

## **WRITTEN SUMMARIES OF ORAL SUBMISSIONS MADE AT ANY HEARINGS HELD DURING THE WEEK COMMENCING 5 JUNE 2023**

### **HyNet Carbon Dioxide Pipeline DCO**

Planning Act 2008

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

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Applicant: Liverpool Bay CCS Limited

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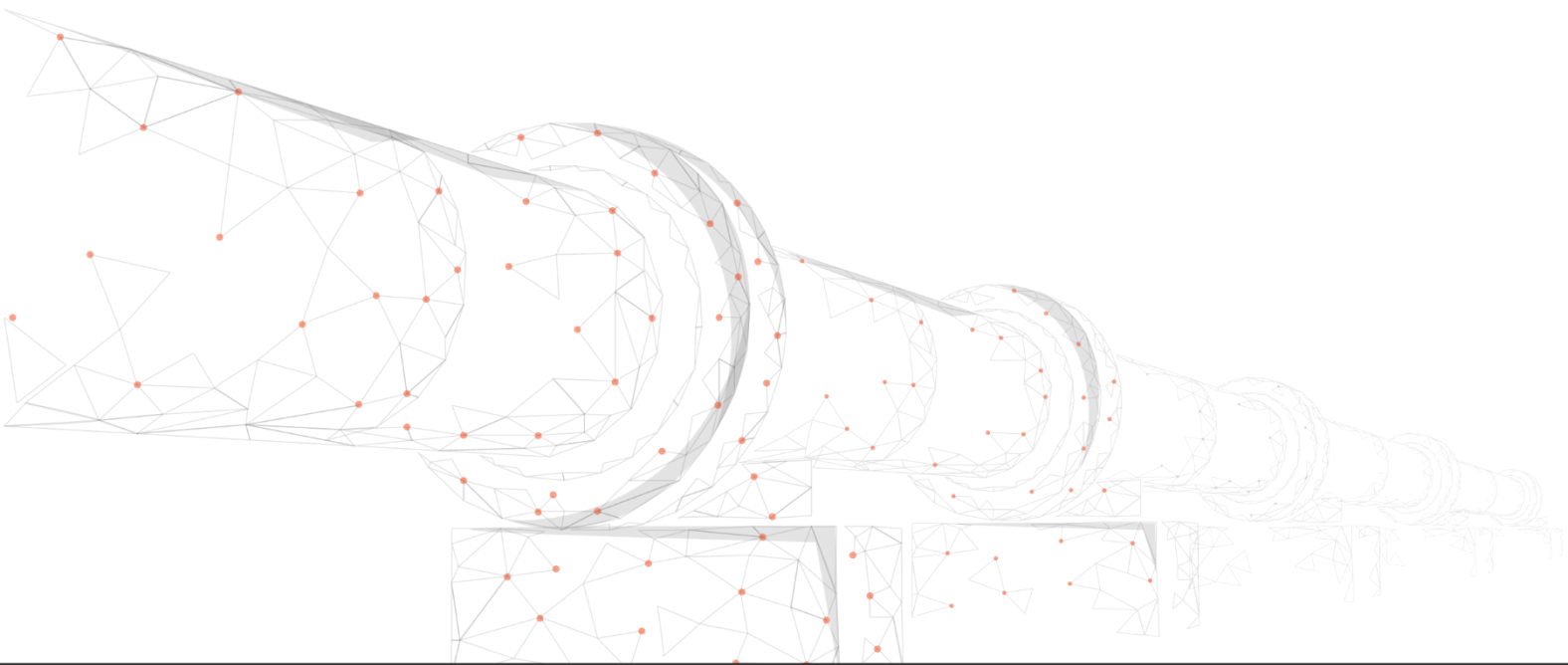
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# HyNet North West

## **PART 1 - ISSUE SPECIFIC HEARING ON ENVIRONMENTAL MATTERS ("ISH1") ON 6 JUNE 2023**



# HyNet Carbon Dioxide Pipeline ISH1: The Applicant's Summary of Oral Submissions and responses to action points



This note summarises the submissions made by Liverpool Bay CCS Limited (the Applicant) at the Issue Specific Hearing on environmental matters (“ISH1”) on 6 June 2023. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant’s submissions.

## 1 ASSESSMENT OF ALTERNATIVES AND CROSS TOPIC ISSUES

1.1 The Applicant was asked to provide an overview of the application with respect to its overarching need, tackling climate change and assessing cumulative effects.

1.2 **Action Point ISH1-AP6 – Submit a copy of the note/ paper providing a brief introduction/ overview of the Development Consent**

1.3 **Response to action point: this text is set out in full in the following paragraphs 1.4 to 1.15 rather than summarised.**

### Overarching need and tackling climate change

1.4 The UK has been at the forefront of global moves to tackle climate change over recent decades. The UK was the first country in the world to introduce emissions reduction legislation through the 2008 Climate Change Act, and was the first major economy in the world to legislate a Net Zero target in 2019.

1.5 Against this backdrop of statutory targets, the UK has significantly reduced its emissions. In 2022, emissions were down by 48.7% from 1990 levels, which is a remarkable achievement. The UK has been able to deliver this emissions reduction while significantly growing GDP, a breaking of the symbiotic link between wealth creation and emissions growth that has underpinned society since the industrial revolution.

1.6 However, the majority of emissions reductions in the UK have arisen from two key sectors. Firstly, emissions reductions from power generation have significantly reduced through a comprehensive build-out programme of renewables at ever increasing scale, and, in parallel, the closure of much of the UK’s coal generation capacity. Secondly, the UK has continued to de-industrialise, with the closure of many of our energy intensive foundation industries such as steel production. The industry remaining in the UK, while having made some reductions in emissions through energy efficiency measures, continues to contribute significantly to the UK’s overall emissions.

1.7 Reducing industrial emissions of greenhouse gases (primarily carbon dioxide) is now imperative if the UK is to meet Carbon Budgets 5 (through to 2032) & Carbon Budget 6 (through to 2037) and to meet Net Zero by 2050.

1.8 Reducing carbon dioxide emissions from industry is challenging for both technical and commercial reasons. Emissions from industry come from two key sources, namely process emissions and combustion emissions. Process emissions are those that arise from the basic chemistry of the manufacturing process – cement is a very good example. In cement manufacturing, even if zero carbon fuel is used then two thirds of the emissions will still remain, simply due to the chemical process of converting limestone to cement.

The only viable method to abate emissions such as these is to deploy Carbon Capture and Storage (CCS) – alternatively, society could move to completely different products – for example, there is a growth in the use of wood products to replace cement, but this market remains nascent and very small compared to the volumes of cement produced globally.

- 1.9 The second source of emissions comes from the combustion of fuels used in manufacturing processes. For these industries, emissions can be abated by switching to a low carbon fuel, such as hydrogen, biomass or low carbon electricity.
- 1.10 The commercial challenge is that many major UK process industries operate in a global market and need to remain internationally competitive. It is challenging for UK industries to absorb the costs of implementing carbon capture and storage, or switching to low carbon hydrogen, when international competitors do not face the same costs. As such, implementation of such technologies needs to be underpinned by a robust policy regime.
- 1.11 The HyNet North West (the Project) was originated in 2016 to deliver the infrastructure required to decarbonise industry across the North West of England and North Wales. The region was chosen due to its extensive industrial base (indeed, the region employs 345,000 people in manufacturing, more than any other region in the UK) and the geological benefits it presents for both carbon dioxide sequestration and hydrogen storage.
- 1.12 The Project is a large scheme being delivered by multiple parties – this is set out in Volume II Chapter 2 of the Environmental Statement [APP-054]. It is, in essence, two operationally separate but conjoined systems – one for Carbon Capture and Storage, which is the subject of the current application, and one for Hydrogen. The Carbon Capture and Storage system underpins the Project – without it, the delivery of a regional hydrogen ecosystem will be severely delayed and impaired, if it is possible at all.
- 1.13 Since 2016, the Project has been developed through various stages of engineering definition, consenting and permitting, in parallel with Government developing a comprehensive policy framework.
- 1.14 Carbon Capture and Storage, alongside Low Carbon Hydrogen, is front and centre of the Government's Net Zero policy. The Net Zero Strategy, published in October 2021, sets out clear targets for CCS and hydrogen deployment, which were further strengthened in the Energy Security Strategy, issued in April 2022. Alongside policy targets, the Government has put significant effort into enabling deployment, through actions such as:
  - (a) Development and innovation funding: Funds such as the Industrial Decarbonisation Challenge (IDC), Industrial Energy Transformation Fund (IETF) and Net Zero Hydrogen Fund (NZHF), government has invested hundreds of millions of pounds into technology and project development.
  - (b) Cluster sequencing process: Government has run a two-year competitive selection process to identify which CCS and Hydrogen projects should be built first. The Project has been successful in these competitions and is now denoted as a Track 1 cluster, deep into deployment planning with Government.
  - (c) Regulatory and legislative structure: Government has developed a comprehensive suite of commercial models which allow projects such as HyNet North West to be investable. These are supported by a Network Code, which sets the industry framework for commercial arrangements, and the Energy Security Bill, a piece of primary legislation which enables appropriate powers for deployment of CCS and Hydrogen.
- 1.15 It is therefore clearly evident that not only are CCS and Hydrogen at the forefront of the UK's policy in achieving Net Zero in hard to abate sectors, but that HyNet North West as a project is one of the foremost projects to secure this policy objective. While HyNet North West is a broad and complex suite of interlinked projects, they are all underpinned by this,

the HyNet CO2 pipeline, which is the cornerstone upon which the rest of HyNet North West is built.

#### Cumulative effects

- 1.16 The Applicant explained that it has followed the normal approach to cumulative effects, which is set out in Chapter 19 of the Environmental Statement [APP-071]. The Applicant confirmed it had taken into account the wider HyNet project separately from the DCO Proposed Development, as well as other projects coming forward at the same time in the usual way, and following the relevant Planning Inspectorate advice notes and wider EIA guidance.

#### Alternatives (route selection)

- 1.17 The ExA asked the Applicant to set out an overview of how the preferred route had been chosen.
- 1.18 The Applicant explained that in determining the start and end points for the proposed pipeline, it should be remembered that the ultimate purpose of the DCO Proposed Development is to enable the transport of CO2 from regional industrial emitters to long term geological storage offshore in Liverpool Bay.
- 1.19 The Applicant's affiliates own and operate existing Liverpool Bay offshore infrastructure and associated onshore facilities, including Point of Ayr terminal and the P852 pipeline that connects Point of Ayr to Connah's Quay power station in Flint.
- 1.20 The identified emitters are located in the vicinity of Ince and Stanlow refinery and form the start points of the pipeline. The possibility of capturing emissions from Hanson's Padeswood cement works was also considered in early stage assessments.
- 1.21 In early concept development back in 2017, the Applicant recognized that maximising the re-use of existing pipeline infrastructure was a significant opportunity for the project to reduce disruption, time and cost during construction. The end point for the new build section of pipeline was therefore determined to be along the existing P852 pipeline in the vicinity of Flint.
- 1.22 At this stage the Applicant made a decision not to impinge on domestic properties.
- 1.23 The pipeline routing process can be defined in three stages:
- (a) Stage one – An assessment of strategic corridors and selection of a preferred option.
  - (b) Stage two – An assessment of potential routes within the strategic corridor, and non-statutory consultation on a short list of alternative routes.
  - (c) Stage three – Selection of a preferred route, design development and statutory consultation
- 1.24 It should be noted that Stage one Strategic Corridors were not defined for the pipeline section from Stanlow to Ince, as the short distance means that strategic corridors were not required and assessment started at stage two directly.

#### Findings of Stage One

- 1.25 The Applicant explained that a core corridor, approximately 13km in length and extending ~1km into Wales was identified between Stanlow and the A548 (Sealand Road). This core corridor has no significant features that would justify differentiation into separate strategic corridors, and so is common to all the corridor options (the "Core" corridor).
- 1.26 From Sealand Road however, three distinct corridors were identified (Northern, Central and Southern) avoiding as far as practical centres of population and environmental

features. These three corridors were then qualitatively assessed, with one corridor being considered to have an advantage over another if it was likely to:

- (a) Be located closer to emitters, requiring less land take;
- (b) Avoid adverse environmental outcomes;
- (c) Provide social and economic outcomes of greater benefit; and
- (d) Have a stronger business case though fewer engineering constraints.

1.27 Following the qualitative assessment, the Core and Southern corridors were taken forward to Stage two. This is because:

- (a) The Northern corridor, traversing the northern perimeter of the Deeside industrial estate requires a crossing of the river Dee , an ecologically significant area designated as a Special Scientific Interest, Special Area of Conservation, Ramsar site and Special Protection Area. To substantially mitigate the impacts of pipeline construction, it is likely that a trenchless crossing will be required. To cross to the west of the Connah Quay power station would need a crossing of around 2km, a length beyond the maximum capabilities of standard trenchless pipe construction techniques. The Northern corridor crossing location was instead found to be routed through an area heavily constrained by existing infrastructure and poor ground conditions.
- (b) The central corridor also avoided the need to cross the wide section of the river Dee estuary by crossing the river Dee in a canalised section further east, in routing along the western bank of the river Dee, the central strategic corridor was constrained by existing infrastructure, including High voltage overhead lines that connect Connah's Quay power station to the National Grid. These run in parallel within large sections of this strategic corridor and would present both a significant construction hazard and a long-term corrosion risk to the pipeline.
- (c) The Southern corridor took a route to the south of the village of would:
  - (i) provide the greatest opportunity to connect other CO<sub>2</sub> emitters, thereby achieving greater CO<sub>2</sub> emissions for the region;
  - (ii) be the least complex and safest to construct on account of having fewer complex crossings;
  - (iii) result in lower risk of impact on sites of international and national environmental designations; and
  - (iv) be likely to present the most cost effective solution based on the fact it would be the least complex.

#### Findings of Stage Two

1.28 Having selected the Core and Southern strategic corridors, multiple route options were then assessed within them, based on similar environmental, social and economic criteria as the strategic corridors, but at a more granular level. Two routes, routes G and I, were then presented to the public during a non-statutory consultation period between June and July 2021.

1.29 Following feedback from the consultation period, and further consideration of engineering complexities, route G was taken forward to stage three and statutory consultation as the preferred route.

1.30 Specifically, Route G:

- (a) provided a less complex crossing of the river Dee, due to increased availability of space;
  - (b) avoided conflict with a water treatment works at Queensferry; and
  - (c) reduced potential interaction with the then proposed A494 Aston Expressway expansion.
- 1.31 For the Ince to Stanlow pipeline section, there were three route options considered. Southern route option A was selected as the preferred route. Southern route option B had a number of additional motorway crossings that would have increased the complexity of that route. Southern route option C had similar, albeit at a smaller scale, interactions with high voltage overhead lines adjacent to the Stanlow refinery site. Route C also went close to some ecologically designated sites.

#### Findings of Stage Three

- 1.32 Having selected a preferred route option, the Applicant then took forward a nominal 100m corridor along this route into statutory consultation and the DCO submission. This recognises the level of design maturity, and enables 'micro-siting' of the pipeline by the detailed design contractor at a later date.
- 1.33 Further engineering design development, along with engagement with landowners, utility companies and statutory bodies has been ongoing and has resulted in a number of small, localised routing changes since the statutory consultation. These are reflected in the change requests that have been submitted to the DCO process.
- 1.34 The Applicant noted that there has been little to no macro-scale challenge to the routing of the pipeline or the route selection process. The Applicant submitted that this should provide confidence that the selection process has given rise to a suitably robust pipeline route having given due consideration to alternatives.

