

## **APPLICANT'S COMMENTS ON SUBMISSIONS RECEIVED AT DEADLINE 4**

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

Planning Act 2008

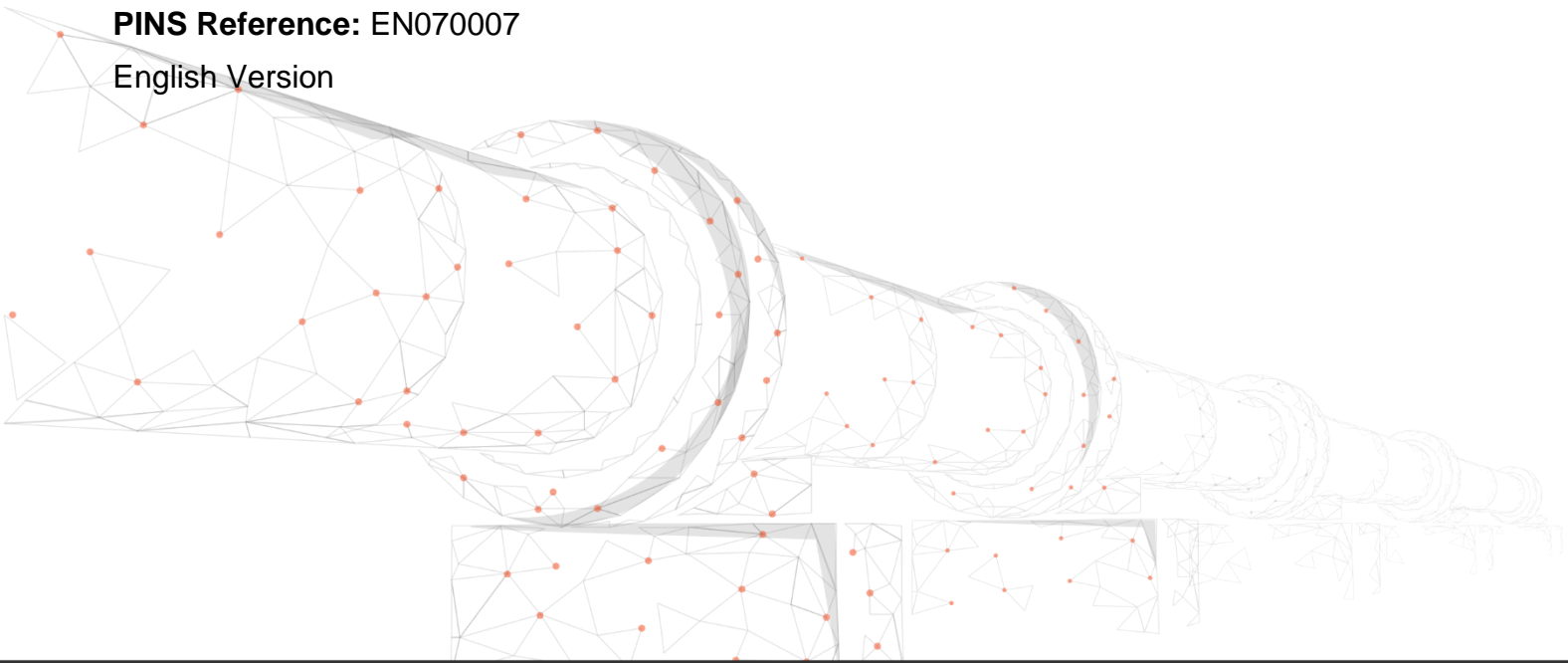
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# 1. INTRODUCTION

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## 1.1. PURPOSE OF THIS DOCUMENT

- 1.1.1. This document has been prepared on behalf of Liverpool Bay CCS Limited ('the Applicant') and relates to an application ('the Application') for a Development Consent Order (DCO) that has been submitted to the Secretary of State (SoS) for Energy Security & Net Zero (ESNZ) under Section 37 of the Planning Act 2008 ('the PA 2008'). The Application relates to the carbon dioxide (CO<sub>2</sub>) pipeline which constitutes the DCO Proposed Development.
- 1.1.2. This document provides the Applicant's response to Written Representations submitted at Examination **Deadline 4**.

## 1.2. THE DCO PROPOSED DEVELOPMENT

- 1.2.1. HyNet (the Project) is an innovative low carbon hydrogen and carbon capture, transport and storage project that will unlock a low carbon economy for the North West of England and North Wales and put the region at the forefront of the UK's drive to Net-Zero. The details of the project can be found in the main DCO documentation.
- 1.2.2. A full description of the DCO Proposed Development is detailed in **Chapter 3 – Description of the DCO Proposed Development** of the consolidated Environmental Statement (ES), submitted at Deadline 4 [**REP4-029**].
- The Applicant submitted its Intention to Submit a Change Request (3) on 20 June 2023 [**REP4-270**] and submitted Change Request 3, along with an Environmental Technical Note on 04 July 2023. The ExA have until 01 August 2023 to determine whether to accept Change Request 3 into the Examination.

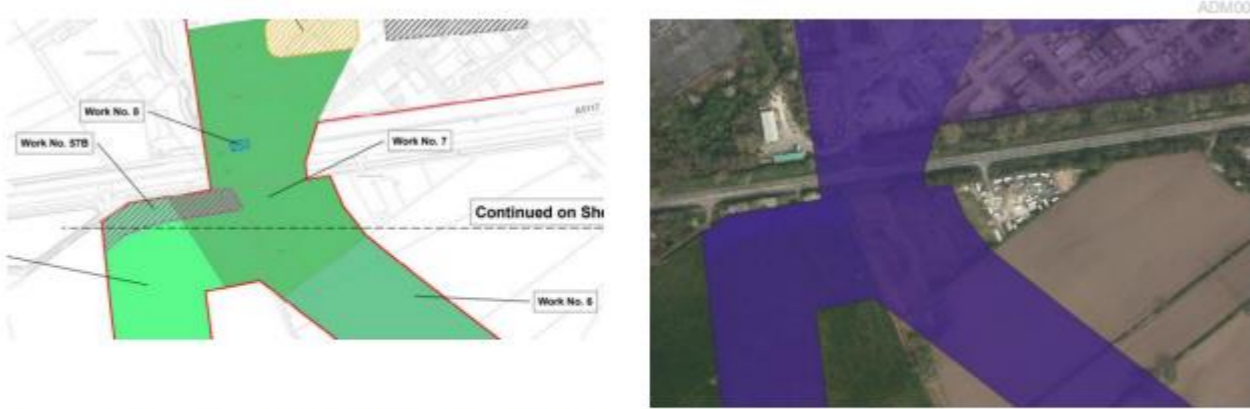
## 2. APPLICANT'S RESPONSE

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- 2.1.1. This chapter provides the Applicant's comments on submissions received at Deadline 4.
- 2.1.2. The Applicant has not responded to the following submission made at Deadline 4, as no substantive comments were made by the Interested Party (IP) that require further comment from the Applicant at this time:
- Cheshire West and Chester Council – Deadline 4 Submission – Local Plan and detailed policies **[REP3-278]**
- 2.1.3. In addition, where a submission does not comment on a particular matter or points are 'noted', the Applicant has not provided a further response or copied the submission into this document.
- 2.1.4. The Applicant notes that some IPs above have reserved the right to make future submissions.
- 2.1.5. The Applicant notes that the Examination Library reference **[REP4-281]** is not in use.

**Table 2.1: Applicant's Comments on Cheshire West and Chester Council (CWCC) – Deadline 4 Submission - Cover Letter [REP4-274]**

Reference	IP Submission	Applicant's Response
	<b>Draft DCO Requirement 13 – Construction Hours</b>	
2.1.1	Further to the Councils written representations submitted at Deadline 1 and Deadline 3 and the discussion of the wording of draft DCO Requirement 13 at ISH2 on the 8 June 2023, on closer review of the draft DCO (Revision E) submitted at DL3 by the Applicant the Council wishes to make its position clear on several matters.	The Applicant has no comments on this matter.
2.1.2	With respect to the exceptions set out in Requirement 13(4), as was outlined at the ISH2 hearing, the Applicant is to further clarify its definition of “ <i>start-up and shut-down operations</i> ”. The Council welcomes this and would highlight the importance of providing such a definition within the wording of Requirement 13. The Council suggests that the Outline Construction Environmental Management Plan (OCEMP) is amended to further <i>define “start-up and shutdown operations”</i> and, in addition, require the provision of further site-specific protective measures within the Noise and Vibration management Plan to be provided within the final CEMP. These protective measures should clearly exclude any intrusive activities / works which would result in unacceptable impacts to amenity at any specific location and should provide any necessary additional site-specific controls / mitigation.	Additional drafting was proposed in revision G of the dDCO at Deadline 4 <b>[REP4-007]</b> . The Applicant awaits the Council's comments on that version.
2.1.3	With respect to the exception set out in Requirement 13(3)(a) the Council would also ask for further clarification by the Applicant of what is meant by “ <i>trenchless construction techniques which cannot be interrupted</i> ”, including the type of operation(s), their likelihood, frequency and duration etc. It is noted that an attempt to define this is provided in paragraph 2.2.1 the OCEMP [REP2-021], however, this is not considered to provide sufficient information to establish the potential for amenity impacts which may need further / additional controls.	Chapter 3 <b>[REP4-029]</b> provides, in paragraph 3.6.110, information relating to the duration of the works at trenchless crossings. It states that the duration of 24 hour working at the majority of trenchless crossings is not likely to exceed a period of days, though the longer crossings in difficult ground conditions are expected to last up to four weeks. This is expected to be for seven trenchless crossings, at six specific crossing locations, as highlighted in Appendix 3.1 Table of Trenchless Crossings of the ES <b>[REP4-070]</b> .  Information to establish the potential for noise and vibration significant effects related to trenchless construction techniques is presented in Chapter 15 <b>[REP4-053]</b> .  Residual effects related to noise from trenchless activities during evening and night-time are presented in Table 15.32 and Table 15.33 of Chapter 15 <b>[REP4-053]</b> .  Paragraph 15.10.2 of Chapter 15 <b>[REP4-053]</b> states that trenchless installation activities during evening and night-time, at locations where the period exceeds the duration defined in paragraph 15.5.56 of the same chapter, will require careful consideration to include secondary mitigation including measures such as acoustic enclosures for ancillary equipment which is kept above ground for the whole duration of the activity. It is also stated that the production of a Noise and Vibration Management Plan and agreement with the Local Authorities is included in Requirement of the Draft DCO <b>[REP4-008]</b> .
2.1.4	Whilst the Council accepts that certain operations including continuous drilling will be required as part of the Project, the Council's concerns lie where such continuous operations occur in very close proximity to residential uses and in particular residential caravans. This	Paragraph 15.10.4 of Chapter 15 <b>[REP4-053]</b> states that the construction programme will seek to minimise the duration of high noise generating construction activities, as far as practicably possible. Where construction activities near sensitive areas are expected to

Reference	IP Submission	Applicant's Response
	<p>issue is particularly highlighted where an established traveller site lies immediately adjacent to the order limits and the trenchless crossing of the A5117.</p>  <p>Works Plan dwg no. EN07007-D.2.4-WSP- Sheet 3 [REP2-005].</p> <p>Ariel map with DCO overlay.</p>	<p>affect residents with a magnitude of medium and high and exceed the durations of 10 or more days or nights in any 15 consecutive days or nights, or a total number of days exceeding 40 in any 6 consecutive months, then a set of enhanced mitigation measures will be discussed and agreed with the Local Authority.</p> <p>Temporary re-housing will be also considered through consultation with the Local Authority for specific locations where other mitigation measures do not provide sufficient attenuation to prevent sleep disturbance during activities in the night-time period.</p> <p>The Outline Noise and Vibration Management Plan set the principles which will be followed by the Contractor during detailed design and the entire construction period. It states that a Section 61 application will be submitted in advance of the trenchless activities in close proximity to sensitive receptors and exceeding 10 or more days or nights in any 15 consecutive days or nights, or a total number of days exceeding 40 in any 6 consecutive months.</p> <p>This will give the Local Planning Authority an opportunity to approve the consent. In addition, noise monitoring locations will be agreed with the Local Authority including a management plan with actions for the Contractor when the agreed trigger noise levels are exceeded.</p>
2.1.5	<p>The criteria for when mitigation including re-homing for significant noise impacts will occur is set out in paragraphs 15.10.3, 15.5.30 and 15.5.56 of Chapter 15 of the Environmental statement [APP-067]. Whilst this is accepted as appropriate for housing, it is not accepted for caravans. Without further clarification and consideration of the scale, type and likelihood of uninterruptible trenchless operations and consideration for any specific mitigation, including appropriate criteria for this, and potentially other sensitive locations, the Council remains concerned in respect the current wording of Requirement 13.</p>	<p>Residual effects related to noise from trenchless activities during evening and night-time are presented in Table 15.32 and Table 15.33 of Chapter 15 of the ES [REP4-053]. It can be seen from the table that potential significant effects are located in sections 4 and 5 of the DCO Proposed Development.</p> <p>Refer to the row below for further details.</p>
2.1.5	<p>To address the above, the Council suggests that the OCEMP further define uninterruptible trenchless operations and specify the need for a "Special Cases" statement, or similar, to be provided as part of the noise and vibration management plan, as part of the final CEMP, and that this is referenced in the definition of "trenchless construction techniques which cannot be interrupted" under Requirement 13. The "Special Cases" statement should include the requirement for the identification of any buildings and/or their occupants which may not be adequately protected by the thresholds set out in Para. 15.5.30/15.5.56 of Chapter 15 of the Environmental Statement [APP-067], including people dwelling in caravans, and should include and site-specific noise trigger levels and/or alternative noise control measures.</p>	<p>The Applicant confirms that the Outline Noise and Vibration Management Plan (document reference: <b>D.7.39</b>), as submitted at Deadline 5, includes a requirement for the Construction Contractor during the preparation of the detailed Noise and Vibration Management Plan and any Section 61 application to identify any buildings and/or their occupants which may not be adequately protected by the significance criteria in Chapter 15 [REP4-053]. As part of this process, the Construction Contractor will agree with the Local Planning Authority suitable criteria for temporary re-housing in accordance with guidance in BS5228-1 Annex E (Informative).</p> <p>The Applicant will arrange a meeting with the Local Planning Authority to make sure the concerns are addressed.</p>



**Table 2.2: Applicant's Comments on CWCC – Deadline 4 Submission - Written summaries of oral submissions made at any Hearings held during the week commencing 5 June 2023 [REP4-275]**

Reference	IP Submission	Applicant's Response
	<i>Issue Specific Hearing 1</i>	
	<i>2.1 Agenda Item 2 – Assessment of Alternatives &amp; Cross Topic Issues</i>	
2.2.1	The Examining Authority (ExA) advised the Hearing that comments were raised in written representations by the Council in relation to cumulative impacts assessed in the Environmental Statement and more particularly the ExA referred to representations in REP-160 and advised that more may have been added since. The ExA referred to the Encirc application and asked the Council to confirm the implications of the route.	The Applicant has no further comments on this matter at this time.
2.2.2	BG confirmed that the Encirc application was currently being determined by the Council. The DCO boundary or the access cuts across the expansion area for NCIRC. BG believed the affected area was the HGV storage and parking area as well as access routes. The Council has raised this as an issue.	The Applicant has no further comments on this matter at this time.
2.2.3	The ExA asked whether the application had been determined or approved and BG confirmed that the application was currently being determined and estimated that a decision would be made over the next couple of months. The ExA asked for the Council to advise the ExA when the application had been determined and BG confirmed that he would update the ExA.	The Applicant has no further comments on this matter at this time.
	<i>2.2 Agenda Item 3 - Biodiversity</i>	
2.2.4	The ExA and the Applicant then discussed Biodiversity Net Gain being offered at 1% in the absence of legislation. The ExA asked for the Council's view and LH confirmed that the Council considered that the 1% was a proportionate approach given the absence of mandatory requirements.	The Applicant has no further comments on this matter at this time.
2.2.5	The ExA also asked the Council if it was satisfied with the opportunities available to the Ecological Network and LH responded that she was in dialogue with the Applicant regarding suitable sites and priority habitats. Those submitted at Deadline 3 are located very close to the pipeline route and there is very limited benefit there and with the wider network.	The Applicant has no further comments on this matter at this time.
2.2.6	The ExA asked for LH to give some insight as to the Ecological Network's aims and LH responded that Policy DM44 identifies policies to enhance the value of the assets and contribute to the Ecological Network and requires no natural assets. The ExA asked if there was a particular area identified on a plan and LH advised that this was available online. The ExA asked for a copy of DM44 to be submitted into the Examination at Deadline 4 and the LH confirmed she would provide a copy.	The Applicant has no further comments on this matter at this time.
2.2.7	The ExA asked if there were any comments by either the Environment Agency or the Councils as to the possibility of other schemes being considered for watercourse	The Applicant has no further comments on this matter at this time.

