs state that 'local' in the Nationally Significant Infrastructure Project (NSIP) context for biodiversity relates to locally designated sites, not council areas. NPS EN-1 Section 5 requires consideration of locally designated sites, which has been undertaken. There is no provision in this requiring assessment at a council area level.</p> <p>The Applicant does not consider it is appropriate to disaggregate parts of the project, and that doing so is contrary to considerable case law that the EIA must consider and report on the impact of 'the project' as a whole.</p> | | |
| 2.1.7 | <p>Significant concern is raised by the Council in respect the supporting biodiversity surveys including their strategy / extent (absence of surveys beyond the order boundary for barn owls and badgers), incomplete / missing survey data, as well as discrepancies in the provided survey data. It is noted that the applicant has advised that further survey data is to be provided within the next couple of months. Considering the nature of the incomplete surveys both in terms of their scope and missing data it is advised that any assessment of the projects likely impacts and effects in respect biodiversity cannot be made at this stage. For this reason, it is asked that suitable provision of time is given to enable the Council to consider any updated survey data and assessments</p> | <p>The Applicant can confirm that, as per discussions and communication with CWAC during a meeting held on 8 December 2022, further surveys for select receptors have taken place during preparation of the DCO Application. The results of further surveys are presented in the following documents submitted on 3 March 2023, subsequently accepted by the Examining Authority (ExA) as part of the Applicant's Section 51 advice response on 14 March 2023:</p> <ul style="list-style-type: none"> • Chapter 9 – Biodiversity [AS-025] • Riparian Mammal Survey Report [AS-039] • Bat Activity Survey Report [AS-027 and 029] | <p>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] and was accepted by the Examining Authority as additional information on the 20 March 2023.</p> <p>Further to the Councils Written Representation (WR) submitted at DL1A [REP1-061] the Council is concerned that there remains incomplete surveys in respect Bats and Barn Owls. With potential for incomplete surveys the Council is concerned that the assessments of importance levels and value/sensitivity of receptors are not based on a complete data set and are therefore not robust.</p> | <p>As discussed during meetings with CWCC (as captured within SoCG [REP2-027]), the Applicant has previously highlighted the need to apply a precautionary approach to the assessment due to the absence of land access to facilitate a number of surveys within the Order Limits. Whilst broadly the majority of land was made available to be able to complete all necessary ecology surveys, in the absence of access to some areas, the Applicant has applied a reasonable worst-case scenario. This applies to both bats and barn owls. The Applicant disagrees that in the absence of such data that the impact assessment presented within the ES is not robust, given the Applicant has applied the precautionary principle to its assessment, as well as the development of embedded, secondary, and tertiary mitigation measures. Given that a reasonable worst-case scenario has been applied, the significance values assigned to pre-construction stage within Table 9.11 Likely Significant Effects during the Construction Stage within Chapter 9 Biodiversity [AS-025], would not change for either barn owl or bats. Similarly, given the embedded mitigation and provision of additional mitigation</p> |

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| | <p>prior to the commencement of the examination.</p> | <ul style="list-style-type: none"> • Bats and Hedgerows Assessments [AS-031 to AS-038] • Outline CEMP [AS-055] <p>The Applicant recognises the need for CWAC to review updated documents and would welcome any queries or discussions in due course. The results of the additional surveys validate the assessment within Chapter 9 - Biodiversity [AS-025] and, despite the additional surveys, the mitigation and mitigation principles as secured by Requirement 5 of the dDCO [AS-016] and prescribed within the Outline CEMP [AS-055] and Requirement 11 and prescribed within the Outline LEMP [APP-229] are sufficient and appropriate to safeguard and mitigate identified receptors.</p> <p>With regards the extent of surveys completed for protected species, the impact assessment presented within Chapter 9 - Biodiversity [AS-025] is appropriate to assess the potential for significant effects upon relevant considered species and receptors within the Order Limits, in the absence of a detailed design stage. The Order Limits have been subject to a number of revisions during the completion of surveys with field data having also been collected beyond the Order Limits as presented within the DCO Application. The primary assessment of potential significant effects has been dedicated to features within the Order Limits, with receptors beyond the Order Limits only potentially subject to indirect impacts. Direct impacts associated with the DCO Proposed</p> | <p>In addition, the Council notes the need for clarifications in respect surveys of other identified receptors.</p> <p>The Applicants Response to the Council's RR [REP-042] states that data has been collected beyond order limits, but it is not clear where this is and seems to refer to the previously larger draft DCO Order Limits at pre-application stage, rather than a measured survey strategy relating to species ranges and standard survey distances considered for these species. The Council requires clarification and/or provision of further information on this matter.</p> <p>The Applicant responds that “<i>primary assessment of potential significant effects has been dedicated to features within the Order Limits, with receptors beyond the Order Limits only potentially subject to indirect impacts</i>”. However, this is confusing “distant” with “indirect”. Impacts on protected species are considered at standard ranges from a development site. Even if these are outside the NIB, they are should not be classed as indirect. The Council needs further clarification and/or further information on this matter.</p> <p>It is stated that “updated surveys will take place at detailed design stage and mitigation is sufficient to safeguard or otherwise mitigate identified receptors within the Order Limits and beyond.” It is not clear how the conclusion that mitigation for receptors beyond the Order Limits has been reached. The Council requests further clarification and/or information to be</p> | <p>measures and principles captured within the REAC [REP2-017] and OCEMP [REP2-021], the residual impact significance (presented within Table 9.13 Summary of Residual Effects [AS-025]) would also not differ.</p> <p>Survey data has been recorded beyond the Order Limits for some receptors, this is presented where available within Chapter 9 Biodiversity [AS-025] and its associated appendices. The information presented within the DCO application describes those receptors that could be subject to direct impacts and effects as a result of the DCO Proposed Development, in the absence of a detailed design. Impacts and effects beyond the Order Limits will be limited to indirect effects (for example, light, noise, vibration). The Applicant has developed a series of mitigation measures and mitigation principles on the premise of ‘assumed presence’ of features beyond the Order Limits (see for example (but not limited to) items D-BD-015, D-BD-021, D-BD-024, D-BD-025, D-BD-028, D-BD-040). The Applicant has provided for the completion of pre-commencement/construction surveys (see items D-BD-005 and D-BD-006 of the OCEMP [REP2-021]) as secured by Requirement 5 of the dDCO [REP1-004] that will ensure mitigation prescriptions can be appropriately applied in response to the detailed design. The Applicant believes this to be a proportionate approach given the predominantly short term, temporary and localised impacts of the DCO Proposed Development.</p> <p>The Applicant notes CWCC's comments regarding permeability to terrestrial animals.</p> <p>With regards CWCC's Ecological Network, given the broadly short term, localised, and temporary impacts of the DCO Proposed Development, particularly recognising the majority of the route encompasses arable and farmland; reinstatement of habitats post-construction is appropriate. Additionally, given the narrow footprint of the Order Limits, opportunities to meaningfully support/add value to CWCC's Ecological Network present a challenge (again taking into consideration the broad habitat types as mentioned above). However, the Applicant has sought to add value where possible, in particular through the inclusion of mitigation areas located across the Order Limits (as detailed within Works Plans [REP2-005]). The locations selected as mitigation areas have considered the land</p> |

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| | | <p>Development will be further restricted within the Order Limits and confined within a prescribed working corridor upon development of a detailed design stage and pipeline route.</p> <p>The DCO Proposed Development will, for its majority, result in short term, temporary and localised impacts associated with pipeline construction, with measures developed to avoid sensitive receptors wherever possible. Mitigation has been developed and presented within the Outline CEMP [AS-055] and the Outline LEMP [APP-229] to update baseline survey results in response to a confirmed detailed design stage as secured by Requirement 5 and 11 of the dDCO [AS-016] (see examples D-BD-005, D-BD-006, D-BD-021 of the Outline CEMP [AS-055]). However, the mitigation prescribed within the DCO Application is sufficient to safeguard or otherwise mitigate identified receptors within the Order Limits and beyond.</p> | <p>provided by the Applicant to resolve this matter.</p> <p>The Applicant acknowledges that the route will be permeable in the majority to terrestrial animals (Badgers). It is considered that this is acceptable with the clarification provided and that this issue can continue to be assessed once more detail design and updated survey reports are available.</p> <p>However, issue remains regarding Bats and barn owls, as well as with specific consideration to habitats and the CWAC Ecological Network.</p> | <p>interests and ownership within the Order Limits. These represent appropriate opportunities within the Order Limits to support and enhance existing green infrastructure within the landscape, and broadly aligns with providing enhancements within the 'core areas' identified within the Ecological Network for Cheshire West and Chester (July 2016). Additionally, the Applicant is engaging with CWCC to explore opportunities for securing Biodiversity Net Gain offsets, which have considered opportunities to benefit the Ecological Network as well as other CWCC policies and initiatives.</p> |
| 2.1.8 | <p>In addition to the above issues relating to surveys, concerns are also raised in respect a number of the undertaken species-specific assessments and which require clarification including detail of the full assessments of tree and hedgerow losses on bats and barn owls, habitat severance in respect badgers and riparian mammals as well the logic for transect and survey locations for breeding / wintering birds and fish.</p> | <p>As stated in Paragraph 3.1.3 of Chapter 3 – Description of the DCO Proposed Development [APP-055], the DCO Application does not define a fixed pipeline design/route and therefore a reasonable worst-case scenario has been applied to the Biodiversity Assessment in Chapter 9 – Biodiversity [AS-025]. In the absence of a finalised detailed design, definitive extents of hedgerow and tree losses, across the Order Limits, cannot be confirmed. Efforts have been made during the design development to avoid features and trees wherever possible, for example, through the use of micro-siting, commitments to avoid certain trees (e.g. veteran trees), and</p> | <p>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 Examining Authority as additional information on the 20 March 2023.</p> <p>As noted above and in the Council's Written Representation and Addendum [REP1-061, REP1A-004], there remains to be incomplete surveys in respect bats and barn owls.</p> <p><i>Riparian Mammals</i></p> <p>The updates provided in ES Chapter 9 [AS-026] state that further surveys have been</p> | <p>In respect of bats and barn owl, please see response above.</p> <p>Riparian Mammals</p> <p>The Applicant refers to its response to Q1.4.16 of the Applicant's Comments on Responses to ExA's First Written Questions [REP2-038]. In summary, the Applicant completed aquatic ecology survey assessments of 70 watercourses. Separately, 61 watercourses were identified for the completion of riparian mammal surveys.</p> <p>Badgers</p> <p>The Applicant acknowledges CWCC's response in regard to permeability and will continue to consider this during the development of the detailed design.</p> <p>In respect of setts, as per item D-BD-020 within Table 9.12 Design and Mitigation Measures and their Delivery Mechanisms in Chapter 9 Biodiversity [AS-025], the three main setts identified during</p> |