#### Response to ExA questions

- 1.35 The ExA asked the Applicant to clarify why a 'do nothing' option had not been included. The Applicant explained that, when moving larger volumes of a compressible fluid over a long distance, the most efficient way to do that at scale is in a pipeline. With the scale of CO<sub>2</sub> emissions, the Applicant is looking to capture from the emitters, a pipeline is the only practical solution to achieve the outcome and deliver a significant reduction in regional industry emissions.
- 1.36 The ExA asked the Applicant whether, given technological advancement, nature based CCS solutions would be enough to address the need case for the DCO Proposed Development. The Applicant explained that it is a question of scale – new technology couldn't deliver anything on the scale required. The purpose of the Government's policy is to do not only something but to do so quickly.
- 1.37 The ExA asked the Applicant regarding submissions from Mr S Gibbins regarding the possibility of a shorter, discounted route **[AS-064]**. The Applicant explained that the route referred to in that submission roughly follows the Northern corridor described above. The crossing of the estuary was a significant ecological and environmental barrier. Mr Gibbins had mentioned taking the pipeline across an existing bridge, however, the Applicant does not control the bridge and would have no ability to use it in this manner.
- 1.38 The ExA asked whether any assessment was made as to whether the proposed route was in the English or Welsh administrative area. The Applicant confirmed that the factors considered were technical and environmental, not based on administrative areas.
- 1.39 The ExA asked, in terms of high-level project evaluation, were specific surveys undertaken to inform the Applicant's viewpoints, or were they based on judgment. The Applicant explained that depends on what stage a decision was made. In common with most large infrastructure projects, consideration of early option stages is largely a desktop exercise.



In terms of surveys on sites, it is not practical to go into the level of detail the Applicant has done in the ES for every route/corridor, as this would have a disproportionately high time/cost implication and would not allow a DCO to be brought forward in a reasonable timeframe. High-level assessments were carried out, and as the Applicant moved closer to the final route more site-specific surveys were carried out.

- 1.40 The ExA asked whether the engineering/ecological issues for the shorter route were insurmountable. The Applicant explained that while it is possible to tunnel long distances, what changes is the scale of complexity and project requirements. The Applicant noted that there is a long history of pipeline development in UK, norms, practices and techniques which are well known. The UK is quite cautious about ecological sites and open cut trenching is not normally considered to be acceptable within them. The issue is accordingly how the Applicant could cross the estuary. There are trenchless options such as HDD, but with wider pipelines the larger the pipe the more risk there is of HDD collapsing. There would be changing conditions across the crossing; HDD would be complex, and hold a lot of risk that couldn't be quantified until a later stage. Other trenchless techniques are available, microtunneling would be the most common, but the Applicant noted that they are limited by size and length, and are not practical for crossing distances in kilometres.
- 1.41 In relation to the Northern corridor, the ExA asked if there is a rough estimate of how deep the tunnelling would be needed, and whether time / cost / delivery was a consideration. The Applicant explained that it did not develop the Northern corridor to that level of detail, but those matters would be considered, as the Applicant needs to ensure the project is economically viable, otherwise it will not go ahead and CO<sub>2</sub> will not be stored in the long term.
- 1.42 The Applicant also clarified that one constraint is the Connah's Quay power station, which has a lot of high voltage overhead infrastructure associated with it. The ExA referred to a submission that the power station would temporarily need to close to deliver a pipeline in the vicinity. The Applicant explained that the power station is outside its control and it does not have the power to shut it down.
- 1.43 The ExA asked what was done to reduce environmental harms in the route selection. The Applicant explained that route selection included consideration of the feasibility of building a pipeline through that corridor without unacceptable disturbance to ecological or environmentally sensitive areas. The northern corridor was discounted because the Applicant considered it would be unlikely to be able mitigate the impacts on environmental and ecological receptors. The Applicant explained that the stage two assessment had taken into account all the different environmental factors.
- 1.44 The ExA asked whether the Applicant agreed or disagreed that the DCO Proposed Development has greater interference on landownership rights than alternatives which have been discounted. The Applicant accepts that it is always the case that a longer route is likely to affect more landowners. That is taken into account, but it was noted that the impact is happening on each particular landowner, where one landowner is not affected a different landowner would be affected. In the legal context of making this type of decision, the Applicant submits that there isn't a general legal obligation to choose the 'best' route. The Applicant considers, as explained in submissions and DCO application documents that a good choice has been made with regard to route selection. With any linear project the promoter has an inherent incentive to find shorter route, and that was one of the Applicant's criteria but that is always being weighed in balance against other factors.
- 1.45 The Applicant confirmed that the ES and application documents generally summarises the evidence supporting the route selection, and provides a fair explanation of what information the Applicant has relied on, with nothing significant omitted.
- 1.46 The ExA asked Cheshire West and Chester Council (CWCC) to explain their view on the implication of a pending planning application by Encirc Limited in relation to the assessment of cumulative impacts. The Applicant confirmed that it engaged with Encirc, that the Statement of Common Ground [REP3-050] would continue to be updated, and

that the Applicant is actively working with Encirc to allow both developments to come forward.

## 2 BIODIVERSITY

- 2.1 The Applicant was asked to set out the up to date position on facilitating biodiversity net gain and enhancement/benefits, having regard to local and national policy and current legislative provision.

### Biodiversity

- 2.2 The Applicant explained that the BNG Assessment **[REP3-022]** has been conducted in consultation with Natural England (NE), Natural Resources Wales (NRW), CWCC and Flintshire County Council (FCC). The approach has been designed in order to be proportionate to the impact of the scheme, bearing in mind that Nationally Significant Infrastructure Projects (NSIPs) are not currently legally required to provide biodiversity net gain (BNG).
- 2.3 The BNG benefits the Applicant is seeking to provide is 1% gain in Priority Habitats. This is considered to be proportionate to the DCO Proposed Development's impacts, given these impacts are mostly short-term, temporary and localised. The landscape is primarily farmland/agricultural land, as such focus of gains in Priority Habitat is an appropriate approach. This provision is in addition to mitigation to be provided under the DCO, including the woodland mitigation planting.
- 2.4 Priority Habitats are applicable on both sides of the border, and the Applicant feels the Metric is relevant and aligns with policies/drivers in both areas. The impacts either side of the border are slightly different and nuanced e.g. coastal floodplain and grazing marsh is only applicable to Cheshire owing to its absence within the Order Limits in Flintshire.
- 2.5 In Wales, the Environment (Wales) Act 2016 puts a duty on developers to seek benefits to biodiversity. Within FCC's area, the primary driver for BNB is the 2016 Act and Planning Policy Wales. There is no target requirement within FCC for achieving BNB. The Applicant has had discussions with NRW and FCC on using the DEFRA metric as this is considered the most appropriate way to quantify baseline habitats, compensation/offset requirements and evidence gains thereby aiding in demonstrating compliance with this obligation.
- 2.6 Within CWCC's area, the primary drivers are the Natural Environment and Rural Communities Act 2006 (NERC Act) and local policies including CWCC's Local Plan (Part 2) Policy DM44 and associated Ecological Network. In England, the NERC Act places a duty on developers and councils to ensure the enhancement and protection of Priority Habitats. The Applicant noted that CWCC's Ecological Network covers a large proportion of Council area and is centred around Priority Habitats and protecting/enhancing those where possible. Whilst BNG is not yet mandatory, the use of the DEFRA metric to calculate baseline habitats, offset requirements and demonstrating gains aligns with relevant policies either side of border.
- 2.7 The Applicant is in discussion to secure offset sites to achieve, as a minimum, 1% BNG gains in the relevant Priority Habitats, which have been assessed in baseline surveys. These include woodland, hedgerows, ponds (priority habitat), and coastal floodplain grazing marsh (the last habitat within CWCC borders only). The Applicant is currently in discussions with number of parties including FCC and CWCC to secure the gains required through offset site locations, made progress with identifying sites.
- 2.8 The Applicant explained that their approach to BNG assessment conforms to BNG good practice guidelines. Noting, as above, that a quantitative net gain was being sought for both England and Wales, it was acknowledged that the specific policy/legislative drivers in Wales mean that, where advantageous or providing greater benefits, a qualitative approach was being considered. The Applicant has also used the mitigation hierarchy to look to exclude areas of ecological interest including Priority Habitats where possible to reduce impact on them. As part of the Applicant's approach to the overall project it

identified key habitats and areas of ecological interest and has sought to exclude irreplaceable habitat such as ancient woodland and veteran trees and designated sites wherever possible.

- 2.9 The Applicant explained that their current BNG Assessment is scenario based, and will need to be re-run on confirmation of the finalised route design, but currently demonstrates how the Applicant is seeking offsite solutions to achieve the minimum 1% target biodiversity gains. In actuality, the Applicant will secure delivery of a minimum of 1%, but considers it is likely to deliver more than 1% in practice as impacts will be reduced through mitigation measures such as micro siting to avoid or reduce impacts on habitats during detailed design and construction stage mitigation.
- 2.10 Biodiversity gain of 1% is submitted by the Applicant to be a proportionate approach to achieving gains in the absence of mandatory requirement. Baseline surveys have been used to inform the completion of the metric, to quantify the coverage of priority habitats within both CWCC and FCC borders. The Applicant has a full dataset across the Order Limits inclusive of non-priority habitats through surveys using the Phase 1 habitat survey method. The requirements for achieving 1% gain in priority habitats have then been calculated through use of the metric, with separate metrics run individually for both FCC and CWCC. The Applicant has accrued a full baseline habitat dataset across the Order Limits, inclusive of non-priority habitats, through surveys using the Phase 1 habitat survey method.
- 2.11 The Applicant explained that the offset site locations and management are a key component of how BNG will be secured, and that a 30-year management plan will be associated with those offset locations and habitats.
- 2.12 The Applicant explained that the river Dee has been excluded from the BNG Assessment as the BNG Good Practice Principles guidance (CIRIA, CIEEM and IEMA 2019) provides that statutorily designated sites and irreplaceable habitats should not be included in the Metric as they cannot be replaced. Ancient Woodland which abuts, and falls within the Order land has also been excluded from the BNG Assessment.
- 2.13 The Applicant explained that it has taken account of the legal and policy context and engaged with the relevant bodies/LPAs to prepare a strategy that responds appropriately and recognises the cross-border differences between England and Wales as well as the respective Councils. Having formulated that strategy, which the Applicant understands is agreed with the Councils, it is executing it. The Applicant is content, taking into account the nature of this project and impacts expected, that it has calibrated its approach in an appropriate way.

#### Habitat connectivity

- 2.14 The ExA asked the Applicant what elements of the application address landscape connectivity. The Applicant explained that, as part of the suite of measures which have been provided, it has looked to ensure landscape connectivity through mitigation measures. In respect of hedgerows assessment, it will be necessary to remove discrete sections of hedgerow, but the Applicant has provision for reinstatement in the interim period during construction to facilitate foraging and commuting bats, recognising the variety of species including some rarer species. In terms of landscape enhancement, provision has been made for the planting of 13 mitigation areas across the Order Limits, in locations which will enhance and strength green corridors, support CWCC's Ecological Network and those green corridors currently existing, and provide new 'stepping stone' habitat.
- 2.15 The ExA asked the Applicant if there was any further way to boost connectivity or resilience. The Applicant explained that it is broadly happy with the strategy as it stands. There is a very narrow corridor for additional mitigation, and the Applicant's primary aim is to mitigate the impacts it has during construction, looking to minimise those as much as possible during development of the detailed design as well as during construction.

- 2.16 The Applicant confirmed that shadow EPS licences are under active preparation, and it is hoped to submit those to the relevant regulators (NRW and NE) by Deadline 5.
- 2.17 In terms of resilience, the Applicant confirmed it is in discussions with FCC and CWCC in terms of BNG and securing hedgerows gains outside of the Order Limits. Impacts within the Order Limits will be confined, and the Applicant will look to mitigate those in the location they take place, in accordance with the mitigation hierarchy.
- 2.18 The Applicant confirmed it is looking to secure BNG through discussion with relevant parties primarily CWCC and FCC. The Applicant explained that Biodiversity Unit markets are nascent at the moment, as BNG is not yet mandatory, and so, where it is not able to achieve 1% in all priority habitats with the Councils, the Applicant is looking at other opportunities through discussions with other landowners and parties.

### Surveys

- 2.19 The ExA asked the Applicant to provide a broad overview of its biodiversity surveys.
- 2.20 The Applicant explained that it has undertaken an extensive suite of surveys for range of receptors including habitats and species in order to assess the impacts of the DCO Proposed Development. The Applicant has undertaken extensive data analysis associated with those surveys. The Applicant has identified there are risks to some protected species which have been addressed through development of mitigation principles and measures. These mitigation principles and measures have been devised on basis of assuming presence beyond the Order Limits to address scenarios that may arise at the construction stage whilst addressing the known receptors within the Order Limits. It will also be necessary to undertake pre-construction surveys.
- 2.21 In relation to NRW's concerns regarding low rainfall during the carrying out greater crested newt (GCN) surveys, the Applicant explained that as part of the survey approach there is a requirement to undertake multiple visits, and at least one visit was undertaken before the ponds dried out. Drying out of ponds is a key feature of preferred GCN supporting habitat. The fact that a small number of ponds dried out during surveys has not affected the Applicant's assessment, nor has it adversely impacted the mitigation proposals. The Applicant is currently preparing a GCN shadow licence application which will capture all conservation elements and relevant mitigation measures to support a licence application.
- 2.22 In relation to NRW's concerns regarding historic GCN records being taken into account, the Applicant explained that as part of its approach it undertook a desktop assessment which included requesting records from relevant records centres for records of protected and/or notable species within the Order Limits and wider landscape which helped to inform the approach to surveys. While these were relevant and aided the Applicant's approach, the survey results are the main drivers for developing the mitigation strategy.
- 2.23 The Applicant confirmed, in relation to concerns regarding aquatic surveys, that noise and vibration impacts on the aquatic environment were considered.

## **3 TREES**

- 3.1 The ExA asked the Applicant to provide an overview of its most up to date position on what trees would be impacted. As part of that, the Applicant shared a number of slides including excerpts of plans with only the key features displayed for ease of reference. A copy of that presentation is submitted along with this summary as a separate document. References in this section to figures are to the figures on those slides.
- 3.2 Figure 1 shows the only Ancient Woodland within the Order Limits. The Applicant has sought to avoid impacts to this through the use of a trenchless crossing techniques; it is currently assessed that no trees in this woodland will be felled, and the woodland will be safeguarded.