Reference	IP Submission	Applicant's Response
	enhancement and attenuation such as Park Gate Road or Hermitage Road. The Council confirmed that it did not have an expert at the hearing and would therefore need to come back to the ExA at a future deadline.	
	<i>Compulsory Acquisition Hearing 1</i>	
	<i>3.1 Agenda Item 3</i>	
2.2.9	The ExA invited the Council to comment on its objections, issues and updates on voluntary agreements. MS advised that her instructions were that there have been limited negotiations in regard to the Compulsory Acquisition and Temporary Possession of the Council's land. MS confirmed that the Council had received Heads of Terms but that the Council would welcome further engagement in relation to the land sought and how that interacted with the Council's operational land as well as the current use and/ or aspirations for the land affected. In a nutshell MS advised that the Council would welcome an offline discussion with the Applicant to progress matters.	The parties have been and continue to be in discussion on these points.
2.2.10	The Applicant confirmed that the parties do need to have a discussion. The Applicant believes that there are a couple of points that could easily be clarified, especially the interaction with streets and highways.	
2.2.11	The ExA asked for those discussions to take place as soon as possible. The Examination is closing in September and if matters are not resolved before then, they cannot be taken into account. It is within the Applicant's best interest to do so.	The Applicant notes since the Compulsory Acquisition Hearing, a response has been provided to the council regarding plot interests on 19 June 2023, the Applicant also requested feedback on the Heads of Terms and offered a meeting to further discuss the terms. The Applicant sent a further follow up email on 30 June 2023 to the council as no response or feedback has been provided to the email dated 19 June 2023. This will also be recorded in the updated schedule of conditions to be submitted at Deadline 5. The Applicant welcomes further engagement from the Council on this matter.
	<i>Issue Specific Hearing 2</i>	
	<i>Agenda Item 2 – Articles and Schedules of the draft DCO</i>	
2.2.12	The ExA asked the Council to confirm it had concerns regarding the definition of commencement and the 4 items which were excluded from that definition which the Council had concerns with. MS confirmed that she had sought clarification and the concern is in relation to whether fencing will be permanent or not. The ExA then asked the Applicant to confirm and the Applicant advised that the fencing would be for the period of construction and that the Applicant could not give a guarantee on amphibian and reptile fencing as these are subject to European Protected Species Licences. The ExA asked the Applicant to confirm at Deadline 4 whether all issues raised by the Council were temporary or permanent in nature.	This has been clarified in revision G of the dDCO <b>[REP4-008]</b> .

Reference	IP Submission	Applicant's Response
2.2.13	The ExA asked MS to confirm if there were any issues now with Article 6 – Limits of Deviation as the Council had reserved its position previously. MS confirmed that the Council had no further comments.	The Applicant has no further comments on this matter at this time.
2.2.14	The ExA asked if there were any questions as to the benefits of the order, applications and modifications of legislative provisions. MS confirmed that the Council had made a number of representations as to the disapplication of the land drainage consent and had suggested that protective provisions were necessary in regard to interference with ordinary watercourses. MS confirmed that this issue could be dealt with later in the Hearing but that the issue had been raised in multiple submissions.	The Applicant has no further comments on this matter at this time.
2.2.15	The ExA asked if MS was content to deal with the issue when discussing Requirement 8 and she confirmed that she was.	The Applicant has no further comments on this matter at this time.
2.2.16	The ExA raised an issue regarding timescales in Article 10, 11, 15 and 18 in relation to time periods for approvals. The Council had previously sought a 70 day approval period with the Applicant offering 42 days. MS confirmed that so long as there were discussions prior to the formal applications coming forward, the Council could accept 42 days. MS confirmed that it was usual when applications are made under a DCO that there are discussions between the local authority and the Applicant in any event, the Applicant confirmed this is the case. There is going to be some potential work done in advance of the applications being formally submitted and so based on that offer from the Applicant that the work is front loaded, the Council is happy.	The Applicant has no further comments on this matter at this time.
2.2.17	The ExA asked the Applicant to confirm if it was happy for pre-consultation to be included in the documentation and the Applicant confirmed that it was not as it would inflate the time period. MS confirmed that she was content that no pre-consultation was included in the DCO and that the Council and the Applicant would discuss this offline particularly in relation to highways issues.	The Applicant and the Councils held a call focused on highways and protective provisions on 14 June and agreed in principle that suitable notification process and timings could be agreed outside the DCO as an administrative issue. Discussion on the wording of that is ongoing.
2.2.18	The ExA specifically asked the Council to confirm whether or not it operated a street permit scheme and MS introduced James Orme, Network Commissioner for the Council who relied that it did. MS confirmed that the Council would need notice of works coming forward but that this could be picked up in ongoing discussions and confirmed that this did not need to be included in the order but that the Council would like an alternative mechanism. The Applicant confirmed that it would pick this up with the Council.	
2.2.19	The ExA asked the Council to confirm in relation to its role as Lead Local Flood Authority (LLFA) what outstanding information was sought. MS confirmed that the Council would look again at the information provided and the Outline CTMP and revert at the next deadline as to the information missing.	The Applicant looks forward to receiving that information in due course.

Reference	IP Submission	Applicant's Response
2.2.20	The ExA had a discussion on protective provisions and MS confirmed that these were being discussed with the Applicant and that an updated draft was provided yesterday in relation to Part 7 for the benefit of the highway authorities. The ExA asked MS to confirm that the Council was looking for separate protective provisions for the LLFA and MS confirmed that this would be best deferred until the discussion on Requirement 8. The clarity from that discussion provided by the Applicant may repeat the need for protective provisions or delete it altogether.	The Applicant notes that the outline sub-plans for the outline CEMP were only submitted and made available for review by the Council at Deadline 5 so there has not yet been an opportunity for the Council to advise if they are now satisfied.
<i>4.2 Agenda Item 3 – Schedule 2 of the draft DCO - Requirements</i>		
2.2.21	The ExA then moved onto Schedule 2 to the DCO – the Requirements Schedule. In particular there was discussion with regards to the definition of stages and these not being approved by the local authorities. The Applicant confirmed that this was a deliberate decision and BG confirmed that the Council had raised this issue in its written representations in the Examination. BG confirmed that the Council team had reviewed and discussed the need for the Council to approve the stages but that it had arrived at a point where it did not need to approve but the Council did require a definition of a stage and where it starts and finishes. The Applicant committed to defining a stage.	The Applicant has no further comments on this matter at this time.
2.2.22	The ExA then raised the issue of 'self approval' in Requirement 4. MS advised that the Council would come back to the ExA on this point once the point was re-examined.	The Applicant has no further comments on this matter at this time.
2.2.23	The ExA raised a point on Requirement 3 regarding the Council's request for the stages to specifically relate to the Works. The Applicant confirmed and the Council agreed that if stages were defined this point is superseded.	The Applicant has no further comments on this matter at this time.
2.2.24	A discussion ensued over Requirement 8 and the concern regarding the content of the Outline Surface Drainage Strategy – APP-241. The LLFA's position is that this is a high-level strategy and there is concern that any works required to the ordinary watercourse would not be necessarily included and the reference to the surface water drainage plan is only for permanent works and does not include temporary works. The Council was hoping for further clarity from the Applicant as to why protective provisions would not be required. The Applicant confirmed that it is high level as there are no detailed plans. MS confirmed that she appreciated that the application was not at detailed design stage but that the LLFA was stuck between a rock and a hard place. MS confirmed that discussions would need to be taken offline as to whether an amendment to Requirement 8 is required or otherwise. MS confirmed that the Council would take the discussions offline.	The Applicant has submitted an Outline Surface Water Management and Monitoring Plan (Document reference D.7.43) at Deadline 5, which provides recommendations and guidance to the Construction Contractor on the requirements and measures to manage surface water quality, volumetric control, discharge locations and flood risk from temporary works such as construction compounds.
2.2.25	The ExA then moved onto Requirement 9(5) and asked for clarification from the Applicant whether there was a need to agree the verification report with the Council. The Applicant's position was that it did not as it was unnecessary and would cause further delay. Steve Holmes from the Council confirmed that verification reports would typically be used where the local authority could not investigate by their own means as to whether the Requirement	The Applicant's further submissions on this point are set out in <b>[REP4-246]</b> , part 3, paragraph 2.17.

Reference	IP Submission	Applicant's Response
	had been complied with. If you cannot do see that it has or has not been complied with then a verification report is necessary.	
2.2.26	The ExA moved onto Requirement 11(2(C) and the comments from the Council previously raised regarding stages to include the Works. The Council and the Applicant confirmed that this had already been dealt with in previous discussions.	The Applicant has no further comments on this matter at this time.
2.2.27	The ExA then moved to Requirement 13 and construction hours and the ExA confirmed that the Council had consented to the definition of emergency subject to Requirement 13 (3) (c) being removed.	The Applicant has no further comments on this matter at this time.
2.2.28	The ExA then moved to a discussion on Requirement 16 and the restoration of land whereby the BG on behalf of the Council confirmed that an aftercare scheme would be important as despite the land being returned to agricultural use, this would not be the same agricultural use due to the change in soil. The Applicant confirmed that a soil management plan would address this issue.	The Applicant has no further comments on this matter at this time.
2.2.29	The ExA discussed Requirement 20 and asked the Council to explain why it was seeking a 16 week turnaround rather than 56 days. MS confirmed that the Council is content to accept 56 days based on the amendments made to revision E in the current draft DCO. MS also confirmed that the Council was happy with the deemed approval process now that the draft DCO had been amended.	The Applicant has no further comments on this matter at this time.
2.2.30	The ExA discussed Requirement 23 and the time period of 20 days being put forward by the Applicant as being too short to consult with multiple statutory bodies. MS confirmed that it still believed that a 20 day period was too short and the Council would have preferred a longer period, however, with the additional text included whereby a longer period can be agreed between the parties and the fact that the period for approval had been extended from 42 to 56 days then the Council was happy with the drafting.	The Applicant has no further comments on this matter at this time.
2.2.31	The ExA moved to Requirement 24(2) and again time periods were discussed and the need for the Council to request further information from the Applicant in only 10 days. The Council's position is that this is not required at all and this time period should be removed from the draft DCO. MS noted that there had been updates to cross references in the drafts and that the Council would clarify its position at Deadline 4.	The Applicant has no further comments on this matter at this time.
2.2.32	The ExA asked the Council to clarify the mention of additional resource provided to the Council to allow work to be undertaken in advance of formal submission and how this would be secured. MS confirmed that this was offered by the Applicant in a meeting and the Applicant confirmed that it had offered a planning performance agreement for non-statutory engagement to allow the Council to do work in advance of formal submissions to discharge requirements.	The Applicant has no further comments on this matter at this time.

Reference	IP Submission	Applicant's Response
2.2.33	The ExA raised a further issue regarding securing the BNG and whether this would be through a s106 or deed. MS confirmed that she had only just received the document and therefore could not comment at this time. MS also confirmed in response to the ExA's question that the Council was not seeking to secure community benefits.	The Applicant has no further comments on this matter at this time.

**Table 2.3: Applicant's Comments on CWCC – Deadline 4 Submission - Response to Action Points from the Hearings held week of 5 June 2023 [REP4-276]**

Number	Party	Action	Deadline	The Council's Response at Deadline 4	Applicant's Response
ISH1-AP1	Cheshire West and Chester Council (CWCC)/ Flintshire County Council (FCC)	To consider, and keep under constant review, whether any further developments subject to planning permission need to be declared for cumulative impact consideration purposes and to update the Examining Authority. Ongoing throughout the Examination.	Deadline (DL) 4 (20 June) , and ongoing until the close of the Examination.	The Council will provide any necessary future updates in respect further developments for cumulative impact considerations.	The Applicant has no further comments on this matter at this time.
ISH1-AP3	Applicant/ FCC/ CWCC	Undertake a further review of community benefit/ cultural benefits possible relative to law, as well as national and local policy in England and Wales, in tandem with item 2.	DL5	The Council has no comment to make and to confirm has not been seeking to secure community benefits in relation to this Project.	The Applicant has no further comments on this matter at this time.
ISH1-AP4	Natural Resources Wales (NRW)/ Environment Agency (EA)/ FCC/ CWCC	Highlight any outstanding technical points concerning: 1. Derogation issues raised by NRW; 2. Suitability of riparian enhancement for additional areas raised by all parties; and 3. Any flood risk management details not addressed at the Hearing. All Interested Parties (IP) listed.	DL4	The Council would welcome engagement at the earliest possible stage relating to riparian enhancement and watercourse enhancement.	Riparian enhancements have been proposed where opportunities have been identified within the constraints of the DCO Proposed Development. In addition, given the lack of operational impacts of the DCO Proposed Development, the proposed riparian planting and reinstatement will provide enhancements along the pipeline corridor. The Applicant will seek to engage with CWCC, to explain the rationale for the proposed riparian planting to seek their view on the proposals.
ISH1-AP5	FCC/ CWCC	Submit copies of relevant policies/ strategies, discussed at the Hearing, as relevant to the Proposed Development.	DL4	A copy of Local Development plan Policy DM 44 (Protecting and Enhancing the Natural Environment) is appended to the Council's submissions at Deadline 4.	The Applicant has no further comments on this matter at this time.
ISH2-AP3	Applicant/ CWCC	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.	DL4	The Council does not consider that there is any need for a pre-consultation stage to be inserted into the dDCO and that any pre-consultation can be secured through a private agreement between the parties in the form of a Planning Performance Agreement (PPA) for work required in advance of formal submission under the relevant Requirement. The Council and the Applicant are in discussions and the	The Applicant confirms that this work is ongoing.