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| | | <p>use of trenchless installation techniques (for example where ancient woodland spans the Order Limits at Northop). During the detailed design stage and construction of the DCO Proposed Development, further opportunities for micro-siting and avoidance will be sought to further reduce impacts arising from construction as detailed within mitigation measures D-BD-009 to D-BD-014, of the Outline CEMP [AS-055] and Outline LEMP [APP-229] and to be included in the detailed CEMP as secured by Requirement 5 and 11 of the dDCO [AS-016]. Current tree losses have been assessed on a reasonable worst-case scenario based on those 'at risk' as per Appendix 9.11 - Arboricultural Impact Assessment – Part 1 [APP-115].</p> <p>A series of commitments to retain and avoid features have been made during the course of the design development and will be further refined at the detailed design stage. However, trees and features within the Order Limits considered to be at risk of direct impacts or removal have been detailed within Table 9.11 Likely Significant Effects during the construction stage within Chapter 9 - Biodiversity [AS-025].</p> <p>Construction of the DCO Proposed Development will be short term, temporary and localised across the landscape and will require the excavation of a trench</p> <p>within a prescribed construction corridor (see D-BD-053 of the Outline CEMP [AS-055]) and Outline LEMP [APP-229], as secured by Requirement 5 and 11 of the dDCO</p> | <p>carried out and 61 watercourses have been surveyed, however within the Applicants response a number of 70 watercourses is stated. The Council require clarification on this matter.</p> <p><i>Badgers</i></p> <p>The Applicant's response states that the route will be permeable in the majority to terrestrial animals. It is considered that this is acceptable with the clarification provided and that this issue can continue to be assessed once more detail design and updated survey reports are available.</p> <p>The Council requires clarification that all areas have been surveyed 30m from the works as well as the identified sett number discrepancies.</p> <p><i>Breeding/Wintering Birds</i></p> <p>The Applicant's response acknowledges that bird surveys were carried out across a variety of habitat types and in relation to designated sites. However, this approach may still miss unidentified Functionally linked land, or important areas for breeding birds, not related to the designated sites. The Council requires that this be clarified before the residual effects can be accepted.</p> <p><i>Fish</i></p> <p>The Council's Written Representation addendum [REP1A-004] highlights that that the logic for survey locations and types is not clear. The Council request that this be clarified by the Applicant.</p> <p>The Applicant's response to the Council's RR [REP-042] states that there was only one watercourse safe for accessing for</p> | <p>surveys are envisaged to be retained and safeguarded during construction through implementation of a 30m buffer from each sett entrance. As such, the reference to setts likely to be lost during construction presented within Table 9.11 Likely Significant Effects during the Construction Stage [AS-025] is accurate. The figures associated within Appendix 9.5 Badger Survey Report [CR1-071] present all baseline survey, regardless of whether they are likely to be lost or safeguarded during construction.</p> <p>Survey data has been recorded beyond the Order Limits for some receptors, including badger. The information presented within the 2022 ES details badger survey results and those features that could be subject to direct impacts and effects as a result of the DCO Proposed Development, in the absence of a detailed design. Impacts and effects beyond the Order Limits will be limited to indirect effects (for example, light, noise, vibration). The Applicant has developed a series of mitigation measures and principles on the premise of 'assumed presence' of features beyond the Order Limits (see for example (but not limited to) items D-BD-015, D-BD-021, D-BD-024, D-BD-025, D-BD-028, D-BD-040 within the OCEMP [REP2-021]). In addition, the Applicant has provisioned for the completion of pre-commencement/construction surveys (see items D-BD-005 and D-BD-006 of the OCEMP [REP2-021] as secured by Requirement 5 of the dDCO [REP1-004]) that will ensure that the mitigation measures and mitigation principles presented within Chapter 9 Biodiversity [AS-025] (and secured in the OCEMP) can be appropriately applied in response to the detailed design.</p> <p>Breeding/Wintering Birds</p> <p>The transects surveyed, as per the Applicant's response to question 2.12.8 within [REP1-042], took into account the presence and proximity of statutory designated sites. Transect routes were developed to encompass land beyond these site boundaries including viewshed opportunities over land beyond the walked transect routes to ensure any functionally linked habitat was assessed and surveyed as part of the survey approach. In this manner, birds recorded are representative of those using both designated sites as well as functionally linked land across and beyond the Order Limits providing representative examples of bird use across the landscape. This approach coupled with the use of</p> |

| Ref | The Councils Relevant Representation Comment [RR-012] | The Applicant's Response at DL1 [REP-042] | CWACC Response | Applicant's Comments |
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| | | <p>[AS-016]. Measures to maintain the ability of wildlife to move through the construction corridor have been included within the Outline CEMP [AS-055] (see examples D-BD-022 and D-BD-031 of the Outline CEMP [AS-055]), with measures additionally detailed to prevent entrapment of animals during construction (see D-BD-023 of the Outline CEMP [AS-055]) allowing movement either side of the trench. Where watercourses are to be crossed using trenched techniques these will be restricted to as minimal a footprint as is practicable for construction (see D-BD-018 of the Outline CEMP [AS-055]) as secured by Requirement 5 of the dDCO [AS-016] and completed as swiftly as possible to allow reinstatement. Additionally, watercourse crossings for access purposes only will be minimised as far as practicable during construction (see D-BD-064 of the Outline CEMP [AS-055]) as secured by Requirement 5 of the dDCO [AS-016] to reduce unnecessary temporary severance effects.</p> <p>As described within Section 2.2 of Appendix 9.8 - Bird Survey Report [APP-112], transect and survey locations for breeding and wintering birds were designed to provide survey results and coverage across a variety of habitat types, allowing representative bird communities to be sampled. Certain transect locations were chosen on the basis of proximity to or locations within statutory designated sites, recognising a need to understand potential impacts upon qualifying features of such sites (for example, creation of Transect 2 along the River Dee). Transects were developed utilising desk study data</p> | <p>electric fish surveys out of the 70 watercourses surveyed, and some watercourse were subject to DNA survey. It is not clear what percentage of the total watercourses were surveyed or were fully surveyed. An updated survey progress table, was presented in a previous meeting between the Council and the Applicant, showing the percentage and numbers of watercourses surveyed and with which type of survey. The Council ask that this be provided to them so that it can clarify the information shared on screen, as well as a timetable for further, or updated surveys.</p> | <p>transects encompassing habitats representative across the Order Limits have conformed to providing a proportionate approach to survey effort when considering the broadly short term, localised, and temporary impacts of the DCO Proposed Development.</p> <p>Fish</p> <p>The Applicant has completed aquatic habitat scoping assessments along as much of the watercourses that was physically accessible present within the Order Limits. As per Section 2.2 Habitat Scoping Assessments of Appendix 9.9 Aquatic Ecology (Watercourses) [CR1-080] and illustrated within Figure 9.9.1, aquatic habitat scoping assessments were conducted on watercourses across the Order Limits to identify the need for detailed aquatic surveys on the basis of habitats present and the potential for protected and/or notable species receptors. Figure 9.9.1 details the locations all watercourses subject to Habitat Scoping Assessment and subsequently where each further survey type was completed. As detailed within paragraph 2.7.1 of Appendix 9.9 Aquatic Ecology (Watercourses) [CR1-080], Canal Ditch was not subject to habitat scoping assessment due to a lack of access, however, this was addressed through an assessment of aerial imagery. The need for further surveys (e.g. eDNA, electric fishing, macroinvertebrates) was assessed in light of the habitat scoping results, per Section 2.2 Habitat Scoping Assessments.</p> <p>The Applicant proposes to engage CWCC through the SoCG in respect of survey coverage and future programme, with a view to capturing engagement within an updated version of Statement of Common Ground Cheshire West and Chester Council [REP2-027].</p> |