- 3.3 The Applicant has undertaken a comprehensive desktop study and field surveys to understand sensitivity in terms of notable trees and woodlands in line with the British Standard (BS5837) or example presence of ancient woodland veteran trees.
- 3.4 While undertaking field surveys, individual trees were assessed for the presence of features or characteristics that could be considered veteran in nature and, as such, their potential to be veteran trees. Whilst no veteran trees were returned during the desk study, the Applicant categorised a number of trees to be veteran and has sought to avoid these trees where possible. Three remain at 'risk of removal aiming to retain' (shown on Figure 3), but the Applicant is aiming to retain all of them. Through arboricultural protection measures – implementation of an Arboriculture Method Statement, Tree Protection Plan and provision of an Arboricultural Clerk of Works, it is considered these can be protected and retained and the Applicant is not anticipating they will be felled.
- 3.5 For T1074, the Applicant believes there is room to manoeuvre construction without removing the tree. With T1048 and T1056 – the plot relates to construction access only so measures can be put in place to safeguard those trees. The Applicant has applied a precautionary approach and has assessed the trees as being at risk of removal but aiming to retain, but believe it can retain them. The Applicant agreed to further review the position with its engineers to find out whether this can be finalised/confirmed and the status of the veteran trees changed from 'at risk' to 'retained'.
- 3.6 **Action Point ISH1-AP7: Submit clarification as to the risk of veteran tree removal, in the light of what was said in the Hearing concerning such loss, bearing in mind Paragraph 5.3.14 of the National Policy Statement EN-1**
- 3.7 **Response to Action Point ISH1-AP7: Through arboricultural protection measures – implementation of an Arboriculture Method Statement, Tree Protection Plan and provision of an Arboricultural Clerk of Works - it is considered these can be protected and retained and the Applicant is not anticipating they will be felled. The Applicant has changed the status of these to 'retained with protective measures' within Appendix 9.11 – Arboricultural Impact Assessment. This provides that these trees will be protected and retained during detailed design, construction, operation and decommissioning. This commitment has been added to the list in the REAC.**
- 3.8 In relation to Figure 4, the current assessment in the arboricultural impact assessment provides a reasonable worst-case scenario utilising an indicative pipeline routing. The image on the right of Figure 4 illustrates the RAG impact assessment approach where the red corridor assumes removal and the amber is 'at risk'. In this example, the indicative red risk corridor represents the construction corridor width, as such, feature G645 will require full removal. In the event the finalised construction corridor moves, the numbers will take into account any variation that may result in bringing in new trees or tree groups or removal of trees. Where the final construction corridor 'moves' within the Order Limits corridor, the red area changes but does not increase in size, with the former red area then becoming amber.
- 3.9 Figure 5 provides an example of how the Applicant is looking to mitigate impacts on tree features. The Applicant has committed to a 3:1 replacement ratio, three trees planted for every one lost. The Applicant has identified 13 mitigation planting areas to strengthen and enhance green corridors and green infrastructure across the landscape within the Order Limits. This will also provide additional stepping stone habitat within the Cheshire boundary.
- 3.10 There is a 12m offset either side of the pipeline where trees cannot be planted, but the Applicant has included provision for scrub to be planted in these locations within the mitigation areas in order to provide connectivity of habitat. This will have additional benefit of helping to provide habitat mosaics.
- 3.11 In terms of hedgerows and hedgerow severance, a comprehensive hedgerow and robust bats and hedgerows survey programme has been undertaken. Mitigation is being provided having regard to that survey data in order to ensure linear features are reinstated.

- 3.12 The Applicant's position is that all habitats will be reinstated post-construction including hedgerows. However, those hedgerows that have been identified as excellent or good will have increased mitigation prescriptions. For excellent, the Applicant will seek to include the planting of standard trees (where appropriate) or additional measures, such as the inclusion of shrubs for example, that will help to promote the growth and establishment and provide linear connectivity more quickly than would otherwise be delivered.

#### **4 WATER ENVIRONMENT**

- 4.1 NRW were invited by the ExA to outline their concerns regarding the Applicant's WFD Assessment [APP-165].
- 4.2 In response, the Applicant stated that it does not accept that the DCO Proposed Development is not WFD compliant, and the Applicant stands by the WFD Assessment as submitted. As regards the Alltami Brook crossing, the Applicant has been preparing a potential without prejudice derogation case, but has not yet submitted that. This is partly because it has been doing the environmental work to support such a case, and partly because the Applicant had a site visit set up with NRW to discuss its concerns which has only recently taken place. The Applicant has been seeking to scope down the NRW concerns or at least identify the key points so that it could focus its submissions to put before the ExA.
- 4.3 The Applicant remains of the opinion that the option that put before the ExA is the best one. The next option would be derogation, and the ultimate fallback is covered in Change Request 2.
- 4.4 The Applicant explained that it believes its case is robust, has used proportionate information, and follows standard practice for impact assessment for WFD compliance. In terms of ground investigation data, during preparation of DCO submission the Applicant did not have land access, which is why some information is not available. This was outside the Applicant's control.
- 4.5 In terms of NRW's objections relating to potential loss of water, their RR [RR-066] refers to a "worst case scenario", but the Applicant has assessed based on the reasonable foreseeable outcomes rather than worst case. The Applicant is undertaking a further assessment and has submitted, at NRW's request, an options appraisal for the Alltami Brook crossing.
- 4.6 In terms of stream diversion, the Applicant advised that this will be via standard techniques during construction phase and will maintain connectivity during construction. There will be continuity of flow.
- 4.7 In terms of damage to stream flow and potential impacts on ecology, the Applicant has proposed measures to reinstate the riverbed; that would include the grouting of any of the open cut crossings, the grouting of any fissures that may be identified during the open cut to create an impermeable surface, creation of an impermeable surface will prevent the loss of flow, and there will be concrete capping. The Applicant will reinstate bedrock to reflect natural conditions of the watercourse, so it will look very much like it does in its baseline condition and the hydromorphology will behave as it was under baseline.
- 4.8 The Applicant has also committed to undertake a bespoke geomorphological assessment at detailed design. The Applicant offered to bring that work forward, but NRW advised that they did not consider it would assist at this stage.
- 4.9 The Applicant will also look at micro siting at detailed design stage in order to eliminate risk as far as possible and to manage any risks that were encountered. The crossing point will be sited at the most favourable position from the hydrogeological and environmental aspect.
- 4.10 The Applicant set out further information in relation to the hydrogeological impact appraisal (HIA). The Applicant first explained its conceptual understanding of the hydrogeological conditions at Alltami Brook which has been developed in order to address the concerns

raised by NRW. The Applicant is undertaking a HIA to understand the hydrogeology and undertake a high-level assessment of the potential risk of a loss of flow from Alltami Brook resulting in an impact to WFD status.

- 4.11 For the HIA the Applicant has considered multiple sources of publicly available information. The sources used are:
- (a) Various BGS documents:
    - (i) Geological maps (1:10,000 and 1:50,000 scale),
    - (ii) Memoir,
    - (iii) Deeside (North Wales) thematic geological mapping, technical report, BGS, 1988
    - (iv) Hydrogeology of Wales technical report, BGS, 2015
    - (v) BGS GeoIndex, local historic borehole logs.
  - (b) Geophysical Ground Investigation of the Northop Hall Mine Workings, Fugro, February 2022
  - (c) Coal Mining Risk Assessment;
  - (d) Field information i.e., observations from various site walkovers
  - (e) Technical Note – Wepre Brook Crossing, EniProgetti, April 2022
  - (f) Alltami Brook Crossing - Options Appraisal, May 2023
- 4.12 The geological conditions are, along the stretch of the Alltami Brook within the Newbuild Infrastructure Boundary: at the upstream end is the Middle Coal Measures which here is comprised of the Hollin Rock. Further downstream and at the location of the preferred crossing location the Gwespyr Sandstone is at outcrop which is part of the Millstone Grit Group. Downstream of this and in the lower portion of the stretch of the Alltami Brook within the Newbuild Infrastructure Boundary are the Pennine Lower Coal Measures at outcrop. All of these formations have approximately similar lithological makeup, consisting of interbedded grey mudstones, siltstones, sandstones and coal seams in the coal measures. The Hollin Rock and the Gwespyr Sandstone are more sandstone dominant.
- 4.13 There are two faults of note, one cutting across the Alltami Brook perpendicular to it which separates the Hollin Rock/Middle Coal Measures from the Gwespyr Sandstone. Then slightly downstream of the Newbuild Infrastructure Boundary for an approximately 80 m, stretch there is a fault running parallel to the Alltami Brook which is either along or very near to the watercourse (where we would expect fracturing to be present).
- 4.14 The hydrogeological conditions for all of the bedrock formation are primarily fracture flow, which means that water can flow through fractures within the rock. The intergranular flow component is limited, if not negligible. The fracture flow component is laterally discontinuous, and permeability reduces with depth.
- 4.15 Recharge to the bedrock aquifer occurs regionally however is limited through the glacial till superficial deposits.
- 4.16 There are known former collieries near to Pinfold Lane. On the abandonment plans, these are indicated to be approximately 100m north of east of the preferred crossing point on the Alltami Brook.
- 4.17 There are some mine adits shown on historic maps for these abandoned mines indicated to be buried beneath an area of made ground which forms the eastern slope of the valley of Alltami Brook. The mines were known to extend to a depth of 60m below ground level.

- 4.18 There are several key findings/observations to note:
- (a) There is a borehole log for a historic borehole situated on the northern side of the A55 (which was a ground investigation borehole for the A55) which upon completion indicated a rest water level of 0.3m above ground or slightly artesian conditions. This is indicative of an upwards hydraulic gradient. NRW raised concern that other nearby boreholes show differing water pressures. However, the Applicant submits that this is evidence of the laterally discontinuous flow conditions within the bedrock, with pressures being confined to certain areas.
  - (b) Observations were taken on site walkovers which showed groundwater seepage occurring as the boundary of the Lower Coal Measures and the Gwespyr Sandstone indicating a baseflow contribution from the Gwespyr Sandstone to the Alltami Brook, which we again consider as evidence of an upwards hydraulic gradient into the Alltami Brook from bedrock.
  - (c) There were additional observations of seepage emanating from the made ground on the eastern slope of the Alltami Brook. As the made ground is sitting on top of the bedrock and the seepage is occurring from the made ground, this is evidence of the bedrock being saturated. There may be a connection between this flow from the made ground and the nearby former mine adits buried beneath it, however this is unconfirmed. There has been no visual evidence of found of any minewater discharge such as ochreous water. There is no mine water treatment scheme present.
  - (d) Due to the duration since abandonment, which although the Applicant doesn't have a confirmed exact date (the evidence indicates a closure in the late 1940s), it is considered likely that the water levels within the former mine workings have most likely recovered to natural levels, which is that they would be expected to be mostly saturated.
  - (e) The fault located downstream of the preferred crossing point and the Newbuild Infrastructure Boundary which runs parallel to the Alltami Brook is where the Applicant would expect there to be significant fracturing present and a loss of flow to be occurring if that was likely. However, the watercourse does not appear to have any significant loss of flow along this stretch and visually appears to be gaining flow (as it appears wider).
- 4.19 In response to NRW's comment on the proposed works happening quickly compared to the natural features happening slowly, the Applicant notes that in nature things do not always have to occur slowly, as there may be landslides or landslips, earthquakes, or tremors, which happen quickly.
- 4.20 The design itself also intended to prevent water loss. Prevention of water losses would be achieved by avoiding percussive methods that could further fracture the bedrock. Grouting any identified fractures seals the infrastructure to the surrounding bedrock, ensuring no water losses. Washout of grout would be controlled by appropriate grout materials and/or accelerators to ensure rapid gel setting and strength gain. It would be maintained in the long term through the implication of a maintenance plan.
- 4.21 The proposed reinstatement groundwater regime aims to match preconstruction conditions.
- 4.22 All of the evidence currently available shows that a significant loss of flow from the Alltami Brook is very unlikely, in that there is no clear mechanism for the substantial loss of flow from Alltami Brook to occur. For this reason, the Applicant considers the proposed scheme to be WFD compliant.

#### Private Water Supplies

- 4.23 The ExA asked the Applicant what commitments it can give in terms of the DCO Proposed Development as a whole not to degrade private water supplies.



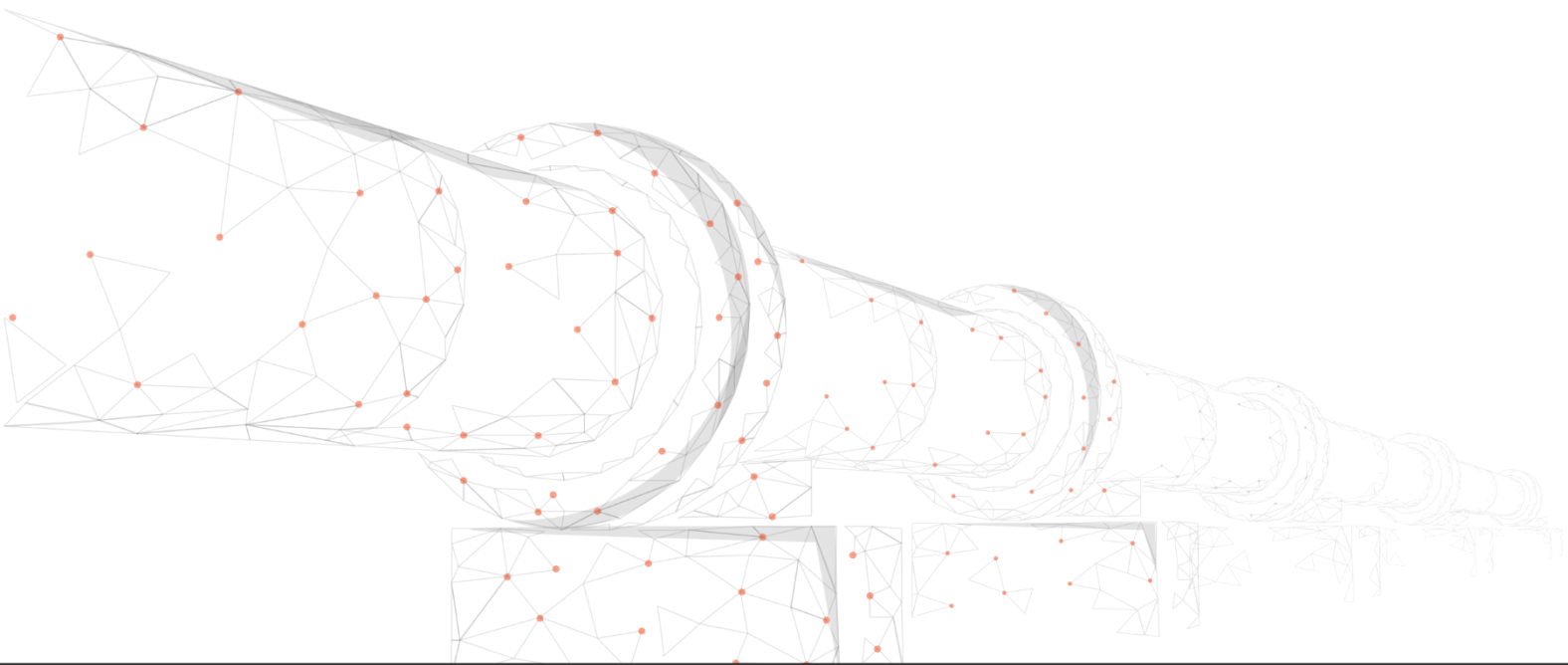
- 4.24 The Applicant explained that there are 13 private (unlicensed) water supplies identified within 1km of the new build infrastructure boundary. The dewatering assessment that supports the ES indicates that none of these identified abstractions are situated within any of the calculated radius of influence (ROIs) for the dewatering of excavations proposed for the Construction Stage.
- 4.25 The exact radius of influence of the private (unlicensed) groundwater abstractions is not known because no information is available on the actual abstraction rates; however, as the maximum legal abstraction rate for a private unlicensed abstraction is 20m<sup>3</sup>/d, they are expected to have a small radius of influence on the surrounding groundwater level.
- 4.26 It is noted that the Croughton Road Caughall abstraction sits close to but outside of the boundary of the calculated ROI for the crossing of the Shropshire Union Canal. However, it is likely that the calculated ROI for this crossing is a conservative estimate as:
- (a) It is assumed that the auger bore method of construction is used; this has highest likely quantitative impact on groundwater as it relies on the use of deep (9.5m) entry and exit pits;
  - (b) It is assumed that such pits would be entirely open on the sides and the base (i.e., self-supporting and able to allow water in) whereas, in reality, the sides of the pits would be a concrete ring that prevents water ingress. Significant quantities of water would only be able to enter through the base vertically. Vertical transmissivity of an aquifer is usually less than horizontal and the area which allows water flow is also limited in size (the area of the base of the pit); and
  - (c) If another method, not requiring deep entry/exit pits is used (i.e., HDD), then there would not be the same requirement for dewatering.
- 4.27 There is one other private abstraction on land near to that's situated very close to the petrol station and one of the crossings. However, because it is outside the ROI, the Applicant does not expect an impact there either.
- 4.28 The assessment considers that the remaining 12 abstractions are too far away to be impacted, based on the calculated ROI of the dewatering and the likely ROI of the abstraction itself.