Number	Party	Action	Deadline	The Council's Response at Deadline 4	Applicant's Response
				Council is awaiting a draft PPA from the Applicant and will update the ExA as to progress.	
ISH2-AP4	Applicant/ FCC	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.	DL4	The Applicant has confirmed in writing to the Council and Flintshire County Council that it will be providing a 24 month defect period in the protective provisions appended to the dDCO at Part 4 of Schedule 10. The Council welcomes this position and reserves its position to make further comments and representations once the next iteration of the dDCO has been submitted into the Examination.	The Applicant has no further comments on this matter at this time.
ISH2-AP5	CWCC	The ExA noted CWCCs DL1 submission [REP1061], as well as the Applicant's response [REP2-044] at Para 2.2.25, and asked CWCC in its role as Lead Local Flood Authority whether, in the light of the Applicant's response, it was still seeking additional information and if so what information it was seeking and why? CWCC to respond by DL4.	DL4	<p>The Council in its role as Lead Local Flood Authority (LLFA) continues to have concerns regarding the level of detail included in the application particularly in relation to the disapplication of section 23 of the Land Drainage Act 1991 in relation to ordinary watercourses.</p> <p>The Applicant has suggested that Requirement 8 provides the necessary comfort for the LLFA to approve any interference with an ordinary watercourse however, Requirement 8 only deals with the drainage design for the hardstanding associated with the construction of the Project rather than specifically with alterations to an ordinary watercourse. There are several significant ordinary watercourse crossings affected by the Project that are within areas of associated surface water flood risk.</p>	<p>The Applicant has submitted an Outline Surface Water Management and Monitoring Plan (OSWMMP) (Document reference: <b>D.7.43</b>) at Deadline 5, which provides recommendations and guidance to the Construction Contractor on the requirements and measures to manage surface water quality, volumetric control, discharge locations and flood risk from temporary works such as construction compounds.</p> <p>The OSWMMP will provide preliminary guidance for working near watercourses and the management of flood risk during the construction phases.</p> <p>The Applicant notes that the outline sub-plans for the outline CEMP were only submitted and made available for review by the Council at Deadline 5 so there has not yet been an opportunity for the Council to advise if they are now satisfied.</p>



Number	Party	Action	Deadline	The Council's Response at Deadline 4	Applicant's Response
				<p>There is insufficient information within the Flood Risk Assessment, surface water drainage strategy (Requirement 8) or the OCEMP to fully understand and assess the impacts that the pipeline and associated works would have on the ordinary watercourse for both permanent and temporary works.</p> <p>The Council has requested a meeting to discuss the detail needed, however, the Applicant has confirmed that it will not have any further detail until the detailed design stage.</p> <p>As a result of this lack of detail, the LLFA would either need protective provisions for the protection of the LLFA or for the disapplication of section 23 of the Land Drainage Act 1991 to be removed from Article 8(c) of the dDCO.</p>	
ISH2-AP9	CWCC/ FCC	The ExA asked both CWCC and FCC to comment on the observations made by them concerning R4 containing an element of 'self-approval'. CWCC and FCC both asked to come back to the ExA in writing on this matter, as their appeared to be a discrepancy in the wording of the response provided. CWCC and FCC to clarify their position re R4, in writing, at DL4.	DL4	<p>The Council has concerns regarding the wording of Article 4 in that the Applicant decides whether or not any amendments to the authorised development are in 'general accordance' with the 'general' arrangement plans and therefore there is almost a self-approval mechanism here. There is no independent approval mechanism if there is a departure and whether or not that departure 'would give rise to any materially new or materially different environmental effects from those assessed in the environmental statement'.</p> <p>The Council would welcome clarification from the Applicant as to the mechanism for resolving any dispute as to whether or not the amendments proposed by the Applicant are in</p>	<p>The Applicant notes that this is entirely standard wording in DCOs where an element of flexibility to produce the detailed design is required.</p> <p>The general arrangement plans are, at this stage, indicative pending detailed design. The details of the above ground elements will be submitted to the relevant LPA for approval under the requirements. The Applicant considers that 'general accordance' with the plans for the underground elements is a judgement it is best placed to make as engineering and safety considerations will drive that design which will not have, for example, operational visual impacts.</p>

Number	Party	Action	Deadline	The Council's Response at Deadline 4	Applicant's Response
				<p>'general accordance' with the 'general arrangements plan'. There does not appear to be any ability to refer the matter to the Secretary of State or otherwise.</p>	
ISH2-AP12	Applicant/ CWCC/ FCC	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 crossreferenced different Rs and caused some confusion. Applicant/ CWCC/ FCC to review and revert back to the ExA at DL4.	DL4	<p>As raised in paragraph 2.3.48 of the Council's response to comments made by the Applicant at Deadline3 [REP3-042] the Council accepts the revised timescale of 56 days for the approval of details submitted under the Requirements and the inclusion of ability to approve such longer period as agreed between the Applicant and the relevant authority. The Council accepts that this is now reflected in revision E of the dDCO submitted at Deadline [REP3-005], in Requirement 22(1) and Requirement 22(1)(c) respectively.</p> <p>The Council, however, does not support the inclusion of controls in respect to the requests for Further Information, including the need for and short timescales for requesting information under Requirement 24) of the dDCO [REP3-005].</p> <p>This issue was further raised by the Council during the ISH2 hearing and the Applicant responded highlighting that the wording of Requirement 22(1) would allow a further 56 days once that further information is supplied by the Applicant.</p> <p>The Council appreciates the Applicant's position and the need for timely decisions to be made on applications made by the Applicant to the Council under the requirements of the dDCO. The Council suggests a simpler</p>	The Applicant's further submissions on this point are set out in the Statement of Common Ground with Natural England [REP4-246], part 3, paragraph 2.29.

Number	Party	Action	Deadline	The Council's Response at Deadline 4	Applicant's Response
				<p>approach would be to delete Requirements 22(1)(a and b) and 24(2-4) and subsequent rewording of the remaining sub sections of the Requirements, thereby requiring approvals and or decisions within 56 days or such extended period as may be agreed in writing between the Applicant and the relevant authority. The Council suggests that this approach would provide the same if not more certainty for both parties without the need for, what the Council considers to be unnecessary and overly restrictive controls over the request for further information.</p>	
ISH2-AP13	Applicant/ CWCC/ FCC	<p>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?</p>	DL4	<p>The Applicant and the Council are in the process of negotiating a financial contribution to be paid by the Applicant for creation and enhancement of habitat on the Council's land (outside of the Order Limits). The specific details of the land identified to deliver the habit is included in the Applicant's REP3-022 Liverpool Bay CCS Limited Deadline 3 Submission - D.6.5.12 Biodiversity Net Gain Assessment.</p>	<p>The Applicant has submitted an updated a BNG Update Strategy <b>[REP2-042]</b> (Rev C) at Deadline 5 which sets out continued progress in securing suitable agreements and offset site locations. The Applicant is continuing to engage with CWCC and will seek to update the BNG Update Strategy, as required, for future deadlines.</p>

**Table 2.4: Applicant's Comments on CWCC – Deadline 4 Submission - Comments on the Councils WR Addendum at DL1A [REP4-277]**

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
<i>2. Written Representation (Biodiversity Comments)</i>				
<i>Surveys</i>				
2.4.1	As is highlighted the Council's Relevant Representation [RR-012] significant concern is raised by the Council in respect the supporting biodiversity surveys including their strategy / extent (absence of surveys beyond the DCO limits for barn owls and badgers), incomplete / missing survey data, as well as discrepancies in the provided survey data.	The Applicant has sought to answer questions received from Cheshire West and Chester Council (CWCC) to date and will continue to engage with the council over any further questions. The Applicant additionally proposes to engage further with CWCC through the Statement of Common Ground (SoCG) process [REP2-027] during the examination to address any further comments or concerns held.	The Council welcomes continuing engagement on this matter.	The Applicant welcomes CWCC's engagement on this matter. The parties' latest positions are set out in the SoCG [REP2-027] submitted at Deadline 5.
2.4.2	An updated ES Chapter 9 [AS-025] and additional survey data in respect bats and riparian mammals has been provided [AS-029-042 and AS-057-59] was accepted by the ExA as additional information on the 20 March 2023. On review of the scope of all the reported surveys, including the additional submission, the Council note that there remain incomplete surveys in respect Bats and Riparian mammals in addition to the need for further clarifications on the survey strategy for other receptors including barn owls, fish and badgers, these are further detailed below	<p>The Applicant refers CWCC to its response to row 2.2.49 of the Applicant's Response to Local Impact Reports (LIR's) [REP2-040] submitted at Deadline 2.</p> <p>CWCC was made aware of the potential need to apply a precautionary approach to assessment and surveys due to issues and restrictions to land access as well as considering a reasonable worst-case scenario on the basis of maintaining flexibility in the absence of a fixed pipeline route (see Table 2-1 – Record of Engagement in relation to the DCO Proposed Development and item CWCC 3.6.2 of Table 3-6 of the SoCG with CWCC [REP1-021]).</p> <p>The Applicant has made every effort to obtain survey data through surveys and assessment (as detailed within paragraph 9.5.29 of Chapter 9 Biodiversity of the Environmental Statement (ES) [AS-025]).</p> <p>The Applicant believes that the survey approach and use of precautionary assessment, where required, is proportionate and appropriate to have informed the impact</p>	<p>The principle of a precautionary approach is accepted to be used in a reasonable manner; however, it is not clear what proportion of the survey data is field data or assumed/precautionary data and that is where the Council's concerns lie.</p> <p>A meeting was held on 22/05/23 between the Council and the Applicant whereby the Application provided further information and explanation which allayed the majority of the Council's concerns as follows:</p> <ul style="list-style-type: none"> <li>- the final works area will be reduced within the Order limits at the final detail design stage, so all surveys carried out so far, which encompass the Order Limits, are above and beyond what would be required.</li> <li>- the majority of access issues were in Flintshire.</li> </ul>	The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 [REP4-263]).

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>assessment and development of mitigation measures and mitigation principles. The use of the precautionary approach is consistent with CIEEM guidance.</p> <p>The Applicant has broadly followed an approach of 'assumed presence' in the absence of survey data; deviations from this approach have been otherwise assessed and justified within Chapter 9 and its associated appendices.</p>	<p>- the majority of species ranges were surveyed (e.g. all required areas surveyed for Badgers and 89% of tree surveys completed for Bats in Cheshire);</p> <p>- most areas of data assumptions also had partial field and desktop data informing them, so any assumptions made were informed and not completely assumed</p> <p>This gives the Council more confidence in the survey approach and results and the Council looks forward to receiving further detailed information on this at Deadline 4/5 and reserves the right to comment and make further representations once this further detailed information has been submitted into the Examination and has been reviewed by the Council.</p>	
2.4.3	<p>With incomplete surveys the Council retains its concerns that the assessments of importance levels and value/sensitivity of receptors is not based on a complete data set and is therefore not robust.</p>	<p>The Applicant refers to the response to point 2.2 above. In addition, the impact assessment presented with Chapter 9 Biodiversity of the ES <b>[AS-025]</b> has been developed on the basis of a reasonable worst-case scenario for the DCO Proposed Development, in the absence of a fixed pipeline route/design.</p> <p>As such, taking into account the embedded mitigation detailed within Table 9.10 and mitigation measures and mitigation principles detailed within Table 9.12 of Chapter 9 Biodiversity of the ES <b>[AS-025]</b>, the impact significance, during the construction stage, as detailed within Table 9.11, and residual effect significance, detailed within Table 9.13 of Chapter 9 Biodiversity of the ES <b>[AS-025]</b>, are considered by the Applicant to be robust and appropriate for the predominantly short</p>	<p>See response at 2.2 above.</p>	<p>See Applicant's response at row 2.4.2 above.</p>

Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		term, temporary, and localised effects of the DCO Proposed Development.		
2.4.4	<p>It is explained in paragraph 9.5.29 of the Assumptions and Limitations section of ES Chapter 9 [AS-025] that surveys post DCO submission will be undertaken but only to corroborate the baseline data presented. With incomplete surveys it is considered unreasonable to be able to assume this to be the case. The Council also note that there is no indication of the percentage of surveys completed and yet to be completed, nor the area of the project covered by the surveys to date. The Council highlight that the quantity of survey for each species or habitat still to be completed and at which stage, should be provided.</p>	<p>The paragraph that CWCC is referring to is presented within the original 2022 ES Chapter 9 Biodiversity [APP-061], which was submitted before the completion and submission of supplementary information. The need of such, was discussed with CWCC as captured within Table 2-1 of the SoCG [REP2-027], row dated 14/07/2022. Following the results of further surveys, the below revised documents were submitted, and accepted by the Examining Authority (ExA) on the 14 March 2023:</p> <ul style="list-style-type: none"> <li>• Chapter 9 – Biodiversity [AS-025]</li> <li>• Riparian Mammal Survey Report [AS-039]</li> <li>• Bat Activity Survey Report [AS-027 and 029]</li> <li>• Bats and Hedgerows Assessments [AS-031 to AS-038]</li> </ul> <p>The paragraph present within [APP-061] was removed accordingly owing to the updated results and revisions made to Chapter 9 subsequently presented within the updated Chapter 9 Biodiversity of the ES [AS-025].</p> <p>Chapter 9 and its supporting appendices detail limitations to survey effort and completion of surveys across the Order Limits and how, where assessed appropriate, a precautionary approach (generally of 'assumed presence') to assessment has been implemented. A precautionary approach has therefore also been applied to the subsequent development of mitigation measures and mitigation principles accordingly.</p>	<p>See response at 2.2 above.</p> <p>The Council reserve the right to comment and make further representations once the updated surveys have been reviewed.</p>	See Applicant's response at row 2.2 above.
2.4.5	The Council note that land outside of the DCO limit has not been surveyed	Survey data has been recorded beyond the Order Limits for some receptors, this is	See response at 2.2 above.	See Applicant's response at row 2.2 above.

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
	<p>including, for example, Barn owl (who can be impacted by disturbance 100m from their nest site) and Badger surveys have not taken place as standard 30m from the NIB, as is the most basic level of survey.]</p>	<p>presented where available within Chapter 9 Biodiversity of the ES <b>[AS-025]</b> and its associated appendices.</p> <p>The information presented within the DCO application describes those receptors that could be subject to direct impacts and effects as a result of the DCO Proposed Development, in the absence of a detailed design. Impacts and effects beyond the Order Limits will be limited to indirect effects (for example, light, noise, vibration).</p> <p>The Applicant has developed a series of mitigation measures and mitigation principles on the premise of 'assumed presence' of features beyond the Order Limits as well as a reasonable worst-case scenario (see for example (but not limited to) items D-BD-015, D-BD-021, D-BD-024, D-BD-025, D-BD-028, D-BD-040) to be utilised during construction and subject to monitoring and oversight by an ECoW (or team of ECoWs) as well as a third party 'auditing ECoW' (as captured by D-BD-001 and D-BD-003 of the OCEMP <b>[REP2-021]</b>).</p> <p>The Applicant has provided for the completion of pre-commencement/ construction surveys (see items D-BD-005 and D-BD-006 of the OCEMP <b>[REP2-021]</b>), as secured by Requirement 5 of the dDCO <b>[REP1-004]</b>, that will ensure mitigation prescriptions and principles can be appropriately applied in response to the detailed design. The Applicant believes this to be a proportionate approach given the predominantly short term, temporary and localised impacts of the DCO Proposed Development.</p> <p>The Applicant additionally refers CWCC to its response in row 2.12.7 within the Applicant's Response to Relevant Representations</p>		

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>[REP1-042]. Direct impacts associated with the DCO Proposed Development will be restricted to within the Order Limits and confined within a prescribed working corridor upon development of a detailed design and pipeline route, with further opportunities explored during the design development (and construction stage) to avoid and safeguard recorded receptors/features. However, the mitigation principles and measures prescribed within the DCO Application are sufficient to safeguard or otherwise mitigate identified receptors within the Order Limits and beyond.</p>		
2.4.6	<p>Species populations depend on their ability to move around habitat features, through the landscape. This has not been assessed specifically, and the missing data means that this cannot be robustly assessed at this stage.</p>	<p>As detailed within Table 9.11 Likely Significant Effects, during the Construction Stage of Chapter 9 Biodiversity of the ES [AS-025], severance, whether temporary or permanent, has been considered for each applicable ecological receptor and significance of effects upon receptors (in the absence of mitigation) derived accordingly. The DCO Proposed Development will broadly result in short term, temporary, and localised impacts arising from installation of the pipeline. Measures have been included within the OCEMP [REP2-021] to ensure permeability of the landscape to species during construction, particularly whilst open cut trench sections are excavated to facilitate installation of the pipe, as well as any other excavations (see items D-BD-022, D-BD-023 specifically).</p>	<p>The Applicant's response to the Council's Relevant Representation at Deadline 2 [REP2-046], states that all hedgerows lost will be replaced with whips and shrubs across the top of the pipeline to reinstate the hedgerow lines in the same location. Further, tree planting will be as close as possible to the loss and on a 3 for 1 basis. 13 areas for mitigation have been selected on the basis of enhancing existing woodland areas, enhancing green infrastructure corridors and providing new connectivity across the landscape, within the confines of the Order Limits. The Council is satisfied that this ensures that habitat connectivity is maintained.</p> <p>The approach to ensuring the permeability of the landscape to species during construction is accepted by the Council and this issue is now resolved.</p>	<p>The Applicant notes that CWCC considers this matter to be resolved.</p>



Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
2.4.7	The Council also note that habitat connections have not been considered in the survey strategy, including in terms of the Cheshire West and Chester Ecological Network	The Applicant can confirm that habitat connections have been assessed, particularly recognising the potential severance effects posed by vegetation removal, for example from hedgerows to facilitate construction. Given the broadly short term, temporary and localised nature of construction, extensive severance impacts are not envisaged, primarily being associated with the open-cut trench required for the majority of pipeline installation. In particular, the effects of severance of hedgerows on bat species has been extensively assessed to determine the potential impacts and develop appropriate mitigation (see response to 2.6 above).	<p>The Council accepts that general habitat connectivity has been taken into account as outlined at 2.6 above for mitigation purposes, as well as the bespoke survey strategy for hedgerow connectivity in relation to Bats.</p> <p>The Council also notes that in <b>[REP3-023]</b> Deadline 3 Submission - D.6.5.12 Biodiversity Net Gain Assessment, the Ecological Network has now been inputted into the Biodiversity Metric, as referenced in paragraph 2.4.13 of that document.</p> <p>The Ecological Network is also targeted for habitat creation, as demonstrated by the habitat creation areas discussed with the Council as detailed in paragraph 2.2.1 of the HyNet CO2 Biodiversity Net Gain Strategy Update <b>[REP3-035]</b>, which are located within the Ecological Network.</p> <p>This issue is now resolved.</p>	The Applicant notes that CWCC considers this matter to be resolved.
2.4.8	The Council note that there are several discrepancies between ES Chapter 9[AS-025] and the various species-specific surveys reports, for example with bat roost potential trees, where the numbers do not match. It is also noted that CAWOS (Cheshire and Wirral Ornithological Society) were not consulted as part of the project.	In relation to bat roost potential trees, Table 9.8 of Chapter 9 Biodiversity of the ES [AS-025] refers to survey results reported within Section 3.2 and Section 3.2 within Appendix 9.3 Bat Activity Report Rev B [AS-027]. A total of 90 structures and 417 trees were identified with bat roosting potential, with 86 trees subjected to aerial tree climb inspections, which resulted in updated suitability for Low, Moderate and High potential trees. Following the submission of Change Request 1, Table 9.4 within the Environmental Statement Addendum Change Request 1 [CR1-124] reports the updated baseline assessment following amendments to the Order Limits. This is also reflected within the updated results presented within	<p>Taking account of the Applicant's explanation, the discrepancies are likely to be as a result of Change Request 1 and therefore the Council reserves the right to comment and make representations on this matter if and once Change Request 1 has been accepted by the ExA.</p> <p>The lack of consultation to CAWOS is not thought to affect results, due to the Applicant's explanation that other sources, some of which cross-reference CAWOS surveys, were consulted. This is accepted by the Council.</p>	The Applicant notes CWCC's Relevant Representation in response to Change Request 1 <b>[CR1RR-003]</b> . The Applicant has set out their response in the Change Request 1 Consultation Report (document reference: <b>D.7.35</b> ).

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>Appendix 9.3 Bat Activity Report Rev C [CR1-062], Section 3.2 and Section 3.3 which detail an increase in the number of trees with bat roost potential from 417 to 427.</p> <p>The Applicant can confirm that CAWOS was not consulted as part of the DCO Proposed Development, however, third-party data within 2km of the Newbuild Infrastructure Boundary was requested from RECORD and Wetland Bird Survey (WeBS) count data was requested from the British Trust for Ornithology (BTO).</p>		
<i>Policy / Green Infrastructure</i>				
2.4.9	The policy considerations of the Planning Statement [APP-048] includes the policy text for CWCC Local Plan Part 2 DM44 including the relevant Ecological Network section of the policy, however, the Council note that there is no response to this in the Policy Assessment section of the table.	The Applicant would refer CWCC to row 2.2.2 to 2.2.5 of its Response to the Local Impact Report [REP2-040]. The Applicant has updated the assessment of Local Planning Policy within the Planning Statement Section 3 and Appendix B [REP2-015].	This is now accepted by the Council and this issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.
2.4.10	For any infrastructure project, and as discussed with the wider 'HyNet Northwest' project (for the creation of infrastructure to produce, transport and store low carbon hydrogen across the North West and Wales), which this Project forms one element of, the Ecological Network is an important consideration, due to the large-scale severance impacts such projects are likely to have, whether it be on a temporary or permanent basis. The significance of habitats lost in the Ecological Network is higher than those outside it. In addition, any compensatory habitats should be targeted to be located	<p>The Applicant acknowledges CWCC Local Plan (part 2) Policy DM44 and the role of ecological networks, as well as the importance of contributing positively towards these to ensure adherence to this policy. It is acknowledged that a large percentage of the order limits covers areas within the ecological network, predominantly due to the 'core areas' occurring over a relatively widespread footprint, together with several instances of 'corridors and stepping stones' (comprising existing Local Wildlife Sites and/or priority habitat).</p> <p>The DCO Proposed Development has undergone several revisions of the Order Limits and re-evaluated construction impacts to attempt to reduce impacts to priority</p>	<p>Please see the Council's response to 2.7 above. The Applicant's response is accepted and in addition, the Council can confirm the areas for habitat creation discussed with the Council with the Applicant as detailed in paragraph 2.2.1 the HyNet CO2 Biodiversity Net Gain Strategy Update [REP3-035], are located within the Ecological Network.</p> <p>The Council looks forward to receiving further information once submitted into the Examination at Deadline 4/5 and it reserves the right to comment and make representations once that information has been reviewed.</p>	The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 [REP4-263]).

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
	<p>within the Ecological Network, to strengthen the network.</p>	<p>habitat wherever possible, to ensure adherence to the mitigation hierarchy. This will be further explored during development of the detailed design of the DCO Proposed Development. This in turn ensures that any severance impacts are kept to a minimum, particularly in cognisance that the DCO Proposed Development will predominantly result in short term, temporary, and localised impacts. An example of this is through commitments to remove a maximum of 15m of hedgerow (per hedgerow crossing) to facilitate construction of the pipeline and replace this within 1 year of impacts occurring (as captured by mitigation item D-BD-032 of the OCEMP [REP2-021] secured by Requirement 5 of the dDCO [REP1-004]).</p> <p>Where impacts do persist on priority habitats, a BNG offsetting strategy is proposed, and this will target areas within the ecological network wherever possible. To this end, the Applicant is working with CWCC to identify suitable sites to provide this priority habitat. If these areas are successfully identified as falling within the ecological network (as led by CWCC), then the DCO Proposed Development will provide a significant positive contribution towards this policy, specifically point 11 which aims to "increase the size, quality or quantity of priority habitat within core areas, corridors or stepping stones". Due to the negative multipliers inherent within the biodiversity metric (which are more heavily weighted for priority habitats), considerably larger areas of this habitat will be created to offset the extent of habitat lost, in order to achieve at least 1% BNG. A full assessment of the DCO Proposed Development against the policy DM44 will be made at Deadline 5 following completion of the updated BNG assessment</p>		

Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		with confirmation of the BNG offsetting strategy.		
<i>Consultation</i>				
2.4.11	The Council note that no meetings occurred involving both CWCC and NE	The Applicant acknowledges CWCC's response and has no further comments at this time	Noted.	The Applicant considers no further response is required.
<i>Assessment of Likely Impacts and Effects (ES Section 9.9)</i>				
2.4.12	It is stated in Section 9.9 "A number of receptors have been scoped out of the assessment where impacts to the receptor is considered to be less than Moderate adverse." It is not certain how this has been assessed, with the survey data still missing for species such as Bats, Otters and Water voles.	Within Chapter 9 Biodiversity of the ES <b>[AS-025]</b> , Paragraph 9.9.2 references Section 9.4 and Table 9.2 (within the same document), which details receptors alongside justifications for each individual receptor scoped out. These do not include species such as bats, otters, water vole that have been carried through the impact assessment process accordingly.	This is accepted and the Council has no further comment.	The Applicant notes that CWCC considers this matter is accepted.
2.4.13	It is stated in Table 9.11 that there is only loss of three outlier Badger setts, whereas the drawings show main setts adjacent and within the NIB, so it is not clear how this conclusion has been reached.	Figure 9-5: Badger Survey Results Sheets 1 to 19 of Appendix 9.5 Badger Survey Report <b>[CR1-070]</b> (confidential appendix) present the results of badger surveys completed to support the impact assessment. These present all instances of badger activity and evidence recorded during surveys regardless of the potential impacts of the DCO Proposed Development. As per mitigation item D-BD-020 of the OCEMP <b>[REP2-021]</b> , it is currently assumed that the detailed design of the DCO Proposed Development will maintain a 30m buffer from all sett entrances associated with identified main setts.	This is accepted and the Council has no further comment.	The Applicant notes that CWCC considers this matter is accepted.
<i>Mitigation, Compensation and Enhancement (ES Section 9.10)</i>				
2.4.14	It is stated that "it is not possible to reinstate trees above or within 12 m either side of the Newbuild Carbon Dioxide pipeline. Where practicable, trees will be planted as close as possible	It should be noted that wherever possible, the Applicant will seek to avoid tree losses during the development of the detailed design and through construction of the DCO Proposed Development, in line with items D-	In addition to the Applicant's response at Deadline 3 in the column to the left, the Council notes the Applicant's response to the Council's Relevant Representation at Deadline	The Applicant notes that CWCC considers this matter to be resolved.

Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
	<p>to those lost, however, these are likely to form a mixture of replacement hedgerows and trees." It is unclear if these areas have been classed as temporary loss or have been classed as permanent loss, if habitats cannot be replaced in the same location of at least 24m in width. This is especially important in LWS, woodlands and hedgerows. Again, there is no assessment of the impact of this at the landscape scale e.g. connecting up other woodlands around the area of impact.</p>	<p>BD-007, D-BD-009, D-BD-010, D-BD-012, D-BD-014, D-LV-005, D-LV-026 as presented within the REAC <b>[REP2-017]</b>. As per paragraph 9.10.8 of Chapter 9 Biodiversity of the ES <b>[AS-025]</b> a reasonable worst-case scenario utilising those trees/woodlands considered 'at risk' of removal (i.e. lost) within Appendix 9.11 Arboricultural Impact Assessment Report <b>[CR1-058]</b> has been used. This scenario risk assessment has been used to identify the extent of mitigation planting required to compensate for tree loss across the Order Limits which has driven the identification of mitigation areas across the Order Limits for woodland/tree planting (this is not to be confused with Biodiversity Net Gain (BNG) offsets of priority habitat woodland which has been dealt with separately). As such, trees have been considered permanently lost within the reasonable worst-case scenario and mitigation area development.</p> <p>Hedgerows will be temporarily lost and reinstated post construction and absent of any tree planting within 12m either side of the centre of pipeline and have as such been classed as temporarily lost. The replanting of hedgerows post construction will maintain connectivity through the landscape by reinstating these linear features. Where reinstatement of trees is not possible within woodland areas, this will be mitigated for through the planting of scrub (see items D-LV-026 and D-BD-062 of the OCEMP <b>[REP2-021]</b>). This will provide connectivity between the retained woodland sections (in the case of severance), whilst additionally providing further benefits through the creation of habitat mosaic.</p>	<p>2 <b>[REP2-046]</b> which states that all hedgerows lost will be replaced with whips and shrubs across the top of the pipeline to reinstate the hedgerow lines in the same location.</p> <p>Further, tree planting will be as close as possible to the loss and on a 3 for 1 basis. 13 areas for mitigation have been selected on the basis of enhancing existing woodland areas, enhancing green infrastructure corridors and providing new connectivity across the landscape, within the confines of the Order Limits. The Council considers that this approach ensures habitat connectivity is maintained and is acceptable.</p> <p>The approach to ensuring the permeability of the landscape to species during construction is accepted.</p> <p>This issue is now resolved.</p>	
<i>Biodiversity Net Gain</i>				

Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
2.4.15	<p>It is noted that BNG is not currently a mandatory requirement but can be used as a general tool to demonstrate if a project is achieving adequate habitat mitigation and compensation. The BNG for this Project has been carried out on priority habitats only (rather than all habitats as a standard BNG calculation would), so just a small proportion of the habitats likely to be impacted by the project. Even considering just Priority habitats, the project results in a 57.25% habitat unit loss, a 7.63% hedgerow unit loss and a 0% river unit result. In terms of the off-site information entered into the metric, this is based on potential scenarios, therefore the project is not achieving a net gain currently. It is noted that the CWCC Ecological Network has not been taken into account in the Strategic Significance columns, so losses could be greater than calculated.</p>	<p>The Applicant acknowledges that at the time of writing, the DCO Proposed Development results in a net loss of priority habitats and provides a hypothetical compensation scenario within the most recent BNG assessment report. This is stated as such within the report submitted at Deadline 3 (document reference <b>D.6.5.12</b>) which supersedes <b>[APP-261 to APP-236]</b>.</p> <p>The hypothetical scenario provides an example of the type and scale of habitats which will be required to evidence the minimum 1% net gain target of priority habitats. This scenario has formed the basis for future discussions around identifying suitable sites in which to achieve the aims of BNG.</p> <p>The Applicant is continuing discussions with CWCC with a view to securing appropriate offset locations, full details of which will be provided within an updated and final BNG assessment report <b>[APP-231 to 236]</b> to be submitted at Deadline 5. However, the Applicant has provided a BNG Strategy Update document for progression of the BNG discussions at Deadline 2 <b>[REP2-042]</b> and updated at Deadline 3. Discussions between CWCC and the Applicant are ongoing with consideration of the Ecological Network and emerging Local Nature Recovery Strategy raised and included within those discussions.</p>	<p>Please see the Council's response at 2.7 and 2.10 above. The Council looks forward to receiving further information from the Applicant to be submitted into the Examination at Deadline 4/5 and reserves the right to comment and make further representations once it has reviewed that information.</p>	<p>The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b>).</p>
2.4.16	<p>In view of the general status of the legislation at this point in time the general approach to BNG is seen as reasonable, however, the Council do highlight that there is still no off-site solution presented to compensate for the losses as described above.</p>	<p>The Applicant acknowledges CWCC's response and can confirm that it continues to explore opportunities with the councils and other parties to secure offset sites. Progress has been made with CWCC's internal BNG team in respect of securing offset site locations covering all four habitat types requiring offsets. Details of discussions to</p>	<p>This progress is acknowledged and the Council looks forward to receiving further information from the Applicant to be submitted into the Examination at Deadline 4/5 and reserves the right to comment and make further representations once it has reviewed that information.</p>	<p>The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b>).</p>