| Ref | The Councils Relevant Representation Comment [RR-012] | The Applicant's Response at DL1 [REP-042] | CWACC Response | Applicant's Comments |
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| | | <p>review in combination with local ornithological knowledge.</p> <p>As detailed in Section 9.6 of Chapter 9 - Biodiversity [AS-025] and Section 2.2 to 2.6 of Appendix 9.9 - Aquatic Ecology (Watercourses) Survey Report [APP-113], aquatic habitat scoping assessments were conducted along the extent of each watercourse within the Order Limits. A total of 70 watercourses were therefore assessed during these aquatic habitat scoping assessments. Table 6 within Appendix 9.9 - Aquatic Ecology (Watercourses) Survey Report [APP-113], details the results of the aquatic habitat scoping assessments and provides reasoning for the scoping out of further surveys, where applicable.</p> <p>Where further fish surveys were recommended, the accessibility of the watercourse was assessed for suitability to carry out electric fishing surveys. As stated in Section 2.2 of Appendix 9.9 - Aquatic Ecology (Watercourses) Survey Report [APP-113], only one watercourse within the Order Limits was deemed to be safe to access for such surveys. Where access to a watercourse deemed to have suitable fish habitat was constrained, an eDNA sample was instead taken to gain an understanding of the fish population within the watercourse (Section 2.7 of Appendix 9.9 - Aquatic Ecology (Watercourses) Survey Report [APP-113]). eDNA surveys collected representative samples from each watercourse by sub-sampling the different habitat and flow types present (Section 2.3 of</p> | | |

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| | | <p>Appendix 9.9 - Aquatic Ecology (Watercourses) Survey Report [APP-113]).</p> <p>Seine netting is the appropriate survey methodology to assess fish populations within larger watercourses and therefore this methodology was employed to survey the River Dee.</p> <p>The survey location was determined by the indicative pipeline location at the time of survey, with surveys carried out as close to the pipeline crossing locations as reasonably possible, given health, safety, and access constraints. Where suitable fish habitat was not observed at the indicative pipeline crossing location, eDNA surveys were conducted either upstream or downstream of the indicative crossing location where appropriate habitat was observed within the Order Limits, and with regard to health, safety, and access constraints.</p> | | |
| 2.1.9 | <p>It is noted that, due to technical reasons, replacement trees cannot be planted within 12m either side of the pipeline. Clarification on this matter is required in respect what this means in terms of tree and hedgerow replacements and to the mitigation, compensation and enhancement for Local Wildlife Sites (LWS) and overall habitat connectivity, including the provision of any required long-term management, which appears to be absent from any proposed mitigation.</p> | <p>Where possible, the Applicant will seek to avoid tree and hedgerow loss as much as reasonably practicably during the detailed design stage of the DCO Proposed Development. Where sections of hedgerow are removed to facilitate construction, these will be reinstated post-construction through the planting of a combination of whips and shrubs as captured within mitigation item D-BD-032 (Outline CEMP [AS-055]), also included in the Outline LEMP [APP-229] as secured by Requirement 5 and 11 of the dDCO [AS-016] and will be reinstated across the top of the pipeline reforming the</p> | <p>The Applicant's response to the RR [REP-042] states that all hedgerows lost will be replaced with whips and shrubs across the top of the pipeline to reinstate the hedgerow lines in the same location. Further, tree planting will be as close as possible to loss and on a 3 for 1 basis. 13 areas for mitigation have been selected on the basis of enhancing existing woodland areas, enhancing green infrastructure corridors and providing new connectivity across the landscape, within the confines of the Order Limits. This is acceptable and should be</p> | <p>The 3:1 ratio of planting of trees for those lost applies to the proposed mitigation areas for tree planting. Where possible, individual tree planting (e.g. along hedgerows) will be explored where trees are required to be removed to facilitate construction, with trees on a 1:1 ratio replanted where feasible to do so within an impacted hedgerow. The mitigation areas across the Order Limits have been devised to accommodate a 3:1 replacement ratio for all trees lost as part of the worst-case scenario assessment. During development of the detailed design, the Applicant will continue to seek to avoid impacts or felling of trees wherever possible as per its embedded mitigation design (see items D-BD-009, D-BD-010, D-BD-013 and D-BD-055, as secured by the OCEMP [REP2-021] as secured by Requirement 5 of the dDCO [REP1-004]).</p> |

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| | | <p>contiguous hedgerow and associated connectivity.</p> <p>As per Section 9.10 of Chapter 9 - Biodiversity [AS-025], whilst minimised or avoided wherever possible, where trees are required to be removed to facilitate construction, these will be replanted in as close a proximity as possible, where it is appropriate to do so (e.g. no planting of trees within the middle of agricultural fields). Tree planting is proposed on a 3:1 (planting to loss) ratio. Thirteen areas have been identified for mitigation and compensation planting to offset the losses of trees identified 'at risk', as assessed within Appendix 9.11 - Arboricultural Impact Assessment – Part 1 [APP-115]. The locations of proposed mitigation areas have been selected on the basis of enhancing existing woodland areas, enhancing green infrastructure corridors and providing new connectivity across the landscape, within the confines of the Order Limits. Mitigation item D-BD-063 (Outline CEMP [AS-055]) as secured by Requirement 5 of the dDCO [AS-016] defines that management of newly planted trees and woodland would follow management across a 10-year period during establishment. However, exact prescriptions will be detailed within the detailed LEMP to be developed at the detailed design stage and secured by Requirement 11 of the dDCO [AS-016]. It is currently assumed that no trees will be felled at Saughall Bank LWS or the banks of</p> | <p>secured by final planting plans. It is noted that tree planting will be monitored for 10 years; it would be in line with other commitments by the Applicant to increase this to the standard 30 year requirement.</p> <p>The Applicant also states that Local Wildlife Site (LWS) habitats will be reinstated, apart from at Ince AGI, where there is permanent loss and 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?</p> <p>The Applicant states that LWS habitats will be reinstated, apart from at Ince AGI, where there is permanent loss and 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. It should be secured that habitats reach a level of either priority habitat status or enhanced condition and the long-term management plan put in place should include this. The 30-year requirement committed to for BNG should also apply to LWS. The Council ask that confirmation of this is required.</p> <p>In addition to the identified impacts in Table 9.11 of ES Chapter 9 [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.</p> | <p>Final planting plans will be developed at the detailed design stage once full impacts to trees are known.</p> <p>The Ince AGI location will utilise land that is of lower ecological value, comprising improved grassland that is subject to grazing and agricultural pressure. A landscape plan has been developed alongside the Ince AGI outline design, which includes the creation of an ephemeral detention pond, species rich grassland, hedgerow and shrub planting, whilst additionally ensuring the majority of the field is returned to its former use (grazing). Whilst the landscape plan will be refined further during the detailed design stage, the habitats provisioned within the landscape plan mitigate for and better the original habitat being lost (improved grassland), additionally providing habitat mosaic benefits within the LWS boundary. Habitats will be managed in line with the detailed LEMP prescriptions for the establishment of habitats to fulfil their function (i.e. 5 years and 10 years) and then returned to relevant landowners, as secured through Requirement 11 of the dDCO [REP1-004]. Paragraph 6.1.2 of the OLEMP [APP-229] additionally states that a review will be undertaken towards the end of the initial maintenance period whereupon management prescription will be agreed for longer term management, as appropriate. The Applicant refers CWCC to its response to Q1.4.2 of Applicant's Comments on Responses to ExA's First Written Questions [REP2-038]. To summarise, mitigation planting and BNG are separate and distinct items with different requirements. Habitat planting for mitigation will be maintained for the establishment period to ensure the function is met then land management returned to the landowner.</p> <p>With regards to the exclusion zone of tree planting above the buried pipeline, provision has been included within the mitigation prescriptions to ensure connectivity of habitats through planting of hedgerow and scrub habitat, see item D-BD-062 of OCEMP [REP2-021] as secured by Requirement 5 of the dDCO [REP1-004]. This may provide additional benefits through creation of habitat mosaics but will ensure habitat linkages are maintained with retained habitats.</p> |