## **5 COMMUNITY BENEFIT**

- 5.1 The ExA asked the Applicant for views on how they consider achieving any cultural or community benefit as part of the DCO Proposed Development.
- 5.2 The Applicant explained that in **REP1-044** at page 112, it has considered whether there were any impacts that would justify S106 obligation, and concluded that there is not. It is the Applicant's intention for there to be a voluntary community benefit fund. The Applicant does not think it lawfully put forward a community benefit position which is formally linked to the planning decision.
- 5.3 Coming on to cultural side, the Applicant's advised that its immediate response is that the position would not be different, but the Applicant will consider further.
- 5.4 The Applicant's position is that it wants the DCO, assuming it is granted, to be legally robust. There is a long history of legislation and case law trying to ensure appropriate considerations are taken into account and inappropriate matters are not. The Applicant has set out clearly that it does not think a community benefit package could be lawfully linked to the planning decision in this case. The Applicant have said they will provide a voluntary package, but that is separate from this process and they are not seeking any weight to be attached to that.
- 5.5 The Applicant considers that in terms of benefit within Wales, there are two obvious areas of benefit outside of the project's overall contribution to Net Zero, one in relation to the jobs that will be preserved at the Point of Ayr terminal. The other strand, is the fact that

the Hansen's Padeswood cement works, a major employer, is intended to benefit from the DCO Proposed Development. As described earlier, one of the important routing considerations was how best to contribute to industrial decarbonisation as part of the DCO Proposed Development, and the cement works was very much at the top of the list as a potential beneficiary. In those two areas there is very much intended to be a valuable benefit for Wales.

## **PART 2 - COMPULSORY ACQUISITION HEARING ("CAH") ON 7 JUNE 2023**



# HyNet Carbon Dioxide Pipeline CAH: The Applicant's Summary of Oral Submissions and responses to action points



This note summarises the submission made by Liverpool Bay CCS Limited (the Applicant) at the Compulsory Acquisition Hearing (“CAH”) on 7 June 2023. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant’s submissions.

## 1 THE APPLICANT’S CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

### The Applicant’s approach to CA and TP

- 1.1 The Applicant was invited by the ExA to set out an overview of its approach to compulsory acquisition (CA) and temporary possession (TP) in the context of the relevant tests under the Planning Act 2008 and DCLG Guidance.
- 1.2 As set out in the Statement of Reasons SoR [REP3-010] and shown on the lands plans [REP2-004], the Applicant is seeking compulsory powers and temporary possession over a corridor of land within which it proposes to microsite the pipeline. That corridor is, in the majority of cases 100m wide to allow for flexibility at the detailed design stage having regard to further investigation of the land and seeking to minimise impacts including on ecology, and trees. Within that corridor, the working corridor for the pipeline is generally 32m, with a final land take of a 24.4m subsurface corridor with rights overlain on that. Those rights are required to allow access to inspect and maintain the pipeline, and to protect it. Together the Applicant submitted that the proposals are the minimum necessary to deliver the proposed development.
- 1.3 Within the AGI and BVS locations some flexibility within the corridor is necessary for these to align with the final pipeline routing. These have been constrained where possible, and for at example Work No, 9, the Stanlow AGI, the work area has been quite tightly drawn.
- 1.4 The Applicant’s approach on CA can be summarised as follows:
  - (a) Where the current use of the plot cannot be resumed, full acquisition is sought. This applies to the surface sites (being the AGIs, BVSs, mitigation land and ancillary features to those such as access and open drains). The landowner could not resume any current use on top of those works; the current use in most cases is agricultural, the nature of the works would preclude agricultural use resuming. Therefore acquisition is considered appropriate.
  - (b) On the pipeline sections, acquisition of a strata of sub-surface land is sought, with a corridor of rights over the surface associated with that. As set out in the SoR (para 6.2.50) the Applicant is seeking to agree long leases over a strata of subsurface land for the Newbuild Pipeline, to the extent necessary to construct, operate and maintain it. As it is not possible to compulsorily create a new lease, the Applicant requires compulsory acquisition powers over this strata of subsurface land in the event that an agreement for a lease cannot be reached.
  - (c) In addition to the acquisition of land, powers to acquire rights and impose restrictive covenants are sought. The need for rights over each plot is set out in

table 3 of the SoR. The majority of permanent rights sought outside the final pipeline corridor are for access in operation to allow inspection and maintenance of the pipeline. There are 2 exceptions proposed to this but these form part of Change Request 1, which will be covered in a later CAH.

- 1.5 The Applicant is seeking temporary possession for land required in construction but not in operation. The intention is to minimise the land over which rights are required to be sought and in accordance with the Guidance
- 1.6 The use of temporary possession powers in DCOs commonly includes ability to use land for access during construction. There are a number of plots where the Applicant requires to be able to take access during construction but does not intend to do so exclusively. Essentially the proposal is to use temporary possession powers to create a temporary right to share accesses – the alternative would be to create a permanent right of access which the Applicant does not consider is necessary or proportionate. In order to assist landowners in identifying and having certainty where we are proposing to share access and not exclude current use, the Applicant has sub-divided its temporary possession to show a category of temporary possession for access only (DCO schedule 7 part 2). These plots are shown brown on the lands plans, and include plot 19-06 which is the access to Northop Hall Southeast bound service station and the adjacent Travelodge Hotel from the A55 and plot t 2-06 which is the access to and private roads within Chester services from the M56.
- 1.7 The Applicant was invited to set out the purpose, structure and content of the Book of Reference, the Statement of Reasons, and the Funding Statement.

#### **Book of Reference (BoR) [REP3-014]**

- 1.8 The purpose of the Book of Reference is to describe the land over which DCO powers are sought and list the interests held in that land. The structure is prescribed by the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, regulation 7. That requires that the BoR be set out in 5 parts:
  - (a) Part 1 – categories 1 and 2 (as defined in section 57 of the PA 2008), are persons interested in land, with the power to sell or convey the land or release the land. That includes owners, lessees, tenants and occupiers, also includes holders of options
  - (b) Part 2 – category 3 which are persons we believe having undertaken diligent inquiry would be entitled to make a claim if the order is implemented, the claims are primarily related to diminishment in the value of land caused by the scheme
  - (c) Part 3 -person with rights over the land
  - (d) Part 4- Crown interests
  - (e) Part 5 – special category land (in this case the only special category land is open space)
- 1.9 The Applicant has structured the BoR in five parts as required. Plots appear in more than one part as it is the nature of the interests held that govern which parts, they are included in. A person may also be listed in more than one part as inclusion follows the nature of the interests held.

#### **Statement of Reasons (SoR) [REP3-010]**

- 1.10 Both the SoR and the funding statement are required as part of the application in accordance with regulation 5 of the regulations. Following the guidance, particularly paragraph 32 of the DCLG guidance referred to in the agenda, and other precedent, the purpose of that document is to:
  - (a) Set out the land over which powers are sought

- (b) Describe any special category land affected
- (c) Describe the powers sought; and
- (d) Set out the Applicant's case as to why the powers should be granted, including addressing the statutory tests set out in section 122 of the Planning Act 2008 that the land is required for or is necessary to facilitate, or is incidental to the development, and that there is compelling case in the public interest for the powers sought to be granted.

1.11 In order to demonstrate the compelling case, the SoR summarises the need case and policy support for the development which is set out in full in other application documents. It also explains the alternatives considered and the engagement which has been had with affected parties. Section 6 sets out the overall case for the powers sought and section 8 specifically considers why that case would justify the grant of powers with regard to human rights and specifically the right to peaceful enjoyment of one's possessions.

#### **Funding statement [APP-029]**

1.12 The Funding Statement is also required by the regulations, which require submission of *"a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded;"*.

1.13 The funding statement submitted sets out in section 1.4 how compulsory acquisition costs, compensation and blight liabilities would be met. In summary, the Applicant's UK based parent company will provide the necessary funding and committed to providing a Parent Company Guarantee (PCG) for that. The parent company's accounts have been included in the statement to demonstrate that it can more than meet the assessed liability. That PCG is now in place.

1.14 The funding statement also sets how the delivery of the whole development would be funded in Section 1.5. That is subject to ongoing work with government on the precise funding model to be used. The Applicant's parent company has sufficient resources to meet the development cost internally however some external funding may be sought. That depends on the model the government adopts for delivery of this project. The credit ratings appended to the funding statement demonstrate that the ultimate parent company has "very strong credit metrics" (Moody's credit report a set out in the appendix to the Funding Statement) and could access credit to fund the development if that is the preferred model.

1.15 The funding statement demonstrates that adequate funding is likely to be available to enable exercise of CA powers within the statutory period and to meet any blight claims. It therefore meets the requirement of paragraphs 17 and 18 of the Department for Communities and Local Government (DCLG) guidance which require the demonstration of such likely availability in order for powers to be granted.

#### The powers sought and the overall case for them being granted

1.16 S122 of the 2008 Act requires that the Secretary of State to be satisfied that the powers sought are required for the development or required to facilitate or are incidental to it. The DCLG guidance at paragraph 9 provides that the Applicant must have and must have set out a clear idea of how each plot would be used. The need and proposed use for each area is set out in the SoR: table 1 for permanent acquisition of surface sites, table 2 for permanent acquisition for pipeline, table 3 for permanent acquisition of rights only, and table 4 for temporary possession plots.

1.17 Although powers are sought over a wider corridor than that which will be finally acquired, that is necessary to allow the development to undertake detailed design in the final routing of the corridor. It is disproportionate to do that work ahead of consent being granted given both the substantial costs involved and the intrusive works, including more GI and trenching required. This approach is common in DCO's and has precedent in two other pipelines; the Yorkshire and Humber CCS DCO and the River Humber DCO both had 100m corridors.

- 1.18 The Applicant is seeking powers over land required for mitigation (primarily landscape and mitigation planting). DCLG guidance paragraph 11 sets out that powers should not be sought over more land than is 'reasonably required' The guidance is clear that land necessary for works to make the development acceptable such as landscaping may be acquired compulsorily, that is set out in paragraph 12. The Applicant accordingly submits that these areas are therefore reasonably required and met the statutory tests and the guidance.
- 1.19 The second limb of the statutory test is the compelling case in the public interest. The guidance at paragraphs 12 and 13 expand on this as requiring compelling evidence that the public benefits outweigh private loss.
- 1.20 The case for the development is set out in the Need Case **[APP-049]**. While the project does not fall within the scope of the current NPSs, it is firmly rooted in national policy as required by paragraph 19 of the guidance. This includes the Net Zero Strategy published Oct 2021 and the energy security strategy published in April 2022
- 1.21 The project as proposed will allow repurposing of the existing pipeline, minimising both the construction impacts and the number of landowners over whom CA powers are sought. On the existing pipeline, CA powers are sought only on the above ground installations and to address one minor gap in the lease documents (plot 36-01).
- 1.22 The majority of the new pipeline development is sited in agricultural land. The Applicant made a commitment early in the process not to seek CA powers over residential dwellings. That has been achieved but has meant reducing the corridor in some locations, notably Church Lane, to avoid infringing on the adjoining properties. That reduction has been achieved by using a trenchless installation technique to avoid requiring the full working width for an open trench. That does increase engineering complexity and risk and can have other impacts, including the need to dig large pits for entry and exit of the drills and 24 hours working being required while the crossing is being created. The pipeline also has to be deeper to reduce the risk of accidental damage from works or planting on the surface. This is therefore an approach which has been targeted to very constrained locations where the Applicant considers that it represents the best balance of the various factors.
- 1.23 The land over the buried pipeline would be returned to its former use following construction, thereby minimising the impact on those affected landowners, farming and commercial businesses. The land for the above ground sites, mitigation and ancillary features (as outlined in 1.4(a)) would be lost to their current uses. The Applicant has been and continues to work with affected landowners to minimise the impacts on them, and considers that this is demonstrated in the schedule of negotiations and the substance of the two change requests submitted .
- 1.24 The Applicant has considered the need for other consents to be obtained to deliver and operate the project and has set these out in the Other Consents and Licences document **[REP3-017]**. That identifies no known impediment to the Delivery of the scheme. As already set out, the financing of the use of powers and for the delivery of the project is available. The Applicant has taken all prudent steps to properly manage potential risks to the project as required by the guidance in paragraph 19.
- 1.25 In summary, the Applicant considers that the powers sought are necessary to deliver the proposed development, are proportionate and are sufficient to justify the interference with landowners' rights. The strong policy support for the proposed development, and importantly the contribution it would make towards achieving Net Zero and decarbonising industry in the north west and North Wales, demonstrate the clear public benefit of the project being granted the powers necessary to ensure its delivery.

## **2 INDIVIDUAL OBJECTIONS, ISSUES AND VOLUNTARY AGREEMENTS**

- 2.1 Cheshire West and Chester Council (CWCC) – The Applicant agreed with CWCC's submission that further discussion is required between the Applicant and CWCC. The

Applicant noted there are a couple of points which the Applicant thinks can be easily addressed.