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		date and future plans to secure these offsets are presented within the Draft BNG Strategy Update <b>[REP2-042]</b> and as submitted at Deadline 3 to capture further progress from discussions with the council.		
<i>Landscape Environmental Management Plan (LEMP)</i>				
2.4.17	The Council note that the Outline Landscape Environmental Management Plan (OLEMP) [APP-] on which the final LEMP is to be based is very general. For example, a 3 for 1 replacement of woodland is referred to, but it is not clear what this means (trees or area). It is not clear why only woodland is referred to for replacement ratios and no other habitats (marshland, grassland etc). It is also noted that it is stated that the OLEMP does not address any off-site requirements needed for BNG. 5 year maintenance of habitats, extended to 10 years for woodland is referred to, however, as within the BNG metric, at least 30 years is required for woodland.	Mitigation planting and BNG are separate and distinct concepts with different requirements, and it is inappropriate to conflate these. Habitat planting for mitigation will be maintained for the establishment period to ensure the function is met then land management will return to the landowner. It is inappropriate for the Applicant to seek to control and restrict a landowner's use of land for 30 years for this form of planting. Paragraph 6.1.2 of the Outline Landscape and Ecological Management Plan (OLEMP) <b>[APP-229]</b> notes that, where appropriate, a review will be undertaken of the needs for future maintenance and management of created habitats beyond the establishment/maintenance period.  As outlined in the response to Flintshire County Council's answer to Q1.4.2 in the Applicant's Comments on Responses to ExA's First Written Questions <b>[REP2-038]</b> , the mitigation planting is not being used to evidence any gains associated with the BNG assessment. Mitigation planting is not proposed to count towards the requirement of Lowland mixed deciduous woodland compensation which is instead being delivered off-site where a minimum 30-year management can be ensured and delivered by a suitably experienced body. The same applies to ponds (priority habitat), Coastal Floodplain Grazing Marsh and hedgerows (beyond like for like reinstatement associated	Please see the Council's response at 2.6 above.  The different approaches to BNG and mitigation planting and long-term management are accepted by the Council, due to the Applicant's obligations to return land to the landowner, as part of the DCO and conversely, the much more flexible options for BNG habitat creation with voluntary partners.  It is also understood that priority habitat woodland mitigation has specific ratios, as it is considered within BNG mitigation and is being delivered off-site where it will be subject to more extensive management.  This issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>with temporary 15m losses during construction).</p> <p>Given the broadly short term, temporary, and localised impacts of the DCO Proposed Development and the habitats likely to be impacted, it is possible to reinstate the majority of habitats impacted post construction in the location of the original impact. This is not possible for woodland and trees and as such an appropriate planting ratio of 3:1 for the loss of trees has been applied recognising the time considerations of tree establishment and growth (i.e. for every tree lost, three will be planted), Thirteen mitigation areas have been selected across the Order Limits where mitigation tree planting will be located, as illustrated within Figure 3.4 Landscape and Ecological Mitigation Plan <b>[CR1-103]</b> and discussed within Section 9.10 of Chapter 9 Biodiversity <b>[AS-025]</b>.</p> <p>The Applicant has been in contact with CWCC as evidenced in the BNG Strategy Update <b>[REP2-042]</b>, and as submitted at Deadline 3, to discuss maintenance provision of BNG habitats.</p>		
<i>Survey Reporting and Monitoring Strategy</i>				
2.4.18	<p>An addition to the submitted REAC the Council's position is that there should be a survey, reporting and monitoring strategy. This would include frequency, phases or stages of survey updates, reporting frequency and the authorities reported to. This could possibly include a working group of interested parties. The Council note that the updated REAC <b>[AS-054]</b> has only been updated in terms of survey data and has not taken on board any of the above requirements.</p>	<p>Survey, reporting and monitoring has been included within the mitigation measures and principles contained within the REAC <b>[REP2-017]</b> and OCEMP <b>[REP2-021]</b>, including items D-BD-001, D-BD-003, D-BD-005, D-BD-006, D-BD-068 and D-BD-069. As part of the requirements of the ECoW (required through D-BD-001) reporting of results (e.g. of surveys undertaken) and compliance (e.g. of construction works against the requirements of the CEMP) will be required. The roles and responsibilities of the ECoW,</p>	<p>The explanation given by the Applicant gives clearer information and it is accepted that further detail will be given on reporting and monitoring elements at the detailed CEMP stage and detailed LEMP and Operations and Maintenance Environment Management Plan.</p> <p>The Council reserves the right to comment and make representations on the submission of survey detail to</p>	<p>The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b>).</p>



Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>including reporting requirements, will be developed and included within the detailed CEMP. In addition to the site ECoW, measure D-BD-003 captures the requirement for a third-party auditing ECoW to be appointed.</p> <p>The roles and responsibilities of the auditing ECoW will also be developed and detailed within the detailed CEMP as secured by Requirement 5 of the dDCO <b>[REP1-004]</b>. Reporting and monitoring requirements will be developed and captured within the detailed LEMP and Operations and Maintenance Environment Management Plan (Requirement 11 of the Draft DCO <b>[REP1-004]</b>), which will include consideration of any terms or conditions of any protected species licenses granted for the DCO Proposed Development.</p>	<p>be submitted by the Applicant into the Examination DL4/5.</p>	
<i>Local Wildlife Sites (LWS)</i>				
2.4.19	<p>The impact assessments presented within ES Chapter 9 on Local Wildlife Sites (LWS) have not been assessed in terms of the designations, with only general habitat mitigation and compensation alluded to. There is no indication of the percentage of LWS loss, nor any long-term plan to ensure the LWS quality habitat is reinstated (maximum long-term management in LEMP suggested is 10 years).</p>	<p>The Ince AGI location represents the only location where permanent habitat losses will be required within an LWS (the Frodsham, Helby and Ince Marshes LWS). The footprint of the Ince AGI will result in impacts to the grazing pasture/farmland that dominates the field in that location (and chosen for the AGI because of its widespread and common habitat type across the landscape). The footprint of the AGI will result in the permanent loss of approximately 0.39ha which represents 0.03% of the overall LWS landscape cover.</p> <p>The DCO Proposed Development will predominantly result in short term, temporary and localised impacts across the Order Limits, as such habitat reinstatement post construction alongside any requirements for mitigation and compensation are appropriate</p>	<p>This further quantitative and qualitative information is welcomed and clearly shows that the impact on the LWS subject to permanent loss is minimal and located on the least valuable, most easily reproduced habitat.</p> <p>It is also noted that reinstated and created habitats, including those within LWSs, will be subject to management and monitoring for a minimum of 5 years post construction (10 years for woodland) until the habitat fulfils its function and that a review will be undertaken towards the end of the initial maintenance period whereupon management prescription will be agreed for longer</p>	<p>The Applicant notes that CWCC reserves its position on this matter and has no further comments.</p>

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>and proportionate to the impacts of the DCO Proposed Development. Efforts to reduce impacts have already been considered and embedded within the design, for example the implementation of trenchless crossing techniques at Shropshire Union Canal. However, further efforts to reduce impacts across the Order Limits, including LWS, as much as practical will be sought through the development of the detailed design in line with mitigation principles and prescriptions (as presented within the OCEMP [REP2-021]). The Applicant recognises that the LWS have additional interests beyond habitats (see descriptions contained within Table 9.6 of Chapter 9 Biodiversity of the ES [AS-025]), supporting for example birds and water vole, and, a range of protected species surveys have been completed as required to assess the potential for habitats within and beyond the Order Limits, inclusive of LWS sites, to support such species. The mitigation measures and principles devised, will safeguard protected and/or notable species during construction, recognising results arising from pre-commencement surveys.</p> <p>Where temporary impacts occur, it is proposed that habitats will be reinstated post construction, either through management and planting or through natural regeneration (only where this is considered appropriate). All reinstated and created habitats, including those within LWSs will be subject to management and monitoring for a minimum of 5 years post construction (10 years for woodland) until the habitat fulfils its function, at which point it will be returned to the landowner. Additionally, Paragraph 6.1.2 of the OLEMP [APP-229] states that a review will be undertaken towards the end of the initial maintenance period whereupon</p>	<p>term management where appropriate.</p> <p>There are no further concerns at this stage and the Council reserves the right to comment and make representations on any further documents submitted on this issue.</p>	

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>management prescription will be agreed for longer term management where appropriate.</p> <p>As discussed within the response in row 2.17 above, it is not appropriate to conflate mitigation planting with BNG, being separate and distinct concepts. The detailed LEMP will set out objectives for ecological and landscape elements and provide detailed prescriptions in respect of management of habitats and targets to ensure appropriate condition is achieved. Where permanent impacts to habitats are anticipated associated within the Ince AGI, baseline habitats, whilst captured within the bounds of the Frodsham, Helsby and Ince Marshes LWS, will be mitigated and compensated for through a landscape plan. Baseline habitat within the field to accommodate the AGI comprises improved grassland. The landscape plan associated with the AGI will provide additional habitats including scrub, riparian planting, species rich grassland, hedgerows, and an ephemeral detention pond (see Sheet 3 of BVS and AGI Landscape Layout Plans <b>[CR1-009]</b>), providing additional benefits to birds and water vole. The remainder of the field beyond the landscape design will be retained as its current habitat type.</p>		
2.4.20	<p>LWS are referred to in table 9.11 [AS-025] when considering the Likely Significant Effects during construction, but no further analysis other than "temporary" impacts during construction; no detail of the sensitivity, replaceability, quality of the habitat and percentage impact on each LWS as a whole, has been made.</p>	<p>The Applicant can confirm that this is an omission within the document which will be rectified within a future iteration of Chapter 9 Biodiversity of the ES prior to the end of Examination. Habitats have been subject to survey across the Order Limits as presented within Appendix 9.1 Habitats and Designated Sites <b>[CR1-054]</b>. The Applicant has sought to reduce and avoid impacts upon habitats and receptors as much as possible. This has included utilising habitats that are of reduced</p>	<p>This is accepted, along with the information in the applicant's response at 2.19 above. There are no further issues and the Council reserves the right to comment and make further representations any further documents submitted into the Examination.</p>	<p>The Applicant notes that CWCC reserves its position on this matter and has no further comments.</p>

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		ecological value wherever possible (comparative to habitats of increased ecological value, e.g. opting for impacts to farmland over impacts to woodland). Further opportunities to reduce and avoid impacts will continue through the development of the detailed design (see response in row 2.19 above).		
2.4.21	In addition to the identified impacts in Table 9.11 [AS-025] the Council raises the need to consider impacts from permanent losses of trees within the planting exclusion zone over the pipeline and the resulting impacts upon the connectivity between LWS and habitats.	Please see response in row 2.14 above.	Please see the Council's response at 2.14 above, this issue is resolved.	The Applicant notes that CWCC considers this matter to be resolved.
<i>Protected Species Considerations – Bats</i>				
2.4.22	There remains to be no indication of the percentage of missing survey data on Bats. No analysis has been made of the confirmed roost locations nor of impact of habitat loss (BLE prefer to emerge into dark corridors straight from the roost and hedgerow/tree losses may impact on roost success of any species) around these locations due to the works. Foraging and commuting impact at a population (landscape) scale has not been considered in any detail. It should also be noted that it is not confirmed which trees require removal at this stage, so any resulting impact is not clear	The Applicant has undertaken an extensive suite of surveys to determine the presence (or otherwise) of features with bat roost potential which have subsequently informed the needs for further assessment and survey for the presence of bats and bat roosts (as detailed within Appendix 9.3 Bat Activity Survey [CR1-062]). Table 9.8 Summary of Species Survey Results within Chapter 9 Biodiversity [AS-025], details rationale and importance valuations per species for both 'roosting' and 'foraging and commuting' bats (captured within separate rows within the table) utilising relevant guidance (e.g. Wray <i>et al</i> and Bat Conservation Trust (Collins, 2016)). Bats, both 'Roosts' and 'Foraging and Commuting Bats' are assessed within Table 9.11 Likely Significant Effects during the Construction Stage of Chapter 9 Biodiversity [AS-025] and include consideration of the potential effects of construction of the DCO Proposed Development upon bats and the roosts identified (or precautionarily assumed)	The Council accepts that the bat hedgerow activity assessment surveys do give some detail on foraging and commuting impacts at a landscape scale.  Further detail on tree and hedgerow removal and mitigation has been provided and assurances given that they will be replaced on the same line, or as near as possible. This in turn, gives assurances that impacts on bats are likely to be mitigated. Please see the Council's response at 2.14 above.  This issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>during the course of surveys as well as consideration of severance of habitats (in respect of foraging and commuting).</p> <p>At the landscape scale, the Applicant has undertaken an extensive array of surveys and assessments to assess bat use of linear features across the Order Limits landscape and determine potential impacts and effects upon foraging and commuting bats. Additionally, within the hedgerow assessment, bat records within 2km of the Order Limits and wider habitat connections have been taken into consideration. Consequently, the Applicant has provisioned mitigation principles and items to safeguard bats during construction (see mitigation items D-BD-024 through to D-BD-033 within the OCEMP <b>[REP2-021]</b>).</p> <p>The Applicant acknowledges CWCC's comment regarding that trees require felling is currently undetermined but has provisioned appropriate mitigation principles and measures to safeguard bats, their roosts and linear foraging and commuting routes (associated with hedgerows) during construction of the DCO Proposed Development (as detailed within the OCEMP <b>[REP2-021]</b>). This is inclusive of measures to safeguard and buffer maternity roosts wherever present (see item D-BD-025 of the OCEMP <b>[REP2-021]</b>).</p>		
2.4.23	<p>Within ES paragraph 9.5.39 [AS-025] the Council note that certain roost types have been assumed in trees and buildings that have potential. Further detail is required to explain the logic of this, in terms of which buildings were assumed to have roosts and why certain roost types and sizes were assumed. The updated surveys have been</p>	<p>The Applicant refers CWCC to the 'Bats – Roosting' row within Table 9.8 Summary of Species Survey Results within Chapter 9 Biodiversity of the ES <b>[AS-025]</b>, which details the precautionary approach to assumed roost presence within the five buildings and 31 trees. To paraphrase, the results of the Preliminary Bat Roost Assessment have been taken into consideration alongside the</p>	<p>A meeting was held on 22/05/23 between the Council and the Applicant, in which the Applicant gave further information, including that 89% of tree surveys are completed for Bats in Cheshire. This gives the Council assurances that any precautionary approaches used where survey data was unable to be</p>	<p>The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b>).</p>

Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
	completed in this respect, however, the above general comments still stand, with additional queries, as below.	known roosts recorded across the Order Limits. Acknowledging these aspects, inferences can be made as to the likelihood of a similar mix of species and roosts being present in the buildings/trees unable to be surveyed.	collected, is based on sound information.  The Council looks forward to receiving further detailed information to be submitted by the Applicant into the Examination at Deadline 4/5 and it reserve the right to comment and make representations once it has reviewed the documentation.	
2.4.24	In relation to bat roosts identified in the Appendix Bat Activity Reports [AS- 029 / 030 / 057 / 058]: the Council note that the numbers of trees and buildings in the DCO limits are now lower (e.g. trees subject to aerial inspection) than previously recorded. This may be because these are now not affected by the project. The Council ask for clarification on this matter.	The Applicant can confirm that the differences in the numbers of trees and structures reported in Appendix 9.3 Bat Activity Report Rev A [APP-098 to APP-101] and Appendix 9.3 Bat Activity Report Rev B [AS-029-030, AS-057 to 058] is due to a review of trees and structures following the completion of the surveys against the Order Limits. This resulted in a reduced number of trees which will not be affected by the DCO Proposed Development due to their location, which wasn't previously reflected within [APP-098 to APP-101]. As some of these trees were subject to an aerial tree climb inspection, this has altered the numbers and results of the aerial tree climb inspection surveys also which has consequently been reflected within the updated reporting.	This explanation provided by the Applicant is accepted by the Council, and the issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.
2.4.25	It is noted from the above surveys that five buildings and thirty-one trees are now assumed as having roosts due to no access being available for survey. It is not clear how the species and type of roost been assumed, or if potential for hibernation roosts been considered? The Council ask for clarification on this matter.	The Applicant refers CWCC to its response to 2.23 above regarding consideration of precautionary roost presence in the absence of survey.  The Applicant additionally refers CWCC to its response in row 2.56.7 <i>Hibernation Surveys</i> within the Applicant's Response to Relevant Representations [REP1-042]. In summary, the Applicant did not undertake hibernation surveys as these were considered disproportionate given the broadly short term, temporary and localised nature of the	Please see the Council's response at 2.23 above. The additional explanation provided by the Applicant is accepted by the Council, and this issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>impacts of construction. However, Moderate trees and buildings can be considered to offer hibernation potential for low or individual numbers of bats; with high and confirmed roosts offering potential for multiple bats, in line with guidance definitions within the Bat Conservation Trust Bat Surveys for Professional Ecologists Good Practice Guidelines (Collins, 2016). The Applicant has included provision for completion of pre-commencement surveys to update baseline results in advance of construction (where necessary). Additional provision has been afforded within mitigation principle D-BD-025 of the OCEMP <b>[REP2-021]</b>, that defines the procedure for safeguarding of any identified maternity or hibernation roost (e.g. exclusion buffers, seasonal working restrictions, and/or licensing where required).</p>		
<i>Protected Species Considerations – Bat Foraging/Commuting</i>				
2.4.26	<p>The Council note that the updated / further surveys and analysis [AS- 031-038 / 059] report that fewer hedgerows are to be affected when compared to the surveys provided in the original submission [APP-098-105]. The updated surveys state that there are now 102 (previously 82) Poor hedgerows, 144 (previously 250) Good hedgerows and 45 (previously 23) Excellent hedgerows. The Council note that this equates to a loss of approx. 86 hedgerows from the original surveys, clarification is requested on this matter.</p>	<p>The numbers quoted by CWCC are not in relation to the total numbers of hedgerows to be impacted by the DCO Proposed Development. The numbers refer to the results of the initial Bat Habitat Suitability Assessment (BHSA) and subsequent categories applied per hedgerow. The reduced numbers reference hedgerows post grouping (where considered appropriate) and following determination of a final BHSA category applied post static detector data analysis and interpretation. Section 2.4 of Appendix 9.4 Bats and Hedgerows Assessment <b>[CR1-064]</b> details the methodology applied to determining final BHSA categories per individual and grouped hedgerows. Annex D Hedgerow Survey Data and Annex H Final BHSA Categories of Appendix 9.4 Part 3 <b>[CR1-066]</b> provide the initial BHSA results of individual hedgerows</p>	<p>The explanation provided by the Applicant of grouping hedgerows and re-categorisation following further surveys is accepted by the Council.</p> <p>This issue is now resolved.</p>	<p>The Applicant notes that CWCC considers this matter to be resolved.</p>

Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>and final BHSA categories and justifications per hedgerow or hedgerow group respectively. A combination of grouping of hedgerows and recategorization of hedgerows post static deployment and data analysis has resulted in the number variances.</p>		
2.4.27	<p>Updated ES Chapter 9 [AS-025] states that "Surveys have been completed on 32 of the 45 'Excellent' hedgerows, 10 of which met the existing Defra thresholds". However, paragraph 4.1.3 of Appendix 9.4 (Bats and Hedgerows Assessment) [AS-031] states "Modified DEFRA Local Scale surveys are due to be conducted for the 45 'Excellent' hedgerows. To date, 32 'Excellent' hedgerows have been subject to two initial surveys, 10 of which met the relevant thresholds and require a further four survey visits prior to construction. The initial two surveys for the remaining 13 'Excellent' hedgerows will be completed prior to construction along with any further surveys required for hedgerows which meet the threshold, in addition to the remaining surveys required for the 10 hedgerows to date which have met the threshold." These seem to be conflicting statements, again highlighting that not all surveys have been completed and therefore raising doubt on the robustness of conclusions of level of impacts.</p>	<p>The Applicant recognises the ambiguity in the wording of the opening sentence of paragraph 4.1.3 within Appendix 9.4 <b>[AS-031]</b> (superseded by <b>[CR1-064]</b>) and will seek to amend this in a future iteration of the appendix. The remainder of the text remains accurate and are not conflicting. The Applicant has completed the required two surveys in line with the stated methodology (see Section 2.5 of Appendix 9.4 <b>[CR1-064]</b>) for 32 of the excellent hedgerows, with 10 of these 32 triggering the threshold requirements for a further four surveys in line with the methods in Section 3.2.</p> <p>The 13 excellent hedgerows that to date have not been subject to the two initial surveys (to determine whether thresholds are triggered) will be completed in advance of construction and in response to the detailed design of the DCO Proposed Development (which may consequently reduce the number of hedgerows requiring survey). These pre-commencement surveys are not required to inform the impact assessment owing to the use of the precautionary approach to the assessment (and as a consequence the application of mitigation accordingly for their categorisation).</p> <p>The volume of data recorded through static detector deployment alone provides a sufficient level of confidence with which to consider bat activity along hedgerows, hence the inclusion of these hedgerows under the</p>	<p>The Council has concerns as it is not quite clear as to the proportion of surveys left to complete. A meeting was held on 22/05/23 between the Council and the Applicant, in which the Applicant committed to providing survey progress information. The Council reserves the right to comment and make representations when this information is provided and/ or submitted into the Examination.</p>	<p>The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b>).</p>



Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		'Excellent' category. The undertaking of crossing point surveys seeks to substantiate the levels of activity recorded during static detector deployment, or otherwise. However, in the absence of crossing point survey data, the application of the mitigation principles presented within the OCEMP <b>[REP2-021]</b> (see items D-BD-031 and D-BD-032) at the excellent hedgerow category would be applied and is therefore considered by the Applicant to be robust.		
2.4.28	As with the watercourse data, there is no indication of the percentage coverage of the total hedgerows impacted that the surveys have covered so far. It is stated that "the 10 hedgerows which have met the existing Defra thresholds, plus the remaining 13 Excellent hedgerows which were unable to be surveyed are currently precautionarily assessed Important FCRs." This is seen as a reasonable approach, although seems again to conflict with the numbers quoted in the Appendix 9.4 report. An updated survey progress table, as presented in the last meeting with the Applicant, showing the percentage, lengths and numbers of hedgerows surveyed, would be useful to clarify the information, as well as a timetable for further, or updated surveys.	<p>The Applicant has arranged a meeting with CWCC and will seek to provide the information CWCC is requesting during and following that meeting. Details of the meeting and outcomes will be captured within an updated SoCG <b>[REP2-027]</b>.</p> <p>The Applicant can confirm that a future programme of surveys is yet to be developed but will be progressed in response to the detailed design of the DCO Proposed Development with surveys to be completed (as required) in advance of construction commencement per mitigation items detailed within the OCEMP <b>[REP2-021]</b> (see items D-BD-001, D-BD-005, D-BD-006).</p>	A meeting held on 22/05/23 between the Council and the Applicant committed to providing survey progress information. The Council reserves the right to comment and make representations when the information is provided and/or submitted into the Examination	The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b> ).
<i>Protected Species Considerations – Riparian Mammals</i>				
2.4.29	The Council highlight that it is not clear why some watercourses with Water vole burrows were only classed as suitable for foraging/commuting Water vole, rather than breeding populations. The phrase "suitable for burrowing water vole" is used, however, it is not clear what this refers to. These should be classed as	Figure 9.6.2 Riparian Mammals (Water vole) within Appendix 9.6 Riparian Mammal Survey Report <b>[CR1-072 to 073]</b> displays watercourse suitability for water voles, and all watercourses where burrows have been recorded have been mapped as suitable for 'Commuting, Foraging and Burrowing' water voles. The phrase 'suitable for burrowing	<p>The explanation provided by the Applicant of the use of terminology is accepted, as well as its relation to protective legislation.</p> <p>It is accepted by the Council that any watercourse subject to severance will only be so on a temporary basis, and that mitigation is in place to take the</p>	The Applicant notes that CWCC considers this matter to be resolved.

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
	<p>breeding at this stage, unless further surveys demonstrate otherwise. There is no assessment of connectivity required and severance of watercourse that the project is likely to cause, thereby missing impacts on the populations present.</p>	<p>water vole' has been used to describe the habitat suitability on each watercourse, e.g., if the bank substrate and profile is suitable for burrow creation, as part of the habitat suitability assessment detailed within Section 2.3 of Appendix 9.6 Riparian Mammal Survey Report <b>[CR1-072 to 073]</b> in line with current relevant best practice guidance. The Applicant does not believe it necessary to re-categorise watercourses as breeding, under the presumption that all watercourses with suitability for burrowing can consequently be considered suitable for breeding. The Wildlife and Countryside Act (1981) additionally considers protection of individuals and places of shelter and therefore no differentiation in use (e.g. breeding or otherwise) is considered necessary in this instance, particularly as this would not alter the mitigation prescriptions and measures already captured within the OCEMP <b>[REP2-021]</b> (see items D-BD-034 and D-BD-035 in particular).</p> <p>Impacts to water vole populations have been assessed at County scale, given the occurrence of water vole populations across the project in England. Temporary severance of watercourses (e.g., open cut trench techniques and temporary culverts) will be kept to the construction width of 32m, and direct loss of resting places, such as burrows is anticipated during construction as detailed within Table 9.11 of Chapter 9 Rev B <b>[AS-025]</b> and Table 9.6 of Environmental Statement Addendum Change Request 1 <b>[CR1-124]</b>. Mitigation has been prescribed within the REAC <b>[REP2-017]</b> in relation to riparian mammals (see items D-BD-034-035, D-BD-048, D-BD-059-060) including a description of displacement method techniques which will be carried out under</p>	<p>appropriate measures to protect the species during construction. The issue is now resolved.</p>	

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		licence. The Applicant has additionally provisioned, wherever possible, for a reduction in the construction corridor width at watercourse crossings (see item D-BD-018 of the OCEMP <b>[REP2-021]</b> ), with no watercourses to be permanently severed, all affected watercourses being reinstated in full after construction.		
2.4.30	<p>With specific references to the revised ES chapter 9 [AS-26] and supported by Appendix 9.6 Riparian Mammal Surveys [AS-039-042]:</p> <p>It is stated that presence of Otter/Water vole has been assumed in some watercourses, due to access restrictions for second survey. There is no basis for assumed presence on some watercourses and not others and this should be clarified.</p>	<p>As presented within Table 2 – Summary of Otter and Water Vole Survey Results and Section 4 - Summary of Appendix 9.6 Riparian Mammal Survey Report <b>[CR1-072]</b>, where second surveys have not been possible due to access restrictions, but suitable habitat was identified during the first survey visit (to warrant a second survey visit), these have been assessed precautionarily as suitable to support otter and/or water vole. Where watercourses have been scoped initially (as absent of supporting habitat) or a watercourse has been subject to two surveys with no evidence of otter/water vole present these species have been assessed as likely absent on the basis of initial habitat assessment or the riparian mammal survey results.</p>	<p>A meeting held on 22/05/23 between the Council and the Applicant gave information on the watercourses that have not been accessed for survey and that information was taken from connected watercourses that were accessible for survey, to inform this approach.</p> <p>The Applicant committed to providing survey progress information. The Council reserves the right to comment and make representations when the information is provided and/or submitted into the Examination.</p>	<p>The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b>).</p>
2.4.31	<p>The Council ask that an updated survey progress table, as presented in the last biodiversity meeting between the Applicant and the Council, showing the percentage, lengths and numbers of watercourses surveyed, and the lengths to be surveyed to complete to accepted survey standards would be useful to clarify the information, as well as a timetable for further, or updated surveys.</p>	<p>The Applicant can confirm that surveys to support the DCO Application and through examination have been completed and no further surveys are anticipated during the examination period. Where surveys have not been able to be completed, due to access constraints or other restrictions, these will be completed as pre-commencement (pre-construction) surveys in response to the detailed design (which may result in some surveys no longer being required). A survey suite will be developed upon confirmation of the detailed design as captured by items D-BD-005 and D-BD-006 of the OCEMP</p>	<p>This approach is accepted and during the meeting held between the Council and the Applicant on 22/05/23, the Applicant committed to providing survey progress information. The Council reserves the right to comment and make representations when the information is provided and/or submitted into the Examination.</p>	<p>The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b>).</p>

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p><b>[REP2-021]</b> to update baseline survey results (where required) and provide data for any areas not previously able to be accessed. The results of these surveys will determine what mitigation measures/principles need applied and/or any needs for protected species licensing to facilitate construction.</p> <p>The Applicant proposes to discuss this point further with CWCC through the SoCG and will capture discussions with revisions to the SoCG with CWCC <b>[REP2-027]</b>.</p>		
2.4.32	<p>Within table 9.11 [AS-025] It is noted that the riparian mammal Likely Significant Effects (LSE) during construction has increased from minor adverse significant (not significant) to Moderate adverse significant (significant) and then from negligible to minor adverse in Table 9.13 Summary of Residual Effects. The Council ask that clarification be made in this respect.</p>	<p>Table 9.11 presented within Chapter 9 Biodiversity of the ES <b>[AS-025]</b> captures and reflects the results of the completed further surveys that were outstanding from the submission of the DCO Application (as presented within Table 9.11 of Chapter 9 Biodiversity of the 2022 ES <b>[APP-061]</b>). In the updated Chapter 9 Biodiversity of the ES <b>[AS-025]</b>, the table notes the confirmation of water vole presence on additional watercourses as well as consideration of "<i>potential otter holts or lay-ups</i>" on other watercourses. Additionally, the table includes consideration of those watercourses precautionarily assessed for the presence of otter and water vole that was absent from the table within Chapter 9 Biodiversity of the 2022 ES <b>[APP-061]</b>. As such, to reflect the updated results and in acknowledging the precautionary assessment of some watercourses, the effect significance was precautionarily increased accordingly for both during construction and residual effects. This is considered by the Applicant to be appropriate in the context of the updated survey results and application of precautionary assessment of some watercourses.</p>	<p>The explanation given by the Applicant is accepted by the Council and this issue is now resolved.</p>	<p>The Applicant notes that CWCC considers this matter to be resolved.</p>

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
<i>Protected Species Considerations – Great Crested Newts (GCN)</i>				
2.4.33	<p>There is a discrepancy of GCN presence within the Red Risk Zone around Chester Zoo, with 6 ponds reported, 5 ponds reported elsewhere and on mapping (Figure 9.2.3 - Presence/Likely Absence Results Overview), 7 ponds in the LSE assessment, with a further 5 having precautionary presence assumed (Table 9.11). It should be noted that publicly available data for GCN from planning application shows GCN presence in 10 ponds within the Red Risk Zone at Chester Zoo, which has not been used in this analysis. There is no indication of the terrestrial habitat mitigation and compensation required for GCN within the Red Zone.</p>	<p>Within Chapter 9 Biodiversity of the ES Rev B <b>[AS-025]</b>, Table 9.8 Summary of Species Survey Results states that five waterbodies in England were found to have a small population of GCN. A single waterbody (166) (see Annex C Table 8 – Presence / Likely Absence Survey Results of Appendix 9.2 Great Crested Newt Survey Report <b>[CR1-060]</b>), had confirmed GCN presence through identification of GCN eggs, with no adult newts recorded during any surveys. This waterbody constitutes the sixth waterbody alluded to within Table 9.8. The Applicant will update the final Chapter 9 Biodiversity document to clarify this within the text, with an updated Chapter 9 to be submitted before the end of the Examination. Table 9.11 Likely Significant Effects during the Construction Stage <b>[AS-025]</b> details GCN have been confirmed in 6 waterbodies, and 5 additional waterbodies have been precautionarily assessed with GCN presence. Figure 9.2.3 - Presence/Likely Absence Results Sheet 7 and Sheet 8 within Appendix 9.2 Great Crested Newt Survey Report <b>[CR1-060]</b> show all 6 ponds with confirmed GCN presence as reported within Chapter 9 Biodiversity of the ES <b>[AS-025]</b> (ponds 43, 46, 166, 167, 169 (all sheet 8) and 171 (sheet 7)).</p> <p>Survey data within Appendix 9.2 Great Crested Newt Survey Report <b>[CR1-060]</b> utilises GCN survey results provided by Cheshire Zoo (via updated third-party data request from Record) from the ongoing GCN monitoring programme. The Applicant is aware of the large number of GCN records in the Chester Zoo area, having reviewed the third-party data and communicated directly</p>	<p>This explanation provided by the Applicant of pond and GCN data is accepted and the Council reserves the right to provide further comments and make representations when the final Chapter 9 document is updated and submitted into the Examination.</p> <p>The traditional habitat mitigation and compensation approach under Natural England Licencing is acknowledged and the Council requests that either a full copy of the Licence is provided, or the habitat mitigation detail is submitted within the CEMP.</p> <p>On the basis of the above (and commitments regarding engagement with the Council on the GCN process at 2.3.4 below), this issue is now resolved.</p>	<p>The Applicant notes that CWCC considers this matter to be resolved.</p>