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| | | <p>the Shropshire Union Canal crossing, with trenchless installation techniques to be employed.</p> <p>With regards LWSs, the DCO Proposed Development will broadly result in short term, temporary and localised impacts during construction. Habitats affected will be reinstated post construction and subject to appropriate management to be defined at the detailed design stage within the LEMP (secured by Requirement 11 of the dDCO [AS-016]) as captured within item D-BD-062 (Outline CEMP [AS-055]) as secured by Requirement 5 of the dDCO [AS-016]. Permanent impacts associated with the construction of the Ince AGI, located within the boundary of the Frodsham and Ince Marshes LWS, will result in the loss of some habitat. Whilst options to mitigate this loss will be explored during the detailed design stage, the field where the AGI will be created is subject to grazing and agricultural pressures and as such may be unsuitable for mitigation directly.</p> <p>All required long term management of created or reinstated habitats will be captured within the detailed LEMP to be produced at the detailed design stage, secured by Requirement 11 of the dDCO [AS-016].</p> | | |
| 2.1.10 | <p>A Biodiversity Net Gain (BNG) assessment has been undertaken, but only for priority habitats, rather than all habitats as a standard BNG calculation would. It is noted that BNG is not currently a mandatory requirement for NSIPs but can be used as a general tool to demonstrate if a project is achieving adequate</p> | <p>The Applicant held discussions with CWAC (in tandem with FCC) regarding the approach to the Biodiversity Net Gain assessment on 21 July 2022 (see D.7.2.2 - SoCG with CWAC) with specific reference to the approach of assessing Priority Habitats solely. As per Paragraph 4.1.7 of the Biodiversity Net Gain – Part 1 [APP-231], the</p> | <p>The Council can confirm that meetings have taken place in respect BNG offsetting.</p> | <p>The Applicant acknowledges CWCC's response and has no further comments.</p> <p>Please refer to the draft Biodiversity Net Gain Strategy Update [REP2-042], updated and submitted at Deadline 3.</p> |

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| | <p>habitat mitigation and compensation. The BNG undertaken shows the project is unable to provide net gain within the order limits and that off-site is only potential. It is asked that if BNG is to be applied to this project, the above be clarified including how off-site mitigation is to be secured.</p> | <p>Applicant can confirm that they are exploring opportunities for the creation of off-site compensation to achieve BNG for priority habitats and will provide details of secured offset sites within a revised Biodiversity Net Gain Report. As BNG is not a mandatory requirement for NSIPs, land cannot be specifically included for the sole purpose of BNG offsetting within the Order Limits.</p> <p>The Applicant is currently in discussions with CWAC to secure BNG provisions, linked to the Mersey Forest scheme. MS Teams meetings have been held on 24 January 2023 and on 17 March 2023 and CWAC are currently in detailed discussion regarding the technical requirements of the project and the commercial terms.</p> | | |
| Chapter 16 – Population and Human Health | | | | |
| 2.1.11 | <p>A number of footpaths in the borough including those affected by the proposed works to the south of the M53 (Wervin and Wimbolds Trafford Works nos. 13 -15) are prone to drainage and waterlogging issues. Concerns are raised where works have the potential to affect or exacerbate local drainage. It is asked that due consideration of both direct and indirect impacts and on public rights of way from drainage is provided and be clearly addressed in the drainage management schemes and mitigated during construction works</p> | <p>The Applicant has considered the impacts of the increase in surface water flood risk in the Outline Surface Water Drainage Strategy [APP 241 to 245] and this has ensured compliance with all local and national requirements for sustainable water drainage design to prevent any increase in flood risk elsewhere along the proposed pipeline in England.</p> <p>The Applicant has considered flood risk in a Flood Risk Assessment (FRA) [APP-167 to APP-168] in consultation with the Environment Agency, Dwr</p> | <p>The Council's LIR [REP1A-02] highlights the potential for impacts in respect direct and indirect drainage in respect public rights of way.</p> <p>Mitigation / consideration of this potential impact on wider drainage on sensitive public rights of way during construction, operation and decommissioning should be included the relevant management plans (CEMP, OMEMP and DEMP).</p> | <p>The Applicant refers CWCC to the Applicants Response to Local Impact Reports [REP2-040].</p> <p>Land disturbed for construction of the DCO Proposed Development, that isn't then required during operation will be reinstated and returned to original land uses following completion of construction. Item D-LV-002 of the OCEMP [REP2-012] will be updated at Deadline 4 to specifically include consideration of effects to existing land drainage and reinstatement of any existing drainage features.</p> <p>Surface water runoff from the new AGIs and BVSs will be managed and controlled via a flow control and not increase flood risk to other adjacent land or properties.</p> |

| Ref | The Councils Relevant Representation Comment [RR-012] | The Applicant's Response at DL1 [REP-042] | CWACC Response | Applicant's Comments |
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| | (CEMP) as well as the restoration of land. | Cymru and United Utilities Cheshire West and Chester Council's Lead Local Flood Authority. In addition to the FRA, the Applicant has also produced an outline Soil Management Plan [APP-227] as part of the CEMP required by Requirement 5 of the dDCO [AS-016], which will be used as part of REAC commitment [AS-053, D-LS-007] to ensure land is restored. | Clarification is requested if and where such drainage matters are addressed in the above management plans. | As the buried proposed pipeline will not increase impermeable areas, it will therefore not increase surface water flood risk elsewhere. |
| Chapter 17 – Traffic and Transport | | | | |
| 2.1.12 | Whilst some concerns are raised in relation of the suitability and safety of the use of smaller lanes to access construction compounds no overall objection is made from the Council's Highways. | The Applicant has produced an OCTMP [APP-224] which has reviewed the construction traffic routes serving the DCO Proposed Development and includes measures to ensure all routes are suitable for construction traffic without compromising amenity, access and safety. The Applicant notes that CWAC's Highways department does not have any objection to the DCO Proposed Development. | The Council's LIR submitted at deadline 1A [REP1A-02] outlines the impact on traffic and transport. The Council note that there is positive ongoing engagement with the Applicant with regards to the highways impact of the DCO proposed Development. The Council will make representations on the draft DCO and accompanying documentation throughout the Examination and will be liaising with the Applicant to negotiate the Protective Provisions at Part 7 to Schedule 10 of the draft DCO. | The Applicant acknowledges CWCC's response and has no further comments. |
| Chapter 19 – Cumulative Impacts | | | | |
| 2.1.13 | Combined effects should be fully considered with HS2, especially in terms of impacts on MSAs, waste generation and impacts to local and regional transport. Combined effects with other NSIPs should include the Caden Hydrogen Pipe project including its Pipe location and HAGIs which would have potential for physical overlap especially near to the HPP plan and offshoot to the Protos Site. | As per paragraph 19.5.1 of Chapter 19 Combined and Cumulative Effects of the 2022 ES [APP-071] and Table 1 of Appendix 19.1 of the 2022 ES [APP-172], the Study Area for, the Cumulative Inter-Project Effects Assessment has been determined via the identification of Zones of Influence (ZOI) for likely significant effects. The ZOI for local and regional transport used for the assessment is taken from Figure 17.1 of the 2022 ES [APP-211] | The Council acknowledges the reasoning behind the ZOI threshold and confirm that this approach is reasonable. | The Applicant acknowledges CWCC's response and has no further comments. |

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| | | <p>and extends as far east as Helsby. For waste generation (and Mineral Safeguarding Areas (MSAs)) the ZOI was reduced to 10km for practicable and proportionate assessment purposes. As a result of the extent of these ZOIs, HS2 projects have not been scoped into the long-list (Table 2 of [APP-172]) or short-list (Table 3 of [APP-172]) of the Inter-Project Effects Assessment as the HS2 Phase 2b: Crewe to Manchester (the nearest HS2 works to the DCO Proposed Development) are approximately 20km from the DCO Proposed Development.</p> <p>In addition, the residual effects of Chapter 14 Materials and Waste of the 2022 ES [APP-066] concluded Minor Adverse residual effects in relation to material resource consumption and landfill capacity. As no residual effects in relation to MSAs are anticipated, no inter-project effect would occur. Regarding waste generation, mitigation measures detailed in Chapter 14 [APP-066] such as Waste Management Plans and conformance to the Waste Hierarchy are legal requirements as secured by Requirement 5(2)(h) of the dDCO [AS-016]. It is assumed that HS2 would comply with these requirements and would include equivalent mitigation measures, minimising their effects on landfill capacity. As a result, a measurable in-combination effects between the DCO Proposed Development and HS2 are not anticipated.</p> <p>As per Table 2, Table 3 and Table 4 of Appendix 19.1 of the 2022 ES [APP-172], the Cadent Hydrogen Pipeline project (PINS reference: EN060006) is included in the Inter-Project Effects</p> | | |

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| | | <p>Assessment (with development ID 1g). The assessment considered potential inter-project effects during both the construction and operation stages and was informed primarily by development 1g's EIA Scoping Report submitted to the Inspectorate on 26 January 2022. The construction stages assessed Biodiversity, Land and Soils, Landscape and Visual, Materials and Waste, Noise and Vibration, Population and Human Health, Traffic and Transport and Water Resources and Flood Risk. The conclusions of the construction stage assessment were limited to Minor Adverse inter-project effects on all assessed topics.</p> <p>The operational stage assessed Cultural Heritage, Landscape and Visual and Water Resources and Flood Risk. The conclusions of the operational stage assessment were limited to Minor Adverse inter-project effects in relation to Water Resources and Flood Risk, with other effects being determined to be Negligible. This assessment considers that development 1g is adjacent and overlapping the Order Limits for the DCO Proposed Development. The Applicant acknowledges that Table 2 of Appendix 19.1 [APP-172] contains an error, the distance from the DCO Proposed Development has been incorrectly marked as '<0.1km'. This is an erratum and will be marked 'Adjacent', as assessed.</p> <p>As set out in advice note 17, the Applicant can only carry out assessment up to a reasonable cut-off date and with such information as is available. The Cadent pipeline has not yet applied for consent, no ES is available and the cumulative</p> | | |