- 2.2 Flintshire County Council (FCC) – The Applicant agreed with FCC’s submission that further engagement is required, and confirmed that this is a priority for the Applicant.
- 2.3 Canal and River Trust (CRT) – The Applicant thanked the CRT for its fair summary of the discussions to date, and assured the panel that negotiation is a priority for the Applicant. The Applicant confirmed it has offered to cover CRT’s costs to a reasonable sum, noting that the detail of this is outside this process.
- 2.4 Environment Agency – The Applicant agreed further discussions are needed in relation to engineering concerns, and highlighted that it would not be the Applicant’s intention to create a clash of rights, including with the EA’s rights of access. The Applicant is not seeking to extinguish the EA’s rights, and would seek to accommodate them proactively. The parties are in negotiation, and will engage further.
- 2.5 National Highways (NH) – NH confirmed that NH continue to object. The Applicant confirmed it had nothing further to add at that point.
- 2.6 Encirc Limited – Encirc noted positive engagement with the Applicant to date and set out its detailed position regarding interaction between Encirc and the DCO Proposed Development. The Applicant advised that it considers real progress is being made with Encirc, and that discussions are on-going.
- 2.7 Travelodge UK – In response to concerns raised by Travelodge UK regarding the Applicant’s temporary access proposals, the Applicant confirmed that the access in question would be during the construction phase only, and would be non-exclusive. The Applicant also confirmed that there are no trenchless techniques proposed beside the Travelodge.
- 2.8 S & C Oultram – In response to a statement from the Oultrams’ agent, which stated that his client had not received Heads of Terms, the Applicant confirmed that Heads of Terms were issued in July, August and September 2022, and that the Applicant was then asked to not to issue further Terms until various matter of concern had been addressed. The Applicant confirmed that the Oultrams’ concerns regarding the construction compound are being actively worked on, and that while access would still be required it may be possible to reduce the land take required. The Applicant advised that it considers taking access for the pipeline construction can be managed so as to maintain the Oultrams’ current operational use of and access to the adjoining land.
- 2.9 Peter Lewis on behalf of the executors of Ms Evans (deceased), Messrs Hirst and Peers – In response to Mr Lewis’s comments, the Applicant clarified that there are no proposals to fence off the pipeline route permanently. Surface sites (BVS/AGI) will be fenced off for safety reasons. In the unlikely event maintenance of the pipeline required the creation of an open trench, that working area would be temporarily fenced off for safety reasons. Within the discussion with Mr. Lewis it was confirmed that Mr Hirst’s interests were classified as agricultural land.
- 2.10 Network Rail (NR) – The Applicant confirmed that progress is being made with NR through a combination of Protective Provisions and a Framework Agreement. The Applicant confirmed it was not aware of any reason why agreement would not be reached.
- 2.11 Peel NRE – The Applicant confirmed it is in active discussions with Peel, specifically regarding access and drainage.

**3 THE BOOK OF REFERENCE, STATEMENT OF REASONS, LAND PLANS, DILIGENT ENQUIRIES AND UPDATES**

Book of Refence update / Compulsory Acquisition Schedule



- 3.1 The ExA noted that **REP3-012** contained an updated on CA/TP negotiations, and invited the Applicant to summarise the progress made on acquisition.
- 3.2 The Applicant confirmed it has been in ongoing discussions with landowners across the scheme since May 2022. The details of these negotiations are set out in the Schedule of Negotiations, which is updated at each deadline. Heads of Terms have been issued to all landowners since that time, and 11 parties have agreed and signed these Heads of Terms. These parties are listed on the Schedule of Negotiations and marked coloured green. The version REP3-012 / REP3-013 shows 10 parties, and one additional was agreed during week commencing 29 May 2023, and will be included on an updated version at Deadline 4.
- 3.3 As shown on the Schedule of Negotiations, some parties are unwilling or unable to agree to the proposed Heads of Terms. These are for a variety of reasons. These parties continue to be updated on the scheme progress, and may be willing to reach an agreement once the DCO is made, when detailed design is completed and the final location of the pipeline is known, or when personal constraints have been released. Discussions will continue to be ongoing throughout the Examination to seek to reach agreement with all parties where possible, and it is hoped that more agreements can be reached before the end of the Examination. However, it is expected that a number of landowners will remain unwilling or unable to agree to the sale of the land or rights that the project requires, and as such it is proposed that compulsory acquisition and temporary possession powers are therefore required to be used as a last resort.

#### **4 DILIGENT INQUIRY**

- 4.1 The ExA invited the Applicant to provide a further update on unknown parties and any further steps taken to identify them during examination.
- 4.2 The Applicant explained that it has completed diligent inquiry in line with the land referencing methodology set out in Appendix I of the Consultation Report [APP-042]. This was completed in line with the requirements in the Planning Act 2008 that this is completed under s.42 as part of the Applicant's duty to consult, and again under s.57 as part of the Applicant's requirement to notify all parties under s.56. As noted in the Applicant's response to Q1.6.4 (ii) of the ExA's First Written Questions [**REP1-044**]:
- “Reviews are being undertaken on a regular basis to identify updates in Land Registry records. Where information comes to light during the Examination on the holders of these interests, or any additional interests in the Book of Reference, these will be followed up, investigated and updated in the Book of Reference [AS-023].”*
- 4.3 A Land Registry refresh is in progress to identify any updated records ahead of Deadline 4, and any changes will be recorded in a tracked change Book of Reference at that submission. All other updates that have come to light as a result of engagement with landowners and changes in landownership and occupation that have been made known to the Applicant have been updated into the Books of Reference submitted at each deadline.
- 4.4 The ExA invited the Applicant to set out what steps have been taken to firmly establish the ownership, lessee/tenant or occupiers of those properties for which “reputed” parties have been identified.
- 4.5 The Applicant explained that The Applicant has completed diligent inquiry in line with the land referencing methodology set out in Appendix I of the Consultation Report [APP-042]. This includes a precautionary approach to identifying land interests, whereby all interests are included where a right in land is claimed. The Applicant has not sought to require land interests to prove their interests in land to firmly establish interests in properties, which would be a process of due diligence once the Applicant gets get to the point of sale/acquisition.

- 4.6 ***Action Point CAH1-AP1: Update from the Applicant on Plot No. 10-11, with regard to REP1-081 appearing to suggest that Richard Benjamin Jones, as well as R.B. Jones and sons have an interest in this plot, but only one of these parties being listed in the Book of reference (BoR) [REP3-014] as having any land interests. Applicant to review and respond by DL4.***
- 4.7 Response to Action Point CAH1-AP1: Plot 10-11 is owned by Jean Jones, as listed on the Land Registry and in the Book of Reference [CR2-013]. It is farmed and occupied by Jean Jones, R B Jones and S A Jones, all trading as R B & J Jones & Son. The Book of Reference therefore records this correctly.

## 5 REASONABLE ALTERNATIVES

### Flexibility

- 5.1 The ExA invited the Applicant to comment on whether reasonable alternative have been explored and whether the rights sought are legitimate, proportionate and necessary.
- 5.2 The Applicant noted that every linear project has the same challenge which is that there is always a balance to be struck between how much design work is undertaken before consent given that there are substantial costs and time attached to producing a detailed design. The way CA rights have evolved has repeatedly endorsed the approach the Applicant has followed in terms of where that balance is struck to cope with the uncertainties along quite a long route. The length of it means that as a promoter, the Applicant has had to think carefully about not being in a situation where the corridor is too narrow so as to not give the flexibility to cope with the uncertainties and may be revealed when more detailed surveys and design is taken forward. There are projects which have narrowed too much and regretted it. There has to be a balance between engineering need and the need for there to be confidence in the project's deliverability, and the fact it is imposing rights and restrictions on the landowners affected.
- 5.3 In terms of the human rights dimension, the Applicant reiterated that the project is only going to take what it needs, and noted it has a vested commercial interest in not taking more than is needed. Ideally, acquisition is being done by agreement, and the Applicant has made a clear commitment in the SoR in terms of the widths needed for this project. The Applicant is confident it has struck the same balance as on precedent linear projects, which balance has been endorsed by the Secretary of State.
- 5.4 In terms of the corridor width of 100m, there are some exceptions to it, but that is a very standard approach. If not followed, the applicant would be required to get into detailed analysis, whereas the whole philosophy is to go only so far in terms of design. The Applicant has had some discussion and narrowed width where constraints were already obvious, and in other cases have made the corridor wider because the flexibility has been required. Applying a relatively consistent corridor width is the dominant approach in other comparable DCOs, and the Applicant is entirely comfortable with the approach it has followed and considers that this strikes the correct balance with human rights.
- 5.5 It is inevitable with a linear project that an applicant is not going to sign every affected person up to a voluntary agreement within an acceptable timeframe. The reason CA exists is to underpin the delivery of projects. Considering comparable projects, the percentage of landowners that do sign up varies enormously, and the Applicant will sign up as many as it sensibly can. In terms of including CA powers in the DCO, this is necessary to underpin deliverability and the Applicant would not be able, realistically, for a linear project of this length to reach agreement with every affected person without the fall back of a CA.
- 5.6 The ExA asked for clarification in relation to the interaction of the various time frames in the draft DCO in relation to commencement of development and exercise of temporary possession, and the return of land which has been temporarily possessed. The Applicant explained that it would only in practice be using TP once it was ready to proceed with construction. The Applicant noted that the project is under enormous pressure to proceed. It was allocated track 1 status because it could demonstrate it could deliver on a particular timeline. The Eni gas fields in Liverpool Bay are close to the end of their production life,

there is some incentive for Eni to convert those from operating gas fields to regulated CCS operation and substantial steps have been taken to progress this project. In terms of what the DCO theoretically allows for, it does allow for a period of time for commencement of development and exercise of powers. This is normal, and while it does mean landowners experience some uncertainty, the Applicant is obviously engaging with landowners and would keep them advised.

5.7 The ExA asked the Applicant to provide clarification regarding the size of plot 7-02. The Applicant explained that the existing track to the north is too small for the volumes of construction traffic which will go down it, particularly with regard to the veteran trees along 7-02b. In terms of where it is located, within the field to the south there are domestic buildings on either side, so wherever the access track is located would affect one landowner or the other. It is quite a long access, and will be a direct road used for a special piece of tunnelling works, so passing places will be required. The Applicant agreed to review this track and whether it could be narrowed.

5.8 ***Action Point CAH1-AP4: Applicant to review Plot No. 7-02 with regard to explaining its purpose and justifying the width of the land subject to prospective temporary possession, including any health and safety issues, need for vehicle movements/passing bays and the location of any veteran trees. Applicant to review its position further in this regard and respond by DL4.***

5.9 **Response to Action Point CAH1-AP4: The Applicant has reviewed plot no. 7-02. A full technical response to this Action Point is set out in full in D.7.31 Applicant's Responses to Action Points from Hearings held week commencing 5 June 2023. A reduced corridor is shown on the updated Land Plans [CR2-004] and Work Plans [CR2-005] submitted at Deadline 4 will be proposed in [CR3]. The resultant 10m wide corridor enables the construction of a 5m wide bog-matt haul road, with sufficient space for the stripping and storage of top-soil and fencing of a pedestrian route alongside. This will necessitate the occasional installation of passing places using twin sets of bog-matts over the full 10m width.**

- A 25m by \*20m area has been retained at the road entrance in Plot 7-02 to enable:**
- (a) **a HGV to be offloaded at the entrance location when appropriate, removing head-to-head traffic from the haul road;**
  - (b) **a HGV to undertake a three point or 'T' turn, and prevent the need to reverse onto the public highway; and**
  - (c) **a HGV to pull off the public highway whilst another HGV completes a manoeuvre, preventing the blockage of the public highway.**

## **6 CROWN INTERESTS, STATUTORY UNDERTAKERS, SPECIAL CATEGORY LAND, COMPENSATION, FUNDING AND OTHER MATTERS**

### Crown Land

- 6.1 The ExA invited the Applicant to provide an update on Crown land interests.
- 6.2 Secretary of State for Transport - It was confirmed prior to Deadline 3 that the rights formerly believed to be held by the Secretary of State for Transport over plots 2-02 and 2-03 now lie with National Highways Limited. As such, these are no longer considered to be Crown land and this change was made to the Book of Reference submitted at Deadline 3 [REP3-014 / REP3-015].
- 6.3 It has now also been confirmed by the Department for Transport that the rights listed in plots 4-20, 5-01, 5-02, 5-03 and 5-10 have also transferred to National Highways. As such, we are in discussions with National Highways and these plots are no longer considered to be Crown land. This change will be updated and reflected at Deadline 4. This will mean that the Secretary of State for Transport has been removed from the Book of Reference and no Crown consent is required from the Secretary of State for Transport.

- 6.4 Secretary of State for Defence - The only changes that have been made to plots from the list provided in the Applicant's response to Q1.6.16, is to remove plots 6-27 and 7-10. A review of the original datasets has confirmed that the apparatus is not in these plots and they are no longer considered to be Crown land. This change will be updated and reflected at Deadline 4. Attempts have been made to contact the Secretary of State to both confirm this and also seek Crown consent. This was last followed up last week. Given the limited impact on the Crown rights, it is anticipated that the consent will be forthcoming.
- 6.5 Welsh Ministers - It has now been confirmed that the rights formerly believed to be held by the Secretary of State for Wales over plot 18-26 now lie with the Welsh Ministers. As such, this plot has been added to the list required for Crown consent from the Welsh Ministers. This change was made to the Book of Reference submitted at Deadline 2 [REP2-012 / REP2-013].
- 6.6 As set out in the updated Schedule of Negotiations with Land Interests [REP3-012 / REP3-013], which has been provided at Deadline 3, negotiations have been ongoing with the Welsh Ministers since May 2022. Updated Heads of Terms have been issued, and discussions continue.
- 6.7 Secretary of State for Wales - As noted above, it has now been confirmed that the rights formerly believed to be held by the Secretary of State for Wales over plot 18-26 now lie with the Welsh Ministers. As such the Secretary of State for Wales has been removed from the Book of Reference and no Crown consent is required from the Secretary of State for Wales. This change was made to the Book of Reference submitted at Deadline 2 [REP2-012 / REP2-013].
- 6.8 The King's Most Excellent Majesty in Right of His Crown - No changes have been made to plots from the list provided in the Applicant's response to FWQ1.6.16, which remains current. The Crown Estate has passed our request to the relevant staff member internally in order to engage with us, and we are expecting an update from them by the end of this week. Given the limited impact on the Crown rights, it is anticipated that the consent will be forthcoming.
- 6.9 The ExA noted that CRT have commented in relation to plot 18-03 that consent is required from DEFRA, and queried whether it should be listed as Crown land. The Applicant advised that it does not currently consider this to be Crown land but the Applicant is in discussions with CRT to understand the nature of that interest.
- 6.10 **Action Point CAH1-AP2: CRT made a comment that the waterway at Plot No. 18-03 is registered as 'Infrastructure Trust Property and that a separate consent is required from the Department of the Environment, Food and Rural Affairs. If that is the case, the ExA asked whether this plot should be listed in Part 4 (Owner of any Crown Interest in the Land) of the BoR [REP3-014]? Applicant and CRT to review and respond by DL4.**
- 6.11 **Response to Action Point CAH1-AP2: The Applicant will review the response from the Trust once received, but notes that it has not identified any Crown interest in this plot and understands at this time that the DEFRA consenting process does not constitute a Crown interest.**

Special Category Land

- 6.12 The ExA sought the Applicant's confirmation that it still considers replacement land is not required in relation to plot 17-02. The Applicant advised that it would respond in writing.
- 6.13 **Action Point CAH1-AP3: Plot No. 17-02 is registered in the BoR [REP3-014] as Special Category Land, being Open Space. The Applicant considers this plot to be exempt from Special Parliamentary Procedure, as when burdened with the order right, it will be no less advantageous than it was before to the persons specified in Section 132(3) of the Planning Act 2008. The ExA asked for the Applicant to confirm the Plot No. in question was Special Category Land and explain how such land**