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>with Chester Zoo during the survey period in preparation for the ES. The impact assessment and the development of appropriate mitigation measures has been devised based on the survey results and review of third-party data.</p> <p>The Applicant refers CWCC to the REAC <b>[REP2-017]</b> which provides commitments for terrestrial habitat mitigation (items D-BD-014, D-BD-044 and D-BD-055), as secured by the CEMP within Requirement 5 of the dDCO <b>[REP1-004]</b>, and Section 9.10 within Chapter 9 Biodiversity of the ES Rev B <b>[AS-025]</b>. Areas within the Red Risk Zone will be subject to a traditional EPS Licence application which will also include mitigation and compensation requirements for GCN. The Applicant is currently preparing a draft European Protected Species (EPS) licence for GCN (applicable to the Red Risk Zone) which will be provided to and discussed with Natural England during the Examination. The results of discussions will be captured within updates to the SoCG with Natural England <b>[REP1-022]</b> and form the basis for a Letter of No Impediment.</p>		
2.4.34	There is no indication of procedure when it comes to applying to Natural England for District Level Licence and which authorities the Impact and Conservation Payment Certificate will be provided to	The Applicant refers CWCC to footnote 9 within Chapter 9 Biodiversity of the ES <b>[AS-025]</b> , which provides a summary of the District Level Licence approach. The Applicant recognises through discussions within Natural England and CWCC that the conservation payment is likely to be distributed to CWCC as the actioning body. Whilst a provisional compensation payment amount has been received from Natural England, upon confirmation of the detailed design this will require recalculation by Natural England. The Applicant will seek to	This clarification provided is accepted by the Council, and the issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.

Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		keep CWCC apprised of future discussions regarding District Level Licensing.		
<i>Protected Species Considerations – Badgers</i>				
2.4.35	<p>In Table 9.3 of Chapter 9 [AS-025], there is no indication that 30m from the works area was surveyed for Badger setts, as is standard. As previously recommended bait-marking or territory studies have not been undertaken for Badgers, to assess any potential severance impacts on the Badger population as a whole. As above, Badgers being a large mammal rely on being able to forage over extensive areas in a rural environment. The Badger report states that some locations 30m from the NIB were surveyed, due to the area of works reducing, however, this was only on an ad-hoc basis and not due to habitat suitability. Cameras were deployed at the three Main setts found so far, whereas it may have been more useful to camera-trap at setts which showed some activity, to ascertain if they were small Main setts or not. It is stated in Table 9.11 that there is only loss of three outlier Badger setts, whereas the drawings show main setts adjacent and within the NIB, so it is not clear how this conclusion has been reached.</p>	<p>The entirety of the Order Limits has been surveyed for evidence of presence or activity of badger. As alluded to, surveys have taken place beyond the Order Limits in a number of locations, with results presented within Appendix 9.5 Badger Survey Report <b>[CR1-071]</b> to provide additional context to results and setts recorded within the Order Limits. Where setts were recorded within the Order Limits a 30m buffer was surveyed for further evidence, including land beyond the Order Limits, where accessible. Mitigation principles and prescriptions have additionally been developed on the basis of 'assumed presence' of features beyond the Order Limits (see for example (but not limited to) items D-BD-015, D-BD-021, D-BD-024, D-BD-025, D-BD-028, D-BD-040 within the OCEMP <b>[REP2-021]</b>). In addition, the Applicant has provisioned for the completion of pre-commencement/ construction surveys (see items D-BD-005 and D-BD-006 of the OCEMP <b>[REP2-021]</b> as secured by Requirement 5 of the dDCO <b>[REP1-004]</b>) that will ensure that the mitigation measures and mitigation principles presented within Chapter 9 Biodiversity of the ES <b>[AS-025]</b> (and secured in the OCEMP) can be appropriately applied in response to the detailed design.</p> <p>Bait marking and territory surveys were not considered proportionate or necessary in the context of the DCO Proposed Development and its predominantly short term, localised and temporary construction. On the assumption that badger movement and</p>	<p>A meeting was held on 22/05/23 between the Council and the Applicant, in which the Applicant stated that all the standard required survey areas for Badgers was complete.</p> <p>The information provided here and at 2.6 assures the Council that all areas have been appropriately surveyed, territory severance issues during construction are addressed and habitat replacement will occur as required. It is accepted by the Council that bait-marking and territory surveys are not required on that basis.</p> <p>This issue is now resolved.</p>	<p>The Applicant notes that CWCC considers this matter to be resolved.</p>

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		<p>activity will continue to occur within the Order Limits during construction, measures have been included within the mitigation prescriptions and principles to ensure permeability of movement by animals, including badger, during construction (see D-BD-022 and D-BD-023 of the OCEMP <b>[REP2-021]</b>).</p> <p>In respect of setts, as per item D-BD-020 within Table 9.12 Design and Mitigation Measures and their Delivery Mechanisms in Chapter 9 Biodiversity of the ES <b>[AS-025]</b>, the three main setts identified during surveys are envisaged to be retained and safeguarded during construction through implementation of a 30m buffer from each sett entrance and maintenance of permeability to the wider landscape and habitats. As such, the reference to setts likely to be lost during construction presented within Table 9.11 Likely Significant Effects during the Construction Stage <b>[AS-025]</b> is accurate. The figures associated within Appendix 9.5 Badger Survey Report <b>[CR1-071]</b> present all baseline survey results, regardless of whether they are likely to be lost or safeguarded during construction.</p>		
2.4.36	The Council ask for clarification of sett numbers and that all areas surveyed 30m from the works has been undertaken.	See response to question 2.35 above.	Please see the Council's response at 2.36 above. This issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.
<i>Protected Species Considerations – Barn Owls</i>				
2.4.37	Three features were found to contain evidence of barn owl. The Barn Owl Survey reports [APP-108] states that barn owl evidence of a potential roost site was recorded at T472 (SJ35006 66638), and barn owl were recorded nesting within; BOB3 (SJ35043 66642);	As per paragraph 3.2.7 of Appendix 9.7 Barn Owl Survey Report <b>[APP-108]</b> (superseded by <b>[CR1-076]</b> ), barn owl pellets were previously discovered at T472 and T41. No barn owl activity was recorded at T41 during vantage point surveys, as such T41 has been classed as a Temporary Rest Site (TRS) and	Subject to the approval of suitable measures in the final LEMP this explanation provided by the Applicant is accepted by the Council and the and the issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.



Reference	Witten Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
	and T465 (SJ 41653 71153). This does not align with the mapping in the report which shows two occupied nest sites and two temporary rest sites. It should also be noted that it is not confirmed which trees require removal at this stage, so the impact is not clear	captured accordingly within the figures. As noted by CWCC, the number and location of trees required to be removed is not currently known and will be determined during detailed design.		
2.4.38	Within the amended Chapter 9, Table 9.12 (Design and Mitigation Measures and their Delivery Mechanisms) [AS-025] states that a worst-case scenario for barn owl presence has been applied to one location, however, this is not discussed in any of the previous sections. The Council would therefore ask that this be clarified before the residual effects can be accepted.	As detailed within Appendix 9.7 Barn Owl Survey Report <b>[CR1-077]</b> , tree T471 was identified during initial ground-based inspection to have features assessed suitable to support barn owl (see Table 1 – Preliminary on-site scoping survey information of Appendix 9.7 Barn Owl Survey Report <b>[CR1-077]</b> ). As detailed within Table 2 – Aerial Inspection Results, T471 was unable to be aerially inspected due to lack of access. The lack of access additionally impacted the ability to complete vantage point surveys as captured within paragraphs 2.4.3 and 3.2.6 of Appendix 9.7 Barn Owl Survey Report <b>[CR1-077]</b> . As such, in line with a precautionary approach, tree T471 has been included within the mitigation approach presented within item D-BD-037 (as included within the OCEMP <b>[REP2-021]</b> ).	This explanation provided by the Applicant is accepted by the Council, and the issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.
<i>Protected Species Considerations – Breeding/Wintering Birds</i>				
2.4.39	Four transects were undertaken in CWCC (3, 4, 5 and 7), with distribution skewed to take in the Mersey Estuary due to the importance of wintering birds. It is not clear if this meant that habitats that would have been ideally surveyed for breeding birds were missed. The Council ask that the reasoning for the choice of transect locations is provided.	As per paragraph 2.2.1 of Appendix 9.8 Bird Report <b>[APP-112]</b> (superseded by <b>[CR1-079]</b> ), the Applicant identified transect routes across the Order Limits capturing a mixture of habitat types to allow representative bird communities to be sampled, whilst acknowledging areas/habitats that were of likely increased importance to birds, both breeding and wintering (e.g. LWS). As such, the transects undertaken are considered appropriate and proportionate to understand the representative bird assemblages and use	This further explanation regarding breeding and wintering bird surveys strategy provided by the Applicant is accepted by the Council. This issue is now resolved.	The Applicant notes that CWCC considers this matter to be resolved.

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		by birds during both breeding and wintering seasons, whilst ensuring consideration of areas of potential increased importance to birds and possible functionally linked land.		
<i>Fish</i>				
2.4.40	The Council note that the logic for survey locations and types is not clear and it is requested that this be clarified by the Applicant.	<p>The Applicant refers CWCC to its response to row 2.12.8 and 2.57.27 within the Applicant's Response to the Relevant Representations <b>[REP1-042]</b>, which provide further information for the justification of fish survey locations and approaches.</p> <p>The Applicant has completed aquatic habitat scoping assessments along as much of the watercourses that was physically accessible present within the Order Limits. As per Section 2.2 Habitat Scoping Assessments of Appendix 9.9 Aquatic Ecology (Watercourses) <b>[CR1-080]</b> and illustrated within Figure 9.9.1, aquatic habitat scoping assessments were conducted on watercourses across the Order Limits to identify the need for detailed aquatic surveys on the basis of habitats present and the potential for protected and/or notable species receptors. Figure 9.9.1 details the locations all watercourses subject to Habitat Scoping Assessment and subsequently where each further survey type was completed. As detailed within paragraph 2.7.1 of Appendix 9.9 Aquatic Ecology (Watercourses) <b>[CR1-080]</b>, Canal Ditch was not subject to habitat scoping assessment due to a lack of access, however, this was addressed through an assessment of aerial imagery. The need for further surveys (e.g. eDNA, electric fishing, macroinvertebrates) was assessed in light of the habitat scoping results, per Section 2.2 Habitat Scoping Assessments, with further surveys subsequently undertaken utilising</p>	This approach for fish survey strategy is accepted by the Council. During the meeting held between the Council and the Applicant on 22/05/23, the Applicant committed to providing survey progress information. the Council reserves the right to comment and make further representations when the information is provided and/ or submitted into the Examination.	The Applicant is not intending to submit any further information other than that submitted at Deadline 4 on this matter (see Table 2.6 of the Applicant's Response to Submissions Received at Deadline 3 <b>[REP4-263]</b> ).

Reference	Written Representation submitted at Deadline1A	Applicant's Response submitted at Deadline 3	Council's Response at Deadline 4	Applicant's Response at Deadline 5
		appropriate methods in light of access or health and safety considerations.		

**Table 2.5: Applicant's Comments on Canal & River Trust – Deadline 4 Submission - Cover Letter [REP4-271]**

Reference	IP Submission	Applicant's Response
	<b>Statement of Common Ground (SoCG)</b>	
2.5.1	The Trust and the applicant have made no further progress in relation to the draft Statement of Common Ground (SoCG). As outlined at Deadline Three (DL3), the main outstanding matters within the SoCG are linked to the protective provisions for the Canal & River Trust and land rights and reaching agreement on these. The applicant shared an updated SoCG Rev B with the Canal & River Trust, as part of their DL3 submissions [REP3-030]. The Trust is keen to work with the applicant to find common ground on the outstanding matters.	The Applicant can confirm that the protective provisions are with the Trust for review and once this matter is progressed this will be translated into an updated SoCG [REP3-030]. The Applicant is grateful for the Trust's continuing engagement on these matters.
	<b>Protective Provisions for the Trust</b>	
2.5.2	As set out at DL3, the Trust provided the applicant with further clarification/edits/amendments on the draft protective provisions on 17th May 2023. The Trust chased a response from the applicant on these again on 13th June 2023. At the time of writing no further response has been received from the applicant and no further progress has been made. The Trust is keen to work with the applicant to agree the outstanding matters.	The Applicant is grateful for the Trust's engagement on this point. An updated draft was returned to the Trust on 27 June 2023.
	<b>Compulsory Acquisition</b>	
2.5.3	<p>Both the Trust and the applicant are keen to get this matter resolved and reach a voluntary agreement in relation to the land rights sought. The Trust submitted oral submissions at the Compulsory Acquisition Hearings on Wednesday 7th June 2023, and we provide a written summary of our submissions to aid the ExA (Appendix A).</p> <p>As outlined in our oral submissions, the Trust received revised Heads of Terms on 5th June. The Trust is currently considering these revised terms and will respond shortly to the applicant. The Trust is keen to move forward quickly and is confident terms can be agreed prior to the final draft Order being submitted for the close of the Examination.</p>	The Applicant notes the Trust is considering the revised Heads of Terms sent by the Applicant on 5 June 2023.
	<b>Trusts response to Deadline Three matters</b>	
2.5.4	The Trust have reviewed the various relevant DL3 submissions of the applicant which relate to the Trust's interests. On the basis of the positive ongoing discussions regarding protective provisions and a voluntary land rights agreement, the Trust has no specific comments to make on these at this stage.	The Applicant notes this response.
	<b>Change Application Request</b>	
2.5.5	The Trust has provided a separate Relevant Representation to the consultation on the Change Request. The Trust fully supports change 14 in relation to the reduction of the Order limits to remove a section of the Shropshire Union Canal at Work No.18.	The Applicant notes the Trust's support of Change 14.