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| | | assessment has accordingly been undertaken having regard to the information available which is preliminary. This accords with the guidance and the EIA case law. | | |
| The Draft Development Consent Order | | | | |
| 2.1.14 | On review of the draft Development Consent Order (DCO) the Council raises several concerns in respect the proposed wording and appropriateness of its provisions including the principal powers, the content and wording of the suggested requirements and the unrealistic proposed process timescales relating to applications made under the requirements. Discussions with the applicant in respect the draft DCO are ongoing and whilst it is expected that much the raised issues can be appropriately addressed there are several which without resolve are potentially matters for significant concern. | The Applicant is in regular communication with the local authority on the content and wording of the dDCO [AS-016]. | Please refer to the Council's WR [REP1-061] The Council welcomes regular meetings but would prefer area specific meetings with clear agendas and outcomes. | The Applicant acknowledges CWCC's response and notes their request in regard to future meetings. |
| 2.1.15 | These include but are not limited to the following: <ul style="list-style-type: none"> • Clarification in respect the defence to proceedings and arbitration in respect of statutory nuisance for noise and its interplay with existing statute (DCO Part 2 (Principal Powers) Para. 9). • The Construction Environmental management Plan (CEMP) and Landscape and Ecological Management Plan (LEMP) provisions under requirements 5 and 11 are considered too vague. More clarification of the inclusions for | The Applicant is in regular communication with the local authority on the content and wording of the dDCO [AS-016]. | Please refer to the Council's WR [REP1-061] | The Applicant acknowledges CWCC's response and has no further comments. |

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| | <p>each are needed, and in particular direct referenced for mineral safeguarding, the protection and replacement planting of all significant trees and hedgerows (not just ancient woodland), heritage mitigation as well as clear biodiversity considerations including survey reporting and monitoring strategies.</p> <ul style="list-style-type: none"> • Further to the above a definition of "existing features" in requirement 11 (d) is needed. • The proposed exceptions and definitions in relation to the proposed construction working hours under Requirement 12 (1-5) are not considered acceptable. • There is the need for detailed restoration plans including aftercare under requirements 15 and 16. • Clarification of timescales for notifications and decisions under the proposed requirements and discharge of requirements – 42 days? • The proposed 5/21-day notification periods for the request for further information under Schedule 2 Part 2 paras 21 (2-4) is not considered acceptable. | | | |

Table 2.2 – Applicant's Comments on Submissions Received at Deadline 2 from National Highways [REP2-049]

| Ref | National Highways Response | Applicant's Comments |
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| | New Roads and Street Works Act 1991 | |
| 2.2.1 | It is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public money and resources that the Authorised Development proceeds in consultation and agreement with National Highways and with the appropriate protections for National Highways in place. | The Draft Statement of Common Ground (SoCG) with National Highways [REP2-029] submitted at Deadline 2 outlines the Applicant's engagement undertaken to date with National Highways. The Applicant will continue to engage with National Highways. |
| 2.2.2. | As set out in the Deadline 1 response, National Highways is of the view that the installations under the highway could be achieved via the New Roads and Street Works Act 1991 (NRSWA) therefore negating the need for compulsory acquisition. NRSWA specifically refers to tunnelling/boring under the highway (section 101). National Highways contends that parliament intended for street works to be undertaken pursuant to this Act. Its provisions are comprehensive and well established and seek to protect both the undertaker and the street works authority. It is also supported by a code of practice. | <p>Please see rows 2.7.9 to 2.7.12 of the Applicant's Responses to Written Representations [REP2-041] submitted at Deadline 2.</p> <p>The Applicant notes that National Highways does not consider NRSWA to form a comprehensive code for street works when it is promoting its own DCOs. Rather, it routinely seeks disapplication of parts of NRSWA in the same terms as the Applicant. The Applicant refers to, amongst many recent examples, the A47 Wansford to Sutton Development Consent Order 2023, article 11, A417 Missing Link Development Consent Order 2022 article 12, and A428 Black Cat to Caxton Gibbet Development Consent Order 2022 article 11. The Applicant does not accept National Highway's position on this point which is inconsistent with its own actions.</p> <p>The Applicant notes that it is required to seek approval for the works from National Highways as highway authority under section 61 of NRSWA and it is not seeking to remove any control of the highway authority or undermine the protection of the street. The Compulsory Acquisition (CA) proposals relate to land rights, not the control of the works in so far as they may fall within the definition of street works. This submission conflates these two points.</p> <p>As set out in section 48 of NRSWA, a 'street' in Part 3 of that Act (Street Works in England and Wales) includes any highway or road and for the current purposes it is therefore not necessary to differentiate between a street, highway and road and the terms are used as they are in the sources.</p> <p>A highway is a right of the public over land. It does not carry with it any right of the public to any further interference in the subsoil of the land over which it runs. This principle was established as long ago as 1757 when Lord Mansfield held that <i>"the King has nothing but the passage for himself and all his people, but the freehold and all profits belong to the owner of the soil"</i> (Goodtitle Chester v Alker & Eames 1757). The High Court also held in 1871 that <i>"The owner who dedicates to public use as a highway a portion of his land, parts with no other right than a right of passage to the public over the land so dedicated, and may exercise all other rights of ownership, not inconsistent therewith"</i> (St Mary, Newington, Vestry v Jacobs 1871 LR QB 53). The rights of subsoil owners to minerals are also unaffected by creation of highway (Coverdale v Charlton 1899 1 Ch 474).</p> <p>There is no requirement in law to specify a depth for a highway right. The precise depth of a highway will depend on the ground conditions at each location. Case law provides that the</p> |

| Ref | National Highways Response | Applicant's Comments |
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| | | <p>public highway status goes as deep as is necessary to ensure the protection and support of the highway (Tunbridge Wells Corporation v Baird (1896) AC 434). This was supported in the recent Supreme Court case of Southwark LBC v TfL ([2018] UKSC 63), which described the “<i>zone of ordinary use</i>” as being the road surface, airspace and subsoil required for the operation, maintenance and repair of the highway. The depth of a highway is therefore a matter of fact and is location specific (Schweder v Worthing Gas Light and Coke Company (no2) (1913) 1 Ch 118).</p> <p>NRSWA refers to work ‘in’ a street, the street status does not extend infinitely down however, as set out above that status has a depth limit in law. Street status does not allow the authority to interfere with the rights of owners deeper than the street status; it is contrary to the considerable body of well-established law cited above to state that just because works are under a street, NRSWA can authorise them even where they are outside the street status. To do so would be an infringement on the rights of the owner of the subsoil and contrary to ‘zone of ordinary use’ limitation set out by the Supreme Court in 2018. The Applicant agrees that in most cases, and especially where apparatus is installed by breaking open the street and trenching, the legal ambiguity around the depth of the highway is not particularly relevant as works will be in the zone of influence. The Applicant does not agree that the same is necessarily true here. Consequently, the Applicant considers it to be reasonable to assume that installation may be below the depth of the street and to seek to obtain appropriate subsoil property rights for the installation and retention of the pipeline.</p> |
| 2.2.3 | <p>s105 NRSWA 1991 defines “in” (the highway) as “in a context referring to works, apparatus or other property in a street or other place includes a reference to works, apparatus or other property under, over, across, along or upon it...” The element of the Scheme which is ‘under’ the SRN would therefore fall within NRSWA and can accordingly be consented in this way without the need for compulsory acquisition of the freehold of the SRN plots.</p> | <p>The Applicant reiterates it is seeking to agree a land agreement with National Highways as landowner, not the highway authority - any highway authority approval needed will be controlled under s61 consent. The Applicant notes that ‘highway’ status is defined by common law and there is no depth attributed to it in statute. The Applicant submits that there is clear judicial authority that highway status only extends so far as is necessary to support the highway. If any person other than National Highways owned the subsoil in this location, the Applicant would be progressing an agreement with them as well as with National Highways as highway authority.</p> |
| 2.2.4 | <p>In the case of Thames Water Utilities Ltd v London Underground Ltd it was held that major transport works by London Underground as part of the Jubilee Line works were street works. The case also made clear that NRSWA was to operate as a complete code – “The aim of the 1991 Act was to introduce for the first time a complete code for street works...”. (Douglas Brown J). This further emphasises that Parliament did not intend property law to regulate a street works situation. The Applicant has not provided any justification as to why Parliament’s intention should be discarded.</p> | <p>This cited case concerned that status of <u>compensation provisions</u> in the London Underground Act 1992 and the London Underground (Jubilee) Act 1993 which were argued to be inconsistent with the compensation provisions in NRSWA. It found that, <u>so far as compensation for "street works" were concerned</u>, s.101 ensured that the 1991 Act and the Street Works (Sharing of Costs of Works) Regulations 1992 made under it provided a comprehensive code. The case is entirely inapplicable to the current disagreement between the Applicant and National Highways which in essence is that the pipeline installation is not ‘street works’.</p> |
| 2.2.5 | <p>As NRSWA facilitates the proposed Scheme without the need for compulsory acquisition, National Highways contends that the Applicant has not made out the case for compulsory acquisition concerning these works.</p> | <p>Please see Applicant’s response above in rows 2.2.2 and 2.2.3.</p> |