*could be exempt from Special Parliamentary Procedure when the proposed drainage connection works would clearly dig a trench through the area of open space, albeit only for a brief period of time. The Applicant to review its position further in this regard and respond by DL4.*

- 6.14 Response to Action Point CAH1-AP3: The Applicant has reviewed the definition of open space as requested. The definition provides that “open space” has the same meaning as in section 19 of the Acquisition of Land Act 1981. That definition is: *“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.* The plot, outside of the playground is not laid out as a garden but is in use for public recreation, including ball games, walking and exercising of dogs. The Applicant therefore considers that the surface is open space within the definition.
- 6.15 The Applicant notes however that ‘the surface’ is important in this case. As allowed by article 31 of the dDCO [as in revision E, REP3-004], the Applicant can acquire only the subsoil or airspace of land without acquiring the land itself. It is clear that strata of land can be separable (as only strata can be acquired, this is common with mines and minerals titles as an example which are separate to the surface freehold title) and that statutory statuses do not necessarily extend beyond the zone of influence for that status, as recently re-affirmed by the Supreme Court in the case of statutory highway status<sup>1</sup>. The Applicant submits that the subsoil of the playground is not open space within the meaning of the definition as it is ‘not used for the purposes of recreation’. As set out in the Statement of Reasons [REP3-010] at 7.1.7, there is no proposed acquisition of or interference with the open space which the section protects. The Applicant therefore considers that section 131 of the 2008 Act does not apply.
- 6.16 The Applicant is seeking acquisition of a sub-surface strata for the pipeline route. That pipeline would be installed using trenchless techniques and there would be no interference with the open space use for the pipeline installation. The subsurface acquisition would be supported by rights over the surface and which do fall within section 132 of the 2008 Act. There are 2 forms of rights sought. The first set of rights would be for the benefit of the pipeline strata land as the benefited title. Those rights would encompass the pipeline protection rights, preventing inappropriate development or tree planting over the pipeline itself. The second set of rights are drainage rights for the connection to the watercourse.
- 6.17 As set out in the Statement of Reasons [REP3-010] at 7.1.12 the Applicant considers that the pipeline protection rights are intended to prevent construction on the land, which is entirely compatible with its designation as open space. It would therefore not render the open space less advantageous than it is at present to its owner or the public. The Applicant considers that the test set out in section 132(3) is therefore met.
- 6.18 For the drainage rights, as noted in paragraph 7.1.13 of the Statement of Reasons, a right is also sought to install and use an underground drainage connection from Aston Hill BVS to the existing drainage ditch in plot 17-01. The route of the underground drain will be designed to minimise interference with the open space use, avoiding for example the area where play equipment is installed. Installation of the drain would involve the opening of a small trench, laying of pipework, formation of a connection/outfall to drain in plot 17-01 and reinstatement of the surface.
- 6.19 The Applicant submits that in the case of the drainage right, section 132(3) also applies as, while there will be some very short-term, temporary disruption to a small area of the plot during construction, that installation would be carried out under temporary possession powers not compulsorily acquired rights. The installation of the drain would be undertaken in sections to maintain access to the play area and

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<sup>1</sup> London Borough of Southwark and another v Transport for London [2018] UKSC 63

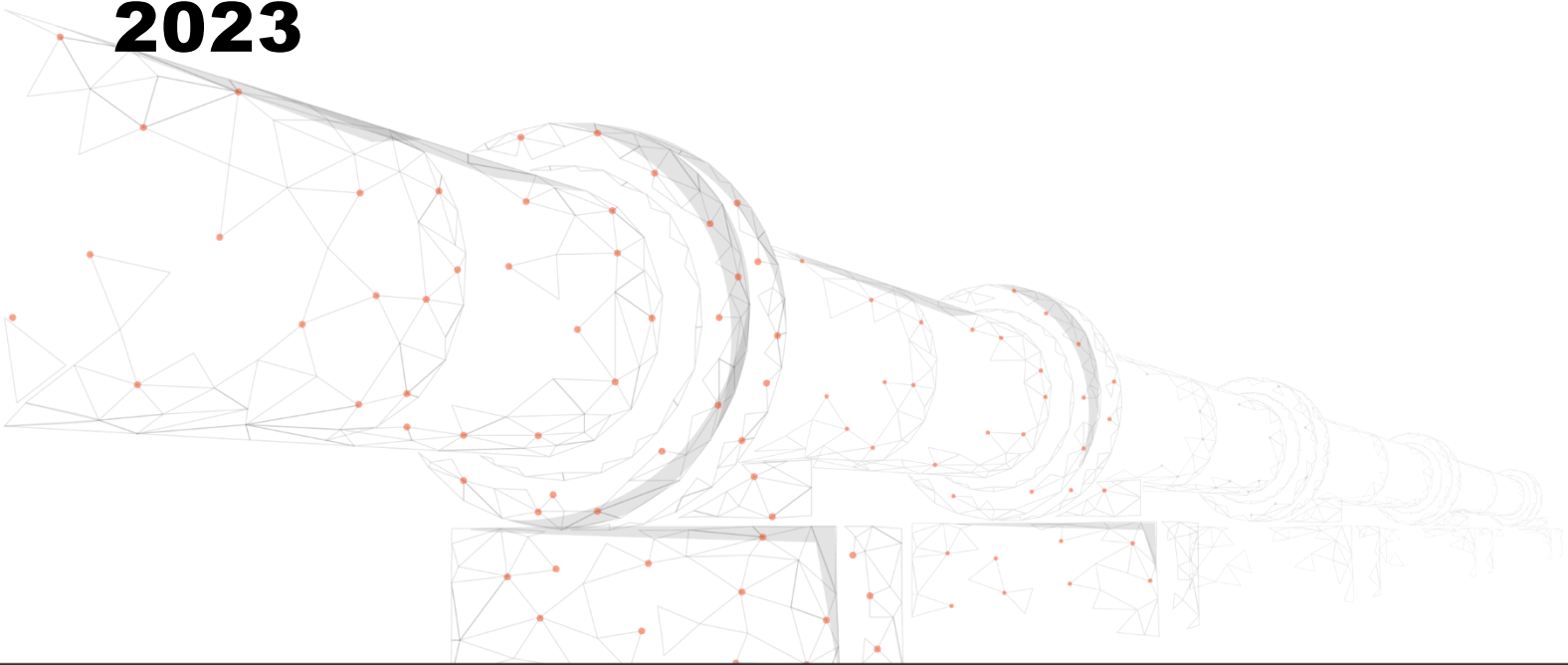
remaining space throughout. Once the drain has been installed there will be no ongoing impact and the acquisition of the rights sought will not render the open space less advantageous than it is at present to its owner or the public.

- 6.20** The Applicant notes that it is seeking to reach voluntary agreement to acquire lease rights on this plot. It is aware that the Community Council has advised it manages this area and that it would accept surface works on this plot, however the Applicant does not consider it can pursue that for the pipeline under the Order while seeking compulsory acquisition of rights in the open space strata. The Applicant will continue to engage with the title holder and the Community Council.

Statutory Undertaker Land

- 6.21 The ExA asked the Applicant to set out the current position in relation to serious detriment to statutory undertakers' land.
- 6.22 The Applicant advised that it does not accept there would be serious detriment to any statutory undertaker in terms of section 127 of the 2008 Act as a result of the DCO Proposed Development. It noted the high bar for serious detriment set out in previous DCO decisions are referred to by the Applicant in previous submissions (see the Applicant's response to FWQ 1.6.14 **[REP1-044]**).

**PART 3 - ISSUE SPECIFIC  
HEARING ON THE DRAFT  
DEVELOPMENT CONSENT  
ORDER (“ISH2”) ON 8 JUNE  
2023**



# HyNet Carbon Dioxide Pipeline ISH2: The Applicant's Summary of Oral Submissions and responses to action points



This note summarises the submission made by Liverpool Bay CCS Limited (the Applicant) at the Issue Specific Hearing on the draft Development Consent Order (“ISH2”) on 8 June 2023. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant’s submissions.

## 1 ARTICLES AND SCHEDULES OF THE DRAFT DCO

- 1.1 The Applicant was invited by the ExA to provide an overview of the draft Development Consent Order (dDCO). The Applicant noted that this overview had been prepared on the basis of Revision E [REP3-005] of the dDCO and did not include Change Request 2 changes (Revision F) [CR2-008].
- 1.2 The Applicant explained that the dDCO has been structured having regard to the now defunct model provisions, and precedent DCOs, as set out in the Explanatory Memorandum [REP3-007], and is standard form in a number of places.
- 1.3 The first Article is the interpretation article, and in addition to the standard provisions there are a number of project specific definitions, including “AGI”, “BVS”, “existing pipeline” and “new pipeline”. A key definition is “Commence”, which provides for a number of activities not to constitute commencement, and “maintain”, as the dDCO would authorise the construction, operation and maintenance of the DCO Proposed Development.
- 1.4 Part 2 of the dDCO sets out the principle powers which would be granted by the DCO.
- 1.5 Article 3 provides that authority under the Planning Act 2008 to construct and operate a nationally significant infrastructure project is granted subject to the controls in the rest of the dDCO, importantly the requirements and protective provisions. The consent is for the NSIP and ancillary works only, as there is no associated development in this dDCO.
- 1.6 Article 4 provides consent for the operation of the authorised development, and includes a bespoke drafting provision regarding the repurposing of the existing pipeline to allow use to transport carbon dioxide. The Applicant explained that this is necessary because the consent under which that existing pipeline was constructed restricted the use to natural gas.
- 1.7 Article 6 sets out limits of deviation. The Applicant highlighted that it is not proposing lateral limits of deviation because it has taken a corridor approach, and the corridor shows the maximum extent of area within which the works can be carried out. The Applicant is seeking vertical limits of deviation for the buried pipeline. The general approach is that the pipeline will be a minimum of 1.2m deep because that allows agricultural use to resume over it. However, at specific crossings, it could be considerably deeper – for example it has to be a minimum of 8 metres below the river Dee.
- 1.8 The dDCO seeks, in Article 8, to dis-apply a number of statutory provisions in accordance the Planning Act 2008 ambition to reduce the number of other consents needed alongside a DCO, or where these would conflict with the object of a DCO. Item (d) in the list is precautionary as the temporary possession sections of the Neighbourhood Planning Act



2017 have not yet been brought into force. Inclusion of Item (d) prevents conflict between statutory provisions should the relevant sections be brought into force.

- 1.9 Article 9 relates to statutory nuisance. The Planning Act 2008 provides a defence to actions of statutory nuisance brought by local authorities, but not to other persons aggrieved. This is generally seen as a gap in the law and this provision is intended to address that gap. It does not affect the powers of local authorities.
- 1.10 Part 3 of the dDCO relates to street works, and allows the undertaker to interfere with streets and execute works. It also includes powers to temporarily restrict or prevent use of streets while works are being undertaken. Part 3 requires to be read in conjunction with Schedules 3, 4 and 5, which lists the streets and accesses where these powers would be applied. This Part also authorises temporary restriction of public rights of way, and the affected rights of way are listed in Schedule 6. It is not proposed to permanently stop up any right of way in the current version of the DCO.
- 1.11 Part 4 of the draft DCO contains supplemental powers, and allows the making of connections to watercourses and drains. The Applicant is aware of a small number of watercourses into which it will need to connect for surface water drainage, and the details of those drainage connections will be controlled under the requirements.
- 1.12 Articles 22 and 23 are precautionary inclusions. Article 22 relates to protective works to buildings. The Applicant has not identified any buildings which would need to be protected during construction, but this is there in case any are identified at pre-commencement state. Article 23 concerns removal of human remains. The Applicant has no reason to believe there are human remains which will require to be removed. However, if they were found, without Article 23 the Applicant would need to get a license from the Ministry of Justice. Article 23 mirrors the conditions which would be attached to such a licence, to allow for removal without delay.
- 1.13 Part 5 of the DCO relates to powers of acquisition – including the powers of compulsory acquisition of land and rights, and the ability to override existing rights. The Applicant is seeking to acquire the land and rights voluntarily. However, in order to ensure that the DCO Proposed Development is deliverable, compulsory powers have been included and compulsory acquisition is sought on almost all of the Order land. The use of these powers is subject to a time limit of five years from the date on which the DCO is made, which follows precedent, and is included to prevent the powers existing over the landlord's interest for an unreasonable length of time.
- 1.14 Part 5 also makes a number of amendments to compulsory acquisition legislation to allow it to function for the DCO. Primarily, these sections amend other pieces of legislation which consider the acquisition of land but not necessarily 'rights' without the land itself. These amendments are routinely included in all DCOs so that the acquisition of rights functions properly under that other legislation.
- 1.15 Although not technically compulsory acquisition, powers of temporary possession are also included in Part 5, partly because that is the common structure and partly because conceptually this sits naturally with compulsory acquisition, being an interference with landowners' rights.
- 1.16 Articles 34 and 35 allow the taking of temporary possession for construction and maintenance. The intention of such powers is to minimise the need for the use of compulsory acquisition by allowing the developer to take access to land it only needs during construction or maintenance without having to permanently acquire it. The Applicant has provided for a notice period for the taking of temporary possession for construction of three months as that aligns with the Neighbourhood Planning Act 2017, as the most recent expression of Government's intention.
- 1.17 Article 36 would allow the compulsory acquisition of land and rights of statutory undertakers. The Applicant is not proposing to acquire any rights or apparatus of statutory undertakers at the moment. However, it cannot rule out that there may be a piece of

infrastructure which is currently unknown, which may need to be diverted when the Applicant actually goes on site. This Article is therefore included as a fallback position, and any exercise of Article 36 would be would to protective provisions. This power could only be granted if the Secretary of State was satisfied there would be no serious detriment under section 127 of the Planning Act 2008.

- 1.18 Part 6 of the DCO contains miscellaneous provisions.
- 1.19 Article 41 provides that nothing in the DCO can affect crown rights without the Crown's consent. This reflects s135 and to some degree duplicates that provision; however this is commonly included in precedent orders and some Crown interests will insist on inclusion of this wording as a condition of granting consent under s135. The Applicant has accordingly included it.
- 1.20 Article 42 applies the protective provisions.
- 1.21 The remaining articles in Part 6 set out a number of technical points such as listing the documents to be certified, setting out how service is to be affected, and providing for the arbitration of disputes.
- 1.22 Schedule 1 sets out the authorised works, describing the consent for which the Applicant is seeking approval.
- 1.23 Schedule 2 sets out the requirements which control the construction and use of the development.
- 1.24 Schedules 3, 4 and 5 provide the detail of the application of street works powers under Part 3 of the DCO, listing all the streets for which the order provides street works authority and on which the undertaker could restrict or prevent traffic or use during works.
- 1.25 Schedule 6 lists the public rights of way which may be temporarily restricted.
- 1.26 Schedule 7 lists the land which cannot be compulsorily acquired and over which only temporary possession can be taken. The Applicant has subdivided that to try and make it clear to landowners where the Applicant is proposing only to take access, and not exclusive possession. This is a self-imposed restriction on the use of Temporary Possession powers.
- 1.27 Schedule 8 lists the land where the Applicant is only seeking to acquire rights and not land, where rights only is sufficient to achieve the Applicant's objectives. The Applicant is seeking the imposition of restrictive covenants on land to protect the pipeline and to ensure that planting or habitat works which the Applicant is required to carry out can be maintained during the required period.
- 1.28 Schedule 9 provides the detail of amendments to compulsory acquisition legislation.
- 1.29 Schedule 10 sets out the protective provisions which will apply to the various statutory undertakers and other bodies who have requested them, with some still under negotiation.
- 1.30 Schedule 11 lists the hedgerows which may be removed.
- 1.31 Schedule 12 sets out arbitration rules, as there is no formal arbitration procedure prescribed by the Planning Act 2008.
- 1.32 The ExA asked whether, in terms of Part 2 of Schedule 1, it is lawful to include "ancillary works" in Wales. The Applicant advised it would review, but was sure it is possible to have ancillary works (works necessary for the development), but not associated development. The Applicant explained that the wording of the ancillary works was deliberately broad because the Applicant does not have detailed design, and so cannot set out exactly what would be needed. There is difficulty in amending a DCO, and therefore a need for the DCO Proposed Development to have a degree of flexibility to deliver the detail design.  
**The Applicant has reviewed the Planning Act 2008 and notes that section 115**

provides that development consent may be granted for development which is the 'development for which development consent is required' (s115(1)(a)), or 'associated development' (s115(1)(b)). Ancillary works form part of the 'development for which development consent is required' under s115(1)(a) and are according not subject to the restriction preventing inclusion in Wales. The ancillary works are necessary to deliver the NSIP development and form part of it, the NSIP cannot be constructed without these. They are listed as ancillary works as a matter of drafting practicality as, otherwise, they would require to be listed under every work, leading to considerable duplication and potential inconsistency.

- 1.33 The ExA flagged some potential clarification needed in the definition of "authorised development", with some words missing. The Applicant agreed to review. **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which makes the changes noted by the ExA in the hearing.**
- 1.34 CWCC raised a concern about the extent of fencing to be excluded from the definition of "commencement". The Applicant explained that it would involve fencing erected for the period of construction. The ExA asked the Applicant to explain at Deadline 4 whether the items listed could be identified as temporary in the definition.
- 1.35 ***Action Point: ISH2-AP1: Development Consent Order (DCO) - Article 2 'Interpretation'. In the light of CWCC maintaining its position, at DL3, concerning the definition of "Commence", where it is seeking the removal of 1) erection of fencing to site boundaries or marking out of site boundaries; 2) installation of amphibian and reptile fencing; 3) the diversion or laying of services; and 4) environmental mitigation measures, from that definition. The Applicant indicated it would review its position in regard to whether the items listed above were intended to be temporary or permanent and respond in writing at DL4.***
- 1.36 **Response to Action Point ISH-AP1: The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which proposes an amendment to the definition to make it clear that the fencing installed under this is for the construction phase only.**
- 1.37 The ExA flagged potential typographical errors in the definition of outline LEMP and outline OMEMP which the Applicant undertook to review. **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which makes the changes noted by the ExA in the hearing.**
- 1.38 The ExA queried whether the definition of REAC should include reference to certification. The Applicant explained that it would form part of the ES and would not be certified separately, and undertook to review the definition of REAC to make that clear. **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which deletes the reference to the REAC being certified.**
- 1.39 In relation to Article 6, Encirc raised a query regarding the depth of the pipeline under the railway. The Applicant explained that the crossing under the railway will be trenchless, and so deeper than the standard 1.2m in any case. The Applicant noted that it would be guided by the railway operator and results of ground investigations as to the acceptable depth. The Applicant explained that this could be secured in protective provisions if it remained a concern.
- 1.40 In response to concerns from National Highways regarding the depth of works under the highway, the Applicant explained that it had committed to complying with DMRB standards, namely CD622 managing geotechnical risk, and that this would inform the design of the crossing under the highway.
- 1.41 In response to concerns from the Environment Agency regarding the depth of works at watercourse crossings, the Applicant explained that depths of 0.425 metres would only be likely to occur where the Applicant encounters particular kinds of rock which could not be dug through, in order to avoid blasting. The Applicant also explained that deeper limits of

deviation are relevant to the River Dee, where the Applicant requires to be 16m between the river bed if HDD is used, which is already 8m below ground level, giving a minimum depth requirement of 24m. The 35m limit therefore allows some flexibility for that crossing. **The Applicant notes that the EA sought confirmation that ground investigation results would be used to inform the detailed design. The Applicant can give that confirmation and notes that this is one of the key purposes of the further investigations planned.**

- 1.42 **Action Point ISH2-AP2: Article 6(1)(d)(ii) allows the deviation of works other than the pipeline vertically downwards to any extent as may be found necessary or convenient. The Applicant was asked why is there no similar limitation to that specified for above ground works as set out in Schedule 2 Requirement (R) 4? It sought to respond in writing at DL4.**
- 1.43 **Response to Action Point ISH2-AP2:** In response the Applicant notes that the vertical limits of deviation on the pipeline are intended to allow construction to take account of the ground conditions and existing use of land. The Applicant has also, as noted in the statements of common ground, agreed to comply with various design standards and codes where it crosses the infrastructure of others. These generally provide for a minimum depth or separation from that infrastructure, for example the Canal and River Trust require that the top of the pipeline is a minimum of 3.5m below the bottom of the Shropshire and Union Canal. Flexibility is therefore needed on depth for the pipeline to allow that compliance to be achieved in each case having regard to the ground conditions.
- 1.44 **The specification of minimum depths has been used as it is that determines that use of land over the pipeline can be resumed. In most cases, agricultural use requires a minimum depth of 1.2m. Some landowners have advised of a need for deeper cover, particularly around the river Dee where ‘deep rip’ ploughing techniques are used. In these areas the pipeline will be buried at a greater depth.**
- 1.45 **The depth of installation under streets managed by the local authorities will be determined by the type of street and form of its construction, and the existence of other infrastructure in and under the street. The Applicant must, in accordance with the dDCO, leave the street in a satisfactory condition which will include ensuring that it is fit for use. Under the strategic road network, the Applicant will seek approval for the trenchless installation which will include the depth. In England, that will be assessed against DMRB CD622 ‘managing geotechnical risk’. In Wales, the only interaction with the SRN is open cut on a slip from the A55 and will be designed in accordance with the appropriate standard.**
- 1.46 **The above ground installations and BVSs are restricted as to a maximum height as that parameter is necessary to limit the visual and landscape impacts to those assessed. There is a practical downward limit on the equipment as these structures are designed to be above ground and cannot be buried. The levels will also require to provide the necessary height for flood resilience. Piling may be necessary on at least one AGI site (Ince) where ground investigations establish this is required. The depth of piles will be determined by the results of investigation. The flexibility sought on these allows deviation from the indicative drawing levels so that these can be designed with regard to those various factors. The actual envelope for deviation in these cases is however limited by the physical and operational constraints.**
- 1.47 **The ExA queried why Article 6(2) requires the Secretary of State’s approval rather than the local authority. The Applicant explained that this was included following precedent from other DCOs. It is believed that the reason is that it is the Secretary of State who has fixed the core envelope for the DCO Proposed Development, and therefore it should be the Secretary of State who is approached to reopen the envelope, as opposed to going to the local planning authority.**

- 1.48 In relation to Article 10, the ExA asked whether provision for pre-application discussion should be added. The Applicant gave its view that it should not, as that would have the effect of lengthening the time period for determination. The Applicant noted that the OCTMP provides for liaison groups and an on-going forum for discussion. Article 10 would be triggered by a need for additional street works not identified in the dDCO, which are likely to come out of discussions with the local highways authority. The Applicant therefore does not consider it necessary to include provision for pre-application discussion.
- 1.49 In relation to Article 10, CWCC confirmed to the ExA that it operates a street works permit scheme. The Applicant advised their preference would be not to reference this in the dDCO, as Article 10 gives the undertaker statutory authority to carry out street works. CWCC advised they would need notice of works coming forward. The Applicant advised that there are a number of processes for notice, for example the staging plans and OCTMP.
- 1.50 ***Action Point ISH2-AP3: In regard to Article 10 (Street Works) to update the ExA as to whether there is any need for a pre-consultation stage to be inserted into the DCO in regard to submissions under this Article or whether it can be adequately dealt with outside of the DCO to the satisfaction of the Applicant, CWCC and relevant IPs? Response in writing at DL4.***
- 1.51 **Response to Action Point ISH2-AP3: The Applicant and the Council's highway representatives held a joint call on 14 June 2023 to discuss this matter. The Applicant understands that the Councils are content that this can be dealt with outside of the DCO subject to agreement on how the notification process will apply in practice. There is understood to be no in principle disagreement. The parties are seeking to document the practicalities between them to ensure that the process is agreed, but it is not considered that this needs to be documented in the DCO and can be dealt with as an administrative issue between the parties.**
- 1.52 The Applicant agreed to review potentially superfluous wording in Article 11(1). **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which makes the changes noted by the ExA in the hearing.**
- 1.53 ***Action Point ISH2-AP4: Article 11(3) concerning restoration and being satisfied in regard to any streets that has been temporarily altered under this article. FCC advised under the Street Works Act it would have a two-year period where FCC could notify the applicant or the person who has conducted the work of a defect and they would have to remediate it. FCC advised it has been in discussion with the Applicant over revising the provisions in Article 11(3) with a view to ensuring a 24-month period is specified. FCC and Applicant to keep the ExA advised of its progress with negotiations in this regard starting at DL4.***
- 1.54 **Response to Action Point ISH2-AP4: The Applicant and highway representatives held a joint call on 14 June 2023 to discuss this matter. The Applicant understands that the Councils are largely content that this can be dealt with through protective provisions and discussion on the detailed drafting of those is in progress. The Applicant notes that agreement has now been reached on the time period (at 2 years as requested by FCC).**
- 1.55 The Applicant agreed to look at including a definition of "Chief Officer of Police". **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which adds this definition.**
- 1.56 The Applicant provided an update on protective provisions (PPs):
- (a) Cadent have provided their standard PPs. Negotiation on these is ongoing, but the Applicant does not consider there to be any insurmountable issues. Commercial points remain under negotiation however the Applicant expects to be able to make progress in short course.

- (b) Canal and Rivers Trust have also provided their standard PPs. Negotiation on these is ongoing, but the Applicant does not consider there to be any insurmountable issues. The Applicant notes that the Canal and River Trust have requested to be consulted on the CTMP. The Applicant is considering this point.
  - (c) CF Fertilisers have requested PPs for works around the ditch to the north of Work No.1 in relation to access and drainage. The principles of that have been agreed, and Applicant is producing a draft for them to review.
  - (d) Environment Agency have provided their standard PPs, the Applicant is due to provide comments back. The Applicant does not consider there to be any insurmountable issues.
  - (e) Exolum have provided their standard PPs, the Applicant is to provide comments back, and the outstanding points are considered to be fairly minor.
  - (f) National Grid had provided their standard PPs which are largely agreed other than two outstanding commercial points around financial obligations, which the Applicant is working on and hopes to make progress
  - (g) National Highways – the Applicant has a meeting set up on lands and suggests it is necessary to set up meeting on DCO. The parties are some way apart and the PPs are still under discussion at this stage.
  - (h) Network Rail have provided their standard PPs. The PPs largely agreed, however they oblige the Applicant to enter into an Asset Protection Agreement and that form of agreement is under review by the Applicant before agreeing to that provision.
  - (i) Peel have provided draft PPs, although there remain some small points between the parties, the Applicant does not consider there to be any insurmountable issue.
  - (j) Scottish Power have provided their standard PPs, there is one point outstanding about notification of non-intrusive works, but otherwise these are largely agreed.
  - (k) United Utilities have been sent PPs and the Applicant is awaiting feedback.
  - (l) Welsh Water have also been engaged on PPs and are seeking some additions, the Applicant requires a discussion with them, as clarification is needed on what they are seeking, however no unresolvable issue has been identified.
- 1.57 Encirc is not on the list, but the Applicant is very happy to provide protective provisions once there has been discussion on what should be covered.
- 1.58 Airbus not currently on that list, but parties' specialists are currently in discussion about the interaction and whether PPs are required. **The Applicant now understands that Airbus may not consider that PPs in their favour are required and that their interests can be protected through the voluntary land agreement. The Applicant is seeking to document this in the draft statement of common ground.**
- 1.59 In relation to NRW, the Applicant understood they had asked for PPs to regulate access outside of their statutory rights of access, but note they are unhappy with the drafting of the relevant part. The Applicant is seeking to understand this concern as the drafting was intended to be of assistance to NRW.
- 1.60 The Applicant also advised that discussions are still underway with Essar, who may or may not also seek PPs, this has not yet been finalised but the Applicant has contact Essar to seek to progress.
- 1.61 **The Applicant noted the query on how communications with 2 Sisters Food Group are secured and would advise that within the dDCO this is through the stakeholder**

communications plan which forms part of the CEMP and is secured by requirement 5.

## 2 SCHEDULE 2 OF THE DRAFT DCO – REQUIREMENTS

- 2.1 The ExA noted that Requirement 3 only requires detailed to be submitted to the local authority but does not require approval, and asked whether that was a drafting error. The Applicant explained that it was a deliberate decision. The intention of the requirement is to give the Councils advance notice of the planned stages for communications and workload planning. The Applicant is happy to add a requirement to specify works numbers in the stages, but is not proposing to require approval of submitted details. The Applicant also confirmed it had no objection to providing a definition of 'stage'. **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which adds this definition.**
- 2.2 The ExA noted a number of Requirements refer to implementing approved details, and queried whether there should also be an obligation to maintain the implemented details. The Applicant explained that once a scheme is implemented, it is difficult to see how it could not be used. The Applicant agreed to respond at Deadline 4 as to why an obligation to maintain the implemented details is not required.
- 2.3 ***Action Point ISH2-AP7: Applicant to review wording of all Rs generally to see whether any of the Rs required a subclause or addition to an existing subclause in regard to maintaining whatever is being secured by the R. For example there is a R to implement surface water drainage works, but should the R include the need to 'maintain' those works for the duration of the development? Applicant to review, provide a written response justifying its position and/ or update the DCO Rs, as necessary, at DL4.***
- 2.4 **Response to Action Point ISH2-AP7: The Applicant has considered this and is still unclear as to what purpose this addition would serve, especially on the construction phase requirements where the plans as implemented control the construction but would not be 'maintained' beyond that. The Applicant considers that requiring implementation in accordance with the plan which controls how the stage of work is carried out is sufficiently clear that the ongoing controls in the plan apply. It would not be reasonable for example to implement traffic control measures for a short time but remove them before completing the street work they apply to; similarly they would not be maintained beyond the period they are needed for that work. The Applicant therefore submits that adding 'and maintained' would not add clarity.**
- 2.5 In relation to Requirement 4, the ExA asked why the Requirement only requires 'general' accordance with application plans. The Applicant explained that this is because the detailed design is not yet known, and the plans currently submitted are indicative.
- 2.6 The Applicant agreed to provide in writing a response on the definition of "environmental effects" and where this wording has originated from.
- 2.7 ***Action Point ISH2-AP8: The ExA noted CWCC was questioning the definition of 'Environmental Effects' with the Applicant responding by pointing out it is standard wording in many DCOs. The Applicant asked to respond in writing to the ExA's question asking for a comment on the source of the wording? Applicant to respond at DL4.***
- 2.8 **Response to Action Point ISH2-AP8: Requirement 4 states: "The authorised development must be carried out in general accordance with the general arrangement plans. The authorised development will not be in general accordance with the general arrangement plans if any departure from the general arrangement plans would give rise to any materially new or materially different environmental effects from those assessed in the environmental statement." [Emphasis added]**