| Ref | National Highways Response | Applicant's Comments |
|-------|---|---|
| | Compulsory Acquisition | |
| 2.2.6 | <p>National Highways has already set out its position with regard to compulsory acquisition and maintains that the case has not been made out by the Applicant. In respect of those plots which are within the SRN in particular, National Highways objects on the grounds that the works could and should be carried out under NRSWA. National Highways submits that there is no compelling case in the public interest for the compulsory acquisition of the Plots in which National Highways has an interest and that the Secretary of State cannot conclude that the permanent acquisition of land forming the SRN and the creation of new rights and restrictions over all of the Plots can be created without serious detriment to National Highways' undertaking.</p> | <p>Please see row 2.7.8, Table 2.7 of the Applicant's Responses to Written Representations [REP2-041] submitted at Deadline 2.</p> <p>The Applicant continues to seek to agree a voluntary agreement with National Highways. The Applicant submits that the installation and operation of pipeline in the subsoil under a highway by trenchless techniques and subject to approval of the technical detail of that installation by the highway authority in that capacity (and as landowner should National Highways wish) is not detrimental and cannot possibly rise to the high bar of being serious detriment. Previous consideration of serious detriment has made clear that just acquiring rights or land is not in and of itself serious detriment (see for example the consideration of the Secretary of State in the Lake Lothing DCO decision).</p> <p>National Highways has not provided any evidence whatsoever as how or why serious detriment would arise in this case where there is no interference with the highway use, no powers are sought to possess or control the operational highway, no works are proposed to highway itself and the NRWSA consent required under s61 is not disapplied. National Highways is again conflating its role as highway authority and its status as owner of the subsoil; just because subsoil is acquired does not in and of itself cause detriment to a highway. This is clearly demonstrated by the very common position where the adjoining property owns subsoil under a highway to the centreline which changes ownership each time that property is transferred.</p> |
| 2.2.7 | <p>National Highways is making enquiries with the Applicant as to the full extent of all 35 Plots in which National Highways has an interest and is clarifying exactly what the Applicant is seeking to acquire and the true impact it has on National Highways with a view to reaching agreement wherever possible.</p> | <p>The draft SoCG with National Highways [REP2-029] submitted at Deadline 2 outlines the Applicant's engagement undertaken to date with National Highways. The Applicant will continue to engage with National Highways on this and other matters.</p> <p>The list of plots in which National Highways has an interest and Applicant's reasons for acquiring rights or possession on these plots is outlined in the Statement of Reasons [REP2-008].</p> |
| | Response to Applicant's Submissions | |
| 2.2.8 | <p>National Highways does not agree with the Applicant's opinion that the Scheme is beyond the scope of the highway. Any underground works create a risk to the ground above and given it is a busy motorway, it is of public importance to ensure that adequate protections are in place. National Highways is under a duty to preserve its statutory duties and protect its own legal position and must preserve and maintain the integrity of the SRN and the Scheme could affect the integrity of the highway irrespective of whether or not the powers sought are in respect of the highway itself or not. In any case, National Highways contends that the extent of the highway isn't the issue, it is the potential for the Applicant to affect the highway and interfere with the highway use. Notwithstanding this, the position with regard to NRSWA is separate to that in that section 105 refers to 'in' and 'under' [the highway]. National Highways contends that it is difficult</p> | <p>The Applicant can confirm that all works in the vicinity of National Highways assets will be undertaken in accordance with the DRMB Standard CD622, as agreed in the draft SoCG with National Highways [REP2-029].</p> |

| Ref | National Highways Response | Applicant's Comments |
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| | to know at this stage whether the Scheme will interfere with the highway despite the trenchless technology which is proposed. It cannot therefore be contended that there will be no interference with the highway. | |
| 2.2.9 | The Applicant submitted at Deadline 1 that they did not see that "...CA of subsurface rights at depth below the highway which does not interfere with the use of the highway can constitute serious detriment." 91.19.54). National Highways does not agree with this position as nothing has been provided to evidence that the works will not interfere with the SRN itself regardless of the fact that the works will be "below" the highway. | The Applicant can confirm that all works in the vicinity of National Highways assets will be undertaken in accordance with the DMRB Standard CD622, as agreed in the draft SoCG with National Highways [REP2-029] . Even where works will be below the highway, the Applicant agrees that NH has an interest in how they will be carried out and has agreed to provide such technical detail for their approval as is required to satisfy National Highways that there is no danger to the highway. This is entirely consistent with the Applicant's position that there is no serious detriment. |

Table 2.3 – Applicant's Comments on Submissions Received at Deadline 2 from Stephens Scown LLP on Behalf of Stephen and Catherine Oultram [REP2-052]

| Ref | IP Response | Applicant's Comments |
|-------|---|---|
| 2.3.1 | We note the applicant's proposed changes in respect of the relocation of the slurry tank at New Bridge Farm. It appears that the applicant has not given any genuine consideration to the practicalities of its proposed actions and therefore the impact that these changes will have on the operations at New Bridge Farm. | The Applicant shall continue to work with the Landowner on effective siting of a new slurry tank location should this be required as a consequence of the DCO Proposed Development. |
| 2.3.2 | The slurry facility cannot be demolished because of a legal requirement in Wales which mandates that the farm must have the ability to store slurry for a minimum period of 5 months. | The Applicant is aware and has acknowledged that either a replacement or interim slurry storage solution would need to be installed prior to any demolition of the existing slurry store to remain in compliance with the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021. |
| 2.3.3 | As a matter of practicality, there is no other suitable site for a slurry store. | The Applicant notes that any alternative slurry storage location would need to be in compliance with the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021, as well as being practical for daily farm operations. The Applicant does not agree that there are no other suitable locations. The Applicant notes it has identified some locations which may require some ground works to render them suitable but does not consider that to be an impediment to delivery. |
| 2.3.4 | There does appear to be sufficient space for the pipeline to go round the back of the store without impinging on either the woodland or the current store. | The Applicant is aware of the working space restrictions around the slurry tank area. The Applicant does not agree that there is sufficient width for the pipeline to be routed between the slurry store and the woodland's root protection zone (which creates a buffer from the trees) without infringing on either. The Applicant has set this out within the Notification Letter [AS-060] with a full assessment contained within the Environmental Statement Addendum 1 [CR1-124] . The Applicant has developed mitigation measures and principles that will be applied during construction of the DCO Proposed Development (see items D-LV-014, D-LV-015, and D-BD-010 of the OCEMP [REP2-021] to safeguard trees and woodland. This includes preparation of an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP) alongside provision of an Arboricultural Clerk of Works (ACoW) during construction. |
| 2.3.5 | We note that, despite assurances from the developer, there does not appear to be any proposal for an alternative location for the construction compound; the current location will deprive the farm of essential facilities (as noted previously). | The Applicant is continuing to investigate means to mitigate the impact of temporary construction compounds in this area. |
| 2.3.6 | The applicant's proposed changes note that the proposed relocation of the slurry tank hasn't been assessed in the ES. The inference that we draw from that statement, and that a separate consent will be needed, is that the applicant is not going to obtain that consent and it has not considered what impediments there might be to obtaining that consent. It would appear a deficiency in the application to include in it a requirement to relocate a slurry tank but decline to assess the necessary impacts of that element of the works. | The Applicant's proposal includes removal of the slurry tank; removal of the slurry tank has been subject to appropriate EIA as reported in the Environmental Statement Addendum Change Request 1 [CR1-142] . Replacement is proposed to address the acknowledged adverse impact removal will have on the Landowner's business and to ensure they are able to continue to comply with the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021. The Applicant has been seeking to work with the Landowner to identify a satisfactory alternative site for which consent could be sought having regard to the limitations on siting of such facilities within the relevant regulations (which include for example separation distances from |

| Ref | IP Response | Applicant's Comments |
|-----|-------------|---|
| | | <p>watercourses and boreholes). The Applicant and Landowner have not yet agreed on a location which would be acceptable to the Landowner and the Applicant does not consider it appropriate to 'force' a location on the Landowner by seeking consent for a location they object to.</p> <p>The Applicant will continue to work with the Landowner to bring forward a suitable alternative location, which will be assessed as required once the location is known.</p> |

Table 2.4 – Comments on the Responses to Deadline 2 Submissions – Canal and River Trust [REP2-048]

| Ref | Canal and River Trust Response | Applicant's Comments |
|--|--|--|
| Statement of Common Ground (SoCG) | | |
| 2.4.1 | <p>The Trust is in the process of negotiating a draft SOCG with the applicant. Unfortunately, no further progress has been made on the SoCG since Deadline One and since the Trust responded on this document with suggested edits on 3rd March 2023. The applicant submitted that version of the SoCG at Deadline 1 with their documentation [D.7.2.11].</p> | <p>Discussions on the outstanding points of the draft Statement of Common Ground (SoCG) [REP1-030] have taken place between the Applicant and the Trust between Deadline 2 and Deadline 3. The Applicant has submitted an updated SoCG at Deadline 3 which reflects these discussions.</p> |
| Confirmation of wish to Speak at Issue Specific Hearing | | |
| 2.4.2 | <p>The Trust confirmed in separate correspondence dated 28th April 2023, as required by Annex C to the Rule 8 letter, the requirement to register to participate at the Issue Specific Hearing in relation to the draft Development Consent Order (ISH2).</p> <p>The Trust is seeking to discuss and reach agreement on these matters with the applicant, prior to the hearing dates. Should agreement be made, the Trust would likely be able to withdraw our intention to speak at the Hearing and save examination time.</p> <p>The Trust do not intend to speak at the Hearing on Environmental Matters (ISH1), unless the ExA considers it necessary for the Trust to attend to aid the Examination.</p> | <p>The Applicant will continue to engage with the Trust on resolving any outstanding issues and document this engagement in the draft SoCG [REP1-030], the latest of which has been submitted at Deadline 3.</p> |
| Confirmation of wish to speak at the Compulsory Acquisition Hearing | | |
| 2.4.3 | <p>As set out in our Deadline One response, the Trust still intends, at this stage, to speak at the Compulsory Acquisition Hearing, as no further progress has been made in relation to our land interests that would be affected by the DCO.</p> <p>We are seeking to agree terms with the applicant in relation to the use of Trust owned land where the Trust's requirements can be accommodated. We welcome that the applicant has stated in their response to ExA Q1.6.20 that they will continue to engage and negotiate with the Canal & River Trust in order to reach a voluntary agreement and that the Applicant will only rely on Compulsory Acquisition as a last resort, if voluntary agreement cannot be reached. [Document D.7.10 page 62].</p> <p>The Trust is seeking to discuss these matters with the applicant further prior to the hearing dates. Should we reach agreement with the applicant, the Trust would likely be able to withdraw our intention to speak at the Hearing and save examination time.</p> | <p>The Applicant will continue to engage with the Trust on resolving any outstanding issues and document this engagement in the draft SoCG [REP1-030], the latest of which has been submitted at Deadline 3.</p> |
| Protective Provisions for the Trust | | |
| 2.4.4 | <p>We had been looking forward to receiving the applicants' response to our Relevant Representation, as required as part of the ExA Question Q1.6.10, including comments on our protective provisions with their Deadline One response. Unfortunately, no details were provided and the applicant provided no response to that Question [Document D.7.10 page 53].</p> | <p>Q1.6.10 of the ExA's First Written Questions was directed at Statutory Undertakers and the Applicant did not respond to this question in its response [REP1-044].</p> <p>The Applicant has commented on the Trust's responses to the ExA's First Written Questions, including Q1.6.10 (see Table 2.3, page 8), in the Applicant's Comments on Response to ExA's</p> |

| Ref | Canal and River Trust Response | Applicant's Comments |
|-------|---|---|
| | | First Written Questions [REP2-038]. The Applicant is happy in principle to include suitable protective provisions in favour of the Trust and will continue to engage with the Trust on the precise wording of the protective provisions. |
| 2.4.5 | Since Deadline One, the Trust have now received amendments and comments on the draft protective provisions for the Canal & River Trust. These were received on 27th April 2023. The Trust is in the process of reviewing these and we will hopefully be able to update the ExA further at Deadline Three in relation to progress made. | The Applicant acknowledges the response from the Trust and will continue to engage on resolving any outstanding issues with regard to the Protective Provisions. A record of this engagement and progress is recorded in the draft SoCG [REP1-030], the latest of which has been submitted at Deadline 3. |
| 2.4.6 | On first reading of the protective provisions there are a number of matters which will need to be negotiated further. The Trust is however keen to reach agreement on all matter as getting these protective provisions for the Trust agreed would go a long way to address our concerns/objection and save Examination time. | The Applicant acknowledges the response from the Trust and would add that since Deadline 1, the Applicant has been engaging with the Trust's appointed legal contact and substantial progress has been made on the Protective Provisions. A record of this engagement and progress is recorded in the draft SoCG [REP1-030], Table 2-1 and Table 3-5, the latest of which has been submitted at Deadline 3. |
| | Trusts' response to Deadline One matters | |
| 2.4.7 | The Trust have read the various relevant DL1 submissions of the applicant which relate to the Trust's interests and in particular the applicant's response to the Trust's relevant representation [RR-008]. The Trust has no specific comments to make on their response and we look forward to meaningful progress being made in relation to reaching voluntary agreement over the land rights sought; the protective provisions for the Trust and SoCG. | The Applicant will continue to engage with the Trust on resolving any outstanding issues and document this engagement in the draft SoCG [REP1-030], the latest of which has been submitted at Deadline 3. |
| | Change Application Request | |
| 2.4.8 | <p>We note the ExA's decision to accept the applicants' request to make changes to the application in the letter dated 24th April 2023. Change 14, with the reduction of the Order Limits at Work No.18, to remove a section of the Shropshire Union Canal (AR PS18), is the only relevant change affecting the Trust. We fully support the removal of part of our undertaking from the Order limits.</p> <p>The Trust will update the ExA on the progress made in relation to the SoCG, protective provisions and other matters at each relevant deadline.</p> | <p>The Applicant welcomes the support for the removal in part of the Trust's land from the Order Limits.</p> <p>The Applicant will continue to engage with the Trust on resolving any outstanding issues and document this engagement in the draft SoCG [REP1-030], the latest of which has been submitted at Deadline 3.</p> |

Table 2.5 – Comments on the Responses to Deadline 2 Submissions – Natural Resources Wales (NRW) [REP2-053]

| Ref | NRW Ref | Natural Resource Wales Response | Applicant's Comments |
|-------|----------|---|--|
| | 1 | Protective Provisions (part 8 of the Draft DCO) | |
| | a) | Access to NRW's flood risk assets during the construction phase | |
| 2.5.1 | 1.1 | As highlighted in NRW's written representations (see Section 3, paragraphs 3.3 to 3.4), there are a number of proposed temporary construction compounds within close vicinity of flood risk assets and main rivers. NRW requires ongoing access to carry out flood risk management works to these assets which protect people and properties from flooding. Our primary area of concern is the centralised compound located adjacent to the Hawarden Embankment (approximate grid reference: SJ 35015 66852). We are concerned that the siting of a compound at this location could affect our ability to access the Hawarden Embankment to undertake flood risk management works. This is a key flood defence structure on the river Dee main river, so unimpeded access to the embankment, and Beeches Drain outfall (just upstream of the proposed compound) will need to be provided. NRW notes that the proposed works area on the opposite bank could also affect its ability to access the Northern Embankment via its existing access route adjacent to Deeside House. NRW also notes that there are a series of equipment yards and localised compounds along the length of Chester Road in Sandycroft and Pentre, several of which appear to be close to main rivers. The siting of any temporary compounds should not affect NRW's ability to undertake flood risk management works along the length of the affected main rivers (in this case Sandycroft Drain South, Pentre Drain North and Pentre Drain South West). It is therefore essential that NRW has unimpeded access to these assets at all times, whether during the construction phase of the DCO proposed development or otherwise, for flood risk management works. It appears to NRW that the applicant's proposals in respect of the temporary construction compounds could compromise such access. | Refer to the Applicant's response to NRW's Written Representation [REP1-071] in row 2.9.2 of Table 2.9 of the Applicant's Responses to Written Representations [REP2-041] . |
| 2.5.2 | 1.2 | The Applicant is seeking to address NRW's concerns by including Protective Provisions within the DCO (see Schedule 10, Part 8 of the draft DCO) as follows: <i>"For the protection of Natural Resources Wales</i> <i>82. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Natural Resources Wales ("NRW").</i> <i>83. The undertaker will permit access by NRW to its assets and landholdings within the Order Limits, through land of which the undertaker is in occupation during construction, on reasonable request.</i> <i>In particular;</i> | These draft provisions were added in response to a direct request from NRW that the maintenance of access for maintenance of flood defences be provided for on the face of the DCO. The Applicant has no objection to deleting these if NRW would prefer given they were only added at NRW's request. There is nothing in the dDCO [REP1-004] which seeks, or could be read as seeking, to disapply powers of entry under the Water Resources Act 1991. The right to maintain flood defences under s165 is not unfettered. The Applicant notes that the power of entry to carry out those works is set out in section 170 (s165 is the power to carry out works, section 170 is the power of entry to carry out those works, in terms of the right to access land, section 170 is accordingly the relevant power). All rights of entry to land must be exercised reasonably. |