- 2.9 Regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 prohibits the Secretary of State from making an order granting development consent for an EIA development unless an EIA has been carried out in respect of that application. The EIA process includes the preparation of an environmental statement by the applicant (Regulation 5). Regulation 14 states that, inter alia, an environmental statement must include “a description of the likely significant effects of the proposed development on the environment”. In practice, environmental statements generally describe the likely effects of the proposed development on the environment, and assess whether these are likely to be significant or non-significant.
- 2.10 Regulation 21 provides that, when deciding whether to make an order granting development consent for EIA development, the Secretary of State must, inter alia, “examine the environmental information”. “Environmental information” is defined in Regulation 3 as “the environmental statement (or in the case of a subsequent application, the updated environmental statement), including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development and of any associated development”. [Emphasis added]
- 2.11 In this context, it is clear that “environmental effects” means the same as the “effects of the proposed development on the environment”. Requirement 4 clearly refers to “environmental effects” in the context of the environmental statement. In this context, the term clearly refers to the likely environmental effects of the proposed development reported on in the environmental statement. Therefore, Requirement 4 would mean that any development carried out pursuant to the DCO, but which would result in likely environmental effects which are materially new or different from those reported in the environment statement, would not be considered to be in general accordance with the general arrangement plans, and the development would be in breach of the Requirement.
- 2.12 The wording of Requirement 4 has precedent in the Southampton to London Pipeline Development Consent Order 2020. Reference to “materially new or materially different environmental effects” (compared to those identified in the environmental statement) is also used in at Requirement 20 (Amendments to approved details) of the draft DCO, and this has precedent in the Thorpe Marsh Gas Pipeline Order 2016, and the River Humber Gas Pipeline Replacement Order 2016. The precedent Orders do not define “environmental effects” and the Applicant does not consider it necessary or appropriate to do so given that the EIA regulations use the term and do not consider a definition to be necessary.
- 2.13 The Applicant agreed to provide in writing a response to the EA’s concerns at Requirement 4 around pipeline depths at watercourse crossings. **In response, the Applicant advises that each crossing will be determined by the crossing methodology and the depths of the installation required either side. Where open cut is used, the depth will be a minimum of 1.2m, or deeper if that is required for the current use and maintenance of the adjacent land or the watercourse to be resumed. For example, if regular clearance of accumulated material in the watercourse is required, the depth will be sufficient to allow that to be carried out. For trenchless crossings the depth will be greater and will be determined on a case by case basis having regard to, inter alia, ground conditions at each location. Crossings of main rivers will require the appropriate flood risk activity permits to be obtained for the works as they involved the installation of a permanent structure under the main river. That permit would be sought from the EA and they accordingly have an appropriate level of control over those works within watercourses in their remit. The Applicant therefore does not propose any amendment to requirement 4 for these crossings as it considers that the EA’s interests are already suitably protected under another legal regime.**



- 2.14 In response to FCC's comments around the materials management plan, the Applicant confirmed the outline MMP would be submitted at Deadline 4.
- 2.15 In relation to Article 8, the EA raised concerns that the outline surface water drainage strategy is very high level. The Applicant explained that this is because detailed design is not yet known, and the outline strategy is intended to guide detailed design. The requirements secure the need for that detailed design to be approved. If more specification is required, the strategy could include a paragraph confirming that the submitted details will deal with specific matters. In relation to concerns about construction phase surface water drainage, that would be covered in the CEMP's sub-plans under requirement 4, not the strategy.
- 2.16 The Applicant agreed to review Requirement 9 to make clear who would be responsible for completing investigations and a risk assessment. **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which makes the changes to this requirement.**
- 2.17 In relation to concerns raised by CWCC and FCC seeking provision for the approval of the verification report, the Applicant advised that it did not consider this to be necessary, and that it would cause unnecessary delay given the undertaker is already required to have the remediation scheme approved and to implement it. There is already an obligation to comply with the scheme, and the verification report just confirms that, and does not need to be approved. There is precedent for this approach in other DCOs.
- 2.18 In relation to Requirement 11(2)(c), the ExA queried the broad nature of the obligation to comply with measures in the ES for protection of existing features. The Applicant explained that this is due to the difficulty in further defining and knowing the relevant features and protective measures prior to detailed design being produced.
- 2.19 In relation to Requirement 12, the ExA asked whether approval is required for ecological survey work. The Applicant advised that the purpose of the survey work is to allow the undertaker to apply for an EPS licence, which is why approval for the survey work is not being sought.
- 2.20 In relation to Requirement 13, construction hours, the Applicant advised that its understanding was that CWCC objected to activities outside core hours within an approved scheme. The Applicant has amended the definition of "emergency" and removed provision for works to address delays being permitted. The Applicant is currently working on providing more information around what start-up and shut-down activities means.
- 2.21 In relation to Requirement 16, FCC maintained their position that an aftercare scheme should be included. The Applicant explained that it is considered a Soil Management Plan is sufficient for this type of development, and would require proper storage of topsoil and returning the correct layers in order to restore the land to the correct condition. A five year aftercare scheme requirement would involve interfering with the landowner and their active farming uses on the agricultural land, which the Applicant does not consider is appropriate. The Applicant agreed to set its position out in writing for Deadline 4.
- 2.22 ***Action Point ISH2-AP11: FCC raised concerns related to the proposed Soil Management Plan and argued that a 5-year aftercare provision should be in place, rather than just the land being returned after a year with no comeback. CWCC supported this position in the Hearing. Whilst the Applicant maintained its position, the ExA ask it to give further thought to what it had heard from the IPs and respond in writing at DL4.***
- 2.23 **Response to ISH2-AP11: It is noted that the outline soil management plan [APP-227] in section 6 requires inspection by a competent person to establish any need for an aftercare scheme with regard to the specific conditions in each case and the landowners' use of land. The Applicant therefore submits that suitable restoration is already secured in that plan and inclusion in requirement 16 is not necessary or**

justified. The Applicant also notes that soil stabilisation takes 1 to 3 years and 5 years would be disproportionate in any case. The Applicant continues to object to the requested addition to this requirement as being unnecessary and unjustified. The Applicant notes that the justification for seeking this given by the Councils was predicated on comparisons to mineral extraction. The Applicant reiterates it does not consider this a relevant or fair comparison to the type and extent of works for which consent is sought in this application, which is more comparable to installation of a large utility connection, where it is common not to include a restoration requirement at all.

- 2.24 The Applicant agreed to confirm in writing at Deadline 4 whether Requirement 17 should include provision for approval of the operational maintenance management plan by the local authorities. **The Applicant, having considered this point, does not consider this to be appropriate. The operation of the pipeline will require to be undertaken in accordance with the Pipeline Safety Regulations and any obligations imposed by the Health and Safety Executive. These requirements will be the main drivers of the operational and maintenance regime, the Applicant must be able to comply with those and cannot be restricted in doing so by this plan. Operation and maintenance of the above ground sites will be determined by HSE considerations and the applicable codes of practice. Operational noise is controlled under a separate requirement and does not form part of the plan. The new pipeline will be operated and maintained in a similar manner to the existing natural gas pipeline. Pipeline inspection will largely be taken from within the pipeline itself and intrusive investigation ('digging down' to the pipeline) would only be necessary in response to issues arising, is not a planned regular activity and would primarily be driven by safety considerations given that. Accordingly, there is little opportunity for the LPAs to require changes to this plan and approval is not necessary or appropriate.**
- 2.25 FCC maintained its position at Requirement 18 that the decommissioning environmental management plan should include an aftercare scheme. The Applicant maintained its position that this is not appropriate, and that it should be remembered that this relates to something a considerable time into the future and involves second guessing what the actual position at the time will be.
- 2.26 CWCC and FCC's written representations sought a longer time period at Requirement 23. The Applicant advised that it did not think 20 days was too short to provide comments on a proposed application, given the Councils would then have 56 days to determine an application.
- 2.27 CWCC and FCC's written representations sought a longer time period for requesting further information pursuant to Requirement 24. The Applicant has previously increased from 5 working days to 10 days. The Applicant advised that it did not consider an extension to 21 days would fit with the overall determination period of 56 days, as it would knock the overall determination period out. The Applicant pointed out that Article 22(1) restarts the 56 days clock if further information is requested. The Applicant is aware of the Councils' resourcing issues, but does require some certainty about time frames being agreed to for discharge of requirements. The Applicant agreed to discuss with the Councils and reply in writing at Deadline 4.
- 2.28 **Action Point ISH2-AP 12 To review Rs 21 (Applications made under this R) and 24 (Further Information) with regard to cross referenced Rs and timescales, as previous revisions have cross-referenced different Rs and caused some confusion. Applicant/ CWCC/ FCC to review and revert back to the ExA at DL4.**
- 2.29 **Response to Action Point ISH2-AP12: The Applicant notes that revision E of the dDCO (deadline 3) and revision F (change request 2) both contain the correct reference. Revision G submitted at deadline 4 is also correct. The Applicant apologises for any confusion in prior versions and has removed automatic cross referencing from this paragraph to prevent this re-occurring. On the substance of the timing, the Applicant and the Councils have not yet resolved this point and will update the ExA as soon as practicable.**

### 3 ARTICLE 44 OF THE DRAFT DCO – CERTIFICATION OF PLANS

- 3.1 The ExA asked whether the outline PROW management plan required to be listed in Article 44 as the definition referred to it being certified. The Applicant confirmed it does not, as it is an appendix to the outline CEMP, and that this would be corrected in the draft DCO. **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which makes this change.**
- 3.2 The ExA asked whether the BNG Assessment and FRA would be certified and if they needed to be listed. The Applicant explained that those documents are part of the ES and do not need to be listed separately.
- 3.3 The ExA asked whether the Guide to the Application and the REAC required to be certified, and the Applicant explained that it was considered that they did not, as they are route maps rather than documents providing control over the DCO Proposed Development.
- 3.4 The ExA asked whether the CEMP appendices should be listed. The Applicant agreed to add reference to the CEMP's appendices in its definition. **The Applicant is submitting a revised dDCO at Deadline 4 (Revision G) along with this submission which makes this change.**

### 4 CONSENTS, LICENCES AND OTHER AGREEMENTS

- 4.1 The ExA invited the Applicant to provide an update on the consents, licences and other agreements required in order to undertake the DCO Proposed Development.
- 4.2 The Applicant advised that the list of other consents and licences is set out in **[REP3-017]**. It is roughly grouped into waste regulations, EPS and other ecological licences, environmental permits, water abstraction/discharge licences and other consents required on an ad hoc basis. The majority of these will be applied for at the appropriate stage, being post-consent during detailed design.
- 4.3 The Applicant advised that since **REP3-017** was submitted, the marine licence application has been submitted to NRW. The Applicant advised it was responding to requests for further information, and will provide an update once the application has been determined to have been validly made. **Since the hearings, the Applicant and NRW have been in discussion on the format of the further information for that application. The Applicant considers that all of the information is fully set out in the ES and HRA for the DCO, and given the deferrals agreed had signposted to that. However, NRW have requested that this information is disaggregated from the wider application and presented as standalone for the marine licence. This work is being undertaken but, given the volume of material and the need to create bespoke summaries and other administrative points, this work is taking longer than originally allowed in the further information request. NRW have therefore requested that the application be withdrawn and re-submitted once that has been finished. The Applicant will update when this has been completed.**
- 4.4 The Applicant noted that the EA has requested that a groundwater investigation consent be added to the other consents and licences list, which the Applicant will do – but that would be applied for post-consent. **This has been added to the other consents and licences list being submitted at deadline 4 along with this submission.**
- 4.5 Shadow EPS licence applications are in preparation, which the Applicant is hoping to submit those in the by deadline 5, with final applications being made at detailed design stage. The Applicant has commenced discussions on district level licensing for newts with Natural England, to be submitted at detailed design stage.
- 4.6 The ExA asked for the Applicant's response to CWCC's submission **[REP3-042]** indicating that potential suitable resources could be provided to the Council to allow work to be undertaken in advance of formal submission. The Applicant confirmed that it is looking at PPAs for the non-statutory pre-application engagement for discharging Requirements to

allow the Councils to engage and frontload that work. The Applicant is currently drafting this, and will be provided to the Councils.

- 4.7 The ExA asked the Applicant to clarify how legal agreements in relation to BNG would be secured, and how they would meet the legal tests for development consent obligations. The Applicant clarified that the legal agreements proposed relate only to BNG, and not to mitigation. The Applicant is therefore not proposing a S106 agreement, as it is not considered to be necessary or justified to use such obligations. The Applicant's draft agreement is with the Councils for review.
- 4.8 The Applicant's proposed structure is for payment of a single lump sum to provide and maintain the BNG units. There would be no on-going obligation on the undertaker, so a S106 agreement is unnecessary, and it would effectively just be a contract.
- 4.9 The ExA asked whether it was proposed to use BNG credits. The Applicant explained that there is no credit scheme at an appropriate level of maturity for the DCO Proposed Development to access.
- 4.10 The Applicant agreed to provide in writing a further explanation of what is proposed, and required in terms of BNG, and whether there is any need to secure that or enter documentation into the Examination in order to demonstrate the agreement, or whether the parties simply confirming there is a private agreement is sufficient.
- 4.11 **Action Point ISH2-AP13: *With regard to any agreements securing BNG, please could the Applicant and the IPs listed give the ExA a clear explanation as to what has been/ is being agreed between the Applicant and IPs. Additionally, could the Applicant and relevant IPs explain: how such an agreement(s) is to be secured, including what is required; how it relates back to the DCO; and whether or not there is an intention to enter a copy of the completed agreement(s) into the examination as evidence. In the event a copy is not intended to be entered into the Examination, please advise how the Applicant and relevant IPs intend to demonstrate to the ExA an agreement in this regard has been completed between the Applicant and relevant IPs to the satisfaction of all relevant IPs?***
- 4.12 **Response to Action Point ISH2-AP13: The Applicant will submit a full BNG strategy update at deadline 5 but makes the following interim comments. The Applicant and the Councils have been in discussion to create the majority of BNG/BNB through schemes managed by the Councils, under exception of woodland in Wales. The approach being proposed for those schemes is that a binding legal agreement is entered into now, securing the units required for the DCO development within the Council's identified schemes. Where the DCO is granted the Applicant would then, prior to commencement of the DCO development, pay over to the Councils the sum representing the costs of creating the required units.**
- 4.13 **The 30 year management agreements will vary between areas and habitat types and details of these will be set out in the deadline 5 submission.**
- 4.14 **The Applicant is not clear at this time whether the Councils and other counter parties to any agreement would be happy to submit copies of completed agreements to the ExA, and suggests that if they are, it may be that some redaction of those would be required. The Applicant is seeking views but notes that the Councils' have only had the draft agreements before them since shortly before the hearings and amendments are understood to be required on those so they are not yet in agreed form.**