| Ref | NRW Ref | Natural Resource Wales Response | Applicant's Comments |
|-------|---------|---|--|
| | | <p>(a) access to the bank and flood defences along the River Dee/Afon Dyford within the plots shown as 13-20, 13-21, 14-04, 14-05, 14-06, 14-07, 14-08 on the land plans will, where the undertaker is in occupation of those plots, be made available by the undertaker on request; and</p> <p>(b) access over the plots shown as 14-11, 14-14a, 14-20, 14-21, 14-22 14-23, 14-24, 14-25, 14-26 and 14-27 on the land plans, will be maintained for NRW, or were interrupted by construction activity, will be made available to NRW on reasonable request. 84. The undertaker will consult NRW during development of detailed design regarding the proposed design in order to ensure that the proposed design would not prevent or unduly restrict NRW in accessing or maintaining any of its assets, including flood defences.</p> <p>84. The undertaker will consult NRW during development of detailed design regarding the proposed design in order to ensure that the proposed design would not prevent or unduly restrict NRW in accessing or maintaining any of its assets, including flood defences”.</p> | <p>Section 173 and schedule 20 of the Water Resources Act provides that the power of entry for works under s170 of that Act must be exercised <u>having given 7 days' notice of intended entry</u> except in an emergency.</p> <p>The Applicant, when in possession of land, is under statutory duties to maintain a safe working site, that will include fencing off areas of open excavation and controlling access to working areas, especially where large machinery is working. Practically, that fencing may be a physical impediment, but access would be provided to NRW on reasonable request. The Applicant submits that this is entirely appropriate in the context of a working site which will include large excavations and is in no way contrary to the Water Resources Act which does not state that land cannot be fenced, only that NRW have a right to enter for maintenance which is acknowledged. With the 7 days' notice required by the Act, access can be provided through any working site in compliance with the statutory obligations on the Applicant. The Applicant was not insisting on 7 days in the PPs as it was happy to provide access on less notice provided that it could be safely accommodated earlier; that was what the Protective Provisions (PPs) were seeking to express, it is not clear to the Applicant why NRW objects to this drafting which was intended to be of assistance to them.</p> |
| 2.5.3 | 1.3 | <p>NRW has concerns with this proposal. Under s.165 of the Water Resources Act 1991 NRW is empowered to access land to carry out flood risk management works. The provisions of the DCO cannot override these powers and NRW does not require separate permission under the DCO to exercise its powers under s165 of the WRA 1991. NRW therefore advises that there should be no physical impediment to access for flood defence assets. Accordingly, the DCO should ensure this as a matter of design/construction.</p> | <p>Regardless of whether or not the PPs are included, the Applicant can make access available as required on notice and there is no conflict with the Water Resources Act.</p> |
| 2.5.4 | 1.4 | <p>NRW understands that the applicant proposes to finalise the detailed plans for the construction compounds post-consent at which stage a construction contractor has been appointed. Should the ExA be satisfied with this approach, NRW requires that the following is incorporated into the DCO in order to address NRW's concerns:</p> <ol style="list-style-type: none"> 1) Requirement 5 of Schedule 2, Part 1 (Construction Environmental Management Plan) should be amended to require NRW's approval prior to the construction stage insofar as access to flood risk assets is concerned. 2) There should be a commitment in the Outline CEMP which states that the developer/contractor/operator (as appropriate) will ensure that uninhibited access to the flood defence assets maintained managed by NRW will be ensured during the construction phase. The wording could be as follows: <p><i>“We will ensure works within the temporary construction compounds and associated access routes are designed to ensure that NRW's access to the flood risk assets that it maintains manages is not prohibited and we will work with NRW to agree suitable access arrangements. This includes compounds 30D (Wood Farm Centralised Compound) and 31A (River Dee Centralised Compound) and the associated</i></p> | <p>As above, 'uninhibited' access is not a reasonable requirement in the context of a working site which requires to be securely fenced in compliance with the Applicant's obligations (including the Construction, Design and Management Regulations 2015 requirement to ensure a safe working site and to control access to open excavations).</p> <p>The Applicant objects to the wording proposed that no construction can be carried out without NRW's consent. That would create a veto on the delivery of the project and would be inappropriate in a granted DCO. NRW submits above that it has a statutory power of entry under the Water Resources Act 1991 – given that power, this drafting is unnecessary and overly controlling of the DCO Proposed Development.</p> <p>The Applicant agrees that NRW has a legitimate interest in approving the works under the flood defences, but the wording proposed is far too wide.</p> <p>The Applicant has no objection to NRW being a consultee on the CEMP, but the approval of that plan sits with the LPA given the scope and nature of that plan. Paragraph 4.2.3 of the OCEMP [REP2-021] sets out that the Construction Contractor will consult with relevant parties, organisations and statutory bodies.</p> |

| Ref | NRW Ref | Natural Resource Wales Response | Applicant's Comments |
|--------|-----------|--|--|
| | | <i>permanent and temporary access routes. No construction works will be carried out without NRW's written approval".</i> | |
| 2.5.5 | 1.5 | Alternatively, the applicant is advised to consider whether a "Construction Flood Risk Asset Access Management Plan" should be prepared and incorporated into the CEMP, subject to consultation with and approval of NRW. | The Applicant does not consider this to be necessary or appropriate given that a) NRW has statutory powers of access on 7 days' notice b) The Applicant is willing, as demonstrated by the draft PPs, to agree to facilitate access during construction without reliance on statutory powers and with notice as agreed (which could be less than 7 days) if NRW wishes to retain that wording. |
| 2.5.6 | 1.6 | NRW considers that such commitments should also be reflected in the Register of Environmental Actions and Commitments (REAC). | The Applicant does not consider this to be necessary or appropriate. |
| 2.5.7 | 1.7 | It should also be noted that in the event that the construction compounds are within 16m of the Hawarden and Northern Embankments of the river Dee main river, they would require an environmental permit (a Flood Risk Activity Permit (FRAP)) under the Environmental Permitting Regulations 2016 for which NRW is the consenting authority. Therefore, the location of such compounds would be considered in the determination of any such application and subject to NRW's approval. | The Applicant acknowledges this comment and refers NRW to the Other Consents and Licences [REP1-011], and as submitted at Deadline 3. |
| | b) | Permanent rights corridor | |
| 2.5.8 | 1.8 | This concern relates to the operational phase of works and the implications that the pipeline could have on NRW's ability to undertake flood risk management works on the Hawarden and Northern Embankments in the future (see NRW's written representations: Section 3, paragraph 3.5). | Refer to the Applicant's response to NRW's Written Representation [REP1-071] in row 2.9.41 of Table 2.9 of the Applicant's Responses to Written Representations [REP2-041]. |
| 2.5.9 | 1.9 | The legal position in respect of access for the purposes of flood risk management works is as set out above. Accordingly, it should be noted that the applicant's proposed permanent rights corridor would not override the provisions of the WRA 1991 and would not preclude NRW from entering any such land for the purposes of exercising its flood risk management functions. Therefore, the same concerns in respect of design / construction of the pipeline apply and the applicant should seek to avoid any potential access impediment at this stage. | Refer to the Applicant's response to NRW's Written Representation [REP1-071] in row 2.9.41 of Table 2.9 of the Applicant's Responses to Written Representations [REP2-041]. There is nothing in the draft DCO [REP1-004] which can be reasonably read as seeking to override the provisions of the WRA 1991. |
| 2.5.10 | 1.10 | These concerns were raised in our Written Representations (Section 3, para 3.5). However, the requested information has not yet been provided. | Refer to the Applicant's response to NRW's Written Representation [REP1-071] in row 2.9.41 of Table 2.9 of the Applicant's Responses to Written Representations [REP2-041]. |
| | 2. | Disapplication of byelaws | |
| 2.5.11 | 2.1 | Article 8 of the draft DCO provides for the application and modification of legislative provisions. Under Article 8(1) (a) the applicant is seeking to disapply 'in relation to the construction of any work or the carrying out of any operation for the purpose of or in | The Applicant has not been advised of any NRW byelaws in place under <i>paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991</i> which this provision would affect. If such byelaws are in place, it would be of assistance if |

| Ref | NRW Ref | Natural Resource Wales Response | Applicant's Comments |
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| | | <p><i>connection with the construction of the authorised development or any maintenance of any part of the authorised development —</i></p> <p><i>a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(a);'</i></p> | <p>NRW could provide a copy of those as the only affected byelaws identified so far are in England, and the EA have advised that they consent to their disapplication. Please refer to the EA's response to the ExA's First Written Questions, Q1.19.20 (page 22) [REP1-062].</p> |
| 2.5.12 | 2.2 | <p>The legislative basis for Article 8 of the draft DCO is section 150 of the Planning Act 2008 ('Section 150') ('Removal of Consent Requirements') which provides as follows (Emphasis added):</p> <p><i>(1) An order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision.</i></p> <p><i>(2) "The relevant body" is the person or body which would otherwise be required to grant the prescribed consent or authorisation</i></p> | <p>NRW is a relevant body <u>where</u> they would otherwise be the body required to grant consent under the disapplied provision. The relevant byelaws identified in this case are in England and NRW are not the relevant body for those. Where NRW have in place byelaws which would be affected and make them a relevant body, it would be of assistance if NRW could provide copies of any byelaws to which this provision would apply for review and discussion.</p> |
| 2.5.13 | 2.3 | <p>NRW is a 'relevant body' under Section 150 (2) and therefore its consent is required in order for the provisions to be dis-applied. NRW's consent is therefore required for Article 33 to remain in the Development Consent Order.</p> | |
| 2.5.14 | 2.4 | <p>Under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, Regulation 5 and Part 1 of Schedule 2 such prescribed consent includes 'A consent under byelaws made under paragraphs 5, or 6 of Schedule 25 (byelaw-making powers of the appropriate agency)'.</p> | |
| 2.5.15 | 2.5 | <p>Further, the ExA asked relevant Statutory Undertakers for their comments in regard to the disapplication of the provisions set out in Article 8(1).</p> | |
| 2.5.16 | 2.6 | <p>NRW has not been provided with the required information in relation to the consents and authorisations identified in Article 8. At the present time, NRW is not in a position to grant consent under Section 150 and cannot agree to the inclusion of Article 8(1) (a).</p> | |