**Table 2.6: Applicant's Comments on Canal & River Trust – Deadline 4 Submission - Appendix A - Written Summary of the Canal and River Trust's (the Trust) Oral Submissions made at the Compulsory Acquisition Hearing 1 (CAH1) held on 7 June 2023 [REP4-272]**

Reference	Canal & River Trust Reference	Written Summary of the Canal & River Trust's (the Trust) Oral Submissions made at the Compulsory Acquisition Hearing 1 (CAH1) held on 7 June 2023	Applicant's Response
2.6.1	1.	The Trust raises no objection to the principle of the Applicant obtaining a long lease the necessary subsoil to lay the pipeline (Plot 8-03) or a licence permitting the temporary possession of part of the canal bank adjacent to the A41 (Plot 9-06). The Trust recognises that a crossing beneath the canal is necessary, and that the length of canal within the Order Limits is proportionate. The Applicant acknowledges that has reduced the width of Plot 8-03 following the Trust's DL1 response.	The Applicant has no further comments on this matter.
2.6.2	2.	However the Trust maintains an important objection to the inclusion of compulsory acquisition powers in respect of Plots 8-03 and Plot 9-06 with regard to the extent to which the Applicant can demonstrate a compelling case to include compulsory acquisition provisions. Specifically, paragraph 25 of the September 2013 'Guidance related to procedures for the compulsory acquisition of land' confirms as follows:  <i>Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.</i>	The Applicant will continue to positively engage with the Trust regarding commercial negotiations with the aspiration of reaching a voluntary agreement before the end of the Examination.
2.6.3	3.	Although the Applicant and the Trust have begun some discussions over the terms of the long lease and accesses licence, and indeed revised Heads of Terms were received by the Trust on 5 June 2023 (on the eve of the compulsory acquisition hearing), the Trust considers that meaningful attempts to acquire land by negotiation have not yet been made by the Applicant, and that negotiations cannot be said to have failed.	The Applicant held a positive meeting with the Trust on 22 June 2023 regarding the voluntary commercial negotiations and followed up with a response to key discussion points on 29 June 2023. The Applicant will continue to positively engage with the Trust with the aspiration of reaching a voluntary agreement before the end of the examination.
2.6.4	4.	The point not just as a matter of principle. Having its land acquired compulsorily rather than by way of agreement has significant practical consequences for the Trust.	The Applicant will continue to positively engage with the Trust regarding commercial negotiations with the aspiration of reaching a voluntary agreement before the end of the examination.
2.6.5	5.	The Trust is both a statutory undertaker and also a registered charity, and as a consequence has significant internal and external reporting requirements for disposal of land or rights, and which are made materially more difficult if such reporting is undertaken 'after the event', for example following the making of a general vesting declaration.	
2.6.6	6.	The valuation of rights / land acquired is complex for canal assets, and in cases where only the subsoil if to be acquired is comparatively low value compared with (say) developed or developable land. While ensuring fair and best value for	

Reference	Canal & River Trust Reference	Written Summary of the Canal & River Trust's (the Trust) Oral Submissions made at the Compulsory Acquisition Hearing 1 (CAH1) held on 7 June 2023	Applicant's Response
		any disposal of land or rights is essential to the Trust, of equal importance is the need to protect Trust assets within the terms of the relevant lease / licence. The Trust is experienced in negotiating and securing such protections in appropriate legal documents, and which are not achieved where land or rights are acquired through a GVD.	
2.6.7	7.	The Trust has unfortunately experienced a recent example of negotiations in respect of a voluntary agreement not being prioritised by a promotor during the DCO examination process, despite heads of terms being substantially agreed. The Order was then made prior to the agreement being completed, and the promoter subsequently then ended negotiations and proceeded to acquire the necessary rights via the making of a GVD. This process resulted in abortive costs and significant wasted personnel time on the part of the Trust.	The Applicant cannot answer for the actions of another DCO promoter and notes it is actively seeking to progress the voluntary agreements.
2.6.8	8.	The Trust's suggested solution - in the event that the long lease and temporary possession licence are not agreed with the Applicant prior to the making of the Order - is to include within the Trust's protective provisions in Schedule 10 (which remain under discussion between the Applicant and the Trust) a provision which makes the Applicant's compulsory acquisition powers subject to the Trust's reasonable consent. Similar provisions are already contained within the draft Order in respect of electricity, gas, water and sewerage undertakers (see Sch 10, paragraph 4), National Grid (Electricity) (see Sch 10, paragraph 19), and National Grid (Gas) (see Sch 10, paragraph 33).	The Applicant notes that the Trust's protective provisions would prevent a reliance on the use of compulsory powers. Without a voluntary agreement in place that restriction is unacceptable as it creates a ransom position on the delivery of the authorised development. The Applicant is working to progress the voluntary agreements.
2.6.9	9.	In those circumstances the Trust would be subject to the requirement to act reasonably, and in the event the Applicant considered otherwise the matter could be dealt with under the Order's arbitration provisions.	

**Table 2.7: Applicant's Comments on Canal & River Trust - Deadline 4 Submission - Appendix B - Response to Action Points from the Hearings held week of 5 June 2023 [REP4-273]**

Reference	Appendix B – Canal & River Trust response to the Action Points from the Hearing sessions	Applicant’s Response
	<i>Compulsory Acquisition Hearing 1 (CAH1)</i>	
2.7.1	<p><b>CAH1 – AP2- The action point relates to whether plot 8-03 (not 18-03 as listed in the question), which is registered as Infrastructure Trust Property, should be listed as Crown Land within the Book of Reference.</b></p> <p>The Canal &amp; River Trust is a community interest company, which was set up in 2012 to take on the activities of British Waterways (BW). When the statutory transfer of BW’s activities took place, the Secretary of State (DEFRA) specified that the former BW waterways and land needed for certain purposes in connection with those waterways were to be held on trust, so that the Trust would be required to retain that property and use it for the Trust’s charitable purposes. That land is referred to as “Infrastructure Trust Property” (ITP) and it is held by the Canal &amp; River Trust as trustee for the Waterways Infrastructure Trust.</p> <p>Accordingly, the Trust’s Infrastructure Trust Property is not considered ‘crown land’ as defined in s227 Planning Act 2008. Between them, sub-sections (2) and (3) provide the definition of crown land as including an interest belonging to a government department or held in trust for His Majesty for the purposes of a government department. In this case, the Canal &amp; River Trust hold the property on trust for the Waterways Infrastructure Trust for public benefit.</p>	<p>The Applicant notes confirmation that the Trust’s land is not Crown Land.</p>
	<i>Issue Specific Hearing 2 (ISH2) (Development Consent Order)</i>	
2.7.2	<p><b>ISH2 – AP6 – The action point relates to the Trust’s objection to the discharge of surface water to the canal. The applicant has advised that article 19 of the DCO requires the consent of the watercourse owner before forming such a discharge. It is asked if this satisfies the concerns of the Trust.</b></p> <p>Water management within our waterways is complex and any new discharges need to be assessed by the Trust’s hydrology and environmental teams to ensure the canal has capacity to accommodate increased flow and this needs to be modelled alongside all other flows into the canal.</p> <p>Within the draft protective provisions for the Canal &amp; River Trust, which are being negotiated with the applicant, the Trust is negotiating a provision to disapply Article 19. The Trust is not a drainage body and the Trust’s consent will be required for any surface water flows into our waterway. We would need to be satisfied that there is no increase in the flood risk and that it will not cause the water quality of the waterway to deteriorate, either in the long term, or as a result of increased discharges. We will only accept clean surface</p>	<p>The Applicant has requested a further meeting with the Trust to resolve outstanding matters in the SoCG and Protective Provisions.</p> <p>As per row Trust 3.5.3 within Table 3-5 (Draft DCO) of the draft SoCG [REP3-030], the Applicant is proposing that any works that interface with its waterways would be carried out in accordance with the Canal &amp; River Trust Third Party Works Code of Practice and that the requirements will be secured by way of a Protective Provision.</p>

Reference	Appendix B – Canal & River Trust response to the Action Points from the Hearing sessions	Applicant's Response
	<p>water. This is managed via a mandatory drainage assessment process via the Canal &amp; River Trusts Code of Practice for Third Party Works. We are seeking a commitment from the applicant to seek consent from the Trust via that process, which goes further than Article 19 of the draft Order.</p> <p>Within the draft Statement of Common Ground between the Trust and the applicant [REP3-030], this matter has been under discussion between the parties (Table 3.7 of REP3-030).</p> <p>The Applicant has confirmed that relevant consents/permits/licenses will be obtained for discharges if required. Within the draft protective provisions, the Trust is seeking assurance that the applicant will abide by the Canal &amp; River Trust Code of Practice in relation to the works related to the canal, including any discharge of surface water to the canal.</p>	



**Table 2.8: Applicant's Comments on Environment Agency - Deadline 4 Submission [REP4-279]**

Reference	IP's Comment	Applicant's Response
	<i>Environment Agency Written Submission for Issue Specific Hearing 1 (6th June 2023)</i>	
	<i>Riparian Enhancements</i>	
2.8.1	The EA can confirm the proposed riparian enhancements at the East Central Drain; Finchetts Gutter Tributary; Backford Brook; and Friars Park Ditch are acceptable.	The Applicant notes the EA's response and has no further comments.
2.8.2	We are particularly supportive of the proposals to use a tussocky species-rich sward within the biodegradable fibre matting; the inclusion of willow whips; and reinstatement of natural bank forms and in-channel features for improved morphological diversity. In terms of the proposal for riparian planting (which is additional to the vegetation which would be reinstated from open cut crossings), we wish to emphasise that this should be a diverse mix of locally-native riparian trees and shrub species (ES ref. D-BD-048 of the Register of Environmental Actions and Commitments (REAC) [REP2-017]).	The Applicant can confirm that it proposes to utilise native species mixes in-keeping with the local landscape character as part of its planting regime for reinstated and created habitats, as captured within item D-BD-062 of the Outline Construction Environmental Management Plan (OCEMP) [REP4-237] secured under Requirement 5 of the dDCO [REP4-008].
2.8.3	We note the commitment, under the REAC [REP2-017], to reinstate all channel and banks 'to mimic baseline conditions as far as practicable to ensure more natural bank forms and in-channel features and morphological diversity' (ES ref. D-BD-048) impacted by the proposed construction of the pipeline. We would advise, in the event it is found not to be possible / practicable to reinstate habitats to former conditions, compensatory measures must be sought within the same Water Framework Directive (WFD) water body. We request this is acknowledged within the REAC [REP2-017] either within DBD-048 or under a separate reference	<p>Given that nature of the watercourses being crossed by trenched crossing methods (i.e. predominantly ditches) reinstatement to mimic baseline conditions is considered viable and the use of the word 'practicable' is compliant with the use of the term in the WFD legislation and other legislation, such as the Habitats Directive. The wording of the commitment takes into account the ecological recovery time of the reinstated channel where it may take two summer seasons for the habitats to return to mimic baseline conditions.</p> <p>Enhancements are proposed along watercourses to provide additional compensatory habitat.</p> <p>It was agreed in consultation with the Environment Agency on 2 March 2023 that trenched crossings of watercourses would be considered to have no operational impacts in there was reinstatement and recovery within two years post-construction assuming no bed reinforcement is required.</p>
2.8.4	We advise the overall aim of the WFD is to enhance the status of all water bodies and their ecosystems. In line with this, it is strongly recommended that the applicant seeks opportunities for enhancement, where practicable and in addition to those already outlined, where trenched crossings are proposed on watercourses. All mitigation measures and enhancement proposals should be documented within the WFD assessment, including how the proposed measures contribute to the objectives of the North West River Basin Management Plan (RBMP).	<p>Riparian enhancements are proposed at: East Central Drain; Finchetts Gutter Tributary; Backford Brook; and Friars Park Ditch. More information on how these contribute to objectives in the North West RBMP will be added to the WFD Assessment [REP4-174] and submitted prior to the end of Examination.</p> <p>In addition, there are also riparian enhancements proposed at the River Gowy and a connected ditch (see Work Plan 57F of the <b>OLEMP</b>) [APP-229] with riparian planting proposed along the western bank of the River Gowy and connected ditch [REP4-006].</p>
	<i>Environment Agency Written Submission for Compulsory Acquisition Hearing (7th June 2023)</i>	
2.8.5	The EA are the landowners of the River Gowy channel bed at Plots 6:01; 6:02; 6:10; and 6:11, as shown in the Land Plans [REP2-002], where we acknowledge the applicant is currently seeking permanent acquisition of Plots 6:01; 6:02; 6:10 and	The Applicant acknowledges the comments and welcomes further feedback on the Heads of Terms.

Reference	IP's Comment	Applicant's Response
	temporary possession of Plot 6:11 to facilitate the proposed development. We advise the ExA that we are currently reviewing the Heads of Terms provided by the applicant.	
	<i>Compulsory Acquisition and Temporary Possession of Land under the Environment Agency's Ownership</i>	
2.8.6	We would welcome further discussions with the applicant on the contents of the proposed agreement for the permanent / temporary acquisition of the aforementioned plots, particularly to ensure the granting of such rights does not include stipulations that may impact the EA's statutory obligations (i.e. securing access rights for the EA).	Engagement on these matters between the Applicant and the EA is currently ongoing.
2.8.7	We would highlight, for the applicant's awareness, there is an aspiration for the restoration of the River Gowy to be delivered as one of the WFD mitigation measures (Action ID: 35564) under the North West RBMP. Therefore, provisions made under the Heads of Terms should not impact the potential future delivery of this action. The applicant must make suitable provisions and actions to support and alter the pipeline route / depth to ensure any potential future works on the River Gowy are achievable. This is to ensure the proposed constructions works / operational development do not jeopardise the attainment of 'good status' in future under the WFD.	<p>The WFD mitigation measures for the River Gowy will be included in the WFD assessment <b>[REP4-174]</b> which is being updated prior to the end of Examination.</p> <p>The OCEMP <b>[REP4-237]</b> commits the Construction Contractor to undertake further engagement with the Environment Agency Planning and Geomorphology Technical Specialists during the detailed design process to determine the required floodplain extent for pipeline burial depth below the existing river bed level of the Rover Gowy. This will determine the potential distance for setting back of the embankments (to a maximum distance of 100m) along the River Gowy to allow for the WFD Mitigation Measure to be achieved. This mitigation is required to enable the re-naturalisation of a sinuous planform of the River Gowy, as depicted in historical mapping records, without the risk of the pipeline becoming exposed (D-WR-055).</p> <p>Provisions in the Heads of Terms are being addressed through separate negotiation.</p>
	<i>Environment Agency as an Identified 'Occupier or Reputed Occupier' of Plots</i>	
2.8.8	Where the EA has been identified as holding an interest in land as an 'occupier or reputed occupier' in the Book of Reference [REP3-014], as also raised in our Deadline 3 submission [REP3-045], the applicant has clarified [REP2-038] that this is as a result of the proximity of the plots to designated 'main rivers'. We are satisfied the applicant has identified the need to obtain a Flood Risk Activity Permit (FRAP), under the Environmental Permitting (England and Wales) Regulations 2016, as included in the 'Other Consents and Licences' Document [REP1-011] and therefore, we have no further comments to make on this matter	The Applicant acknowledges the comment and has no further comments on this matter at this time.
2.8.9	We would advise the applicant, under Table 2.1 of the 'Other Consents and Licences' document [REP1-011], a bespoke Flood Risk Activity Permit (FRAP) may not be required for 'all' temporary or permanent works on / near a 'main river' / flood defences structure / floodplain. Further to this, FRAP exemptions and exclusions will be dependant on the scale and nature of the proposed works and whether they meet the necessary conditions.	The Applicant acknowledges the response from the EA on this matter. The Applicant will update the Other Consents and Licences document <b>[REP4-020]</b> prior to the end of Examination.
2.8.10	Therefore, we advise the wording within the 'Other Consents and Licences' document [REP1-011] is revised to acknowledge a FRAP will be obtained, where required	

Reference	IP's Comment	Applicant's Response
	<p>(additional advice provided in our Deadline 1 submission [REP1-062], and register for an exemption where applicable, whilst acknowledging exclusions for certain works may apply in line with EA (and Natural Resources Wales for the Wales section of the scheme) guidance. For example, Table 2.1 [REP1-011] identifies 'smaller scale works e.g. within or on existing structures, signage, fences, works carried out in an emergency' as falling under a FRAP exclusion. However, this will be dependent on whether this meets the specific conditions / stipulations for an exemption and therefore, may still require a FRAP.</p>	
	<p><i>Environment Agency Written Submission for Issue Specific Hearing 2 (8th June 2023)</i></p>	
	<p><i>Part 2 Principal Powers - Article 6</i></p>	
2.8.11	<p>The EA raised in their Deadline 1 Written Representation submission [REP1-062], concerns with the vertical 'limits of deviation', in so far as this relates to the depth of the pipeline at watercourse crossings / flood defence structures given the intention to refine the depth of the pipeline at the detailed design stage. We are aware the applicant has indicated, under the Applicant's Responses to Written Representations [REP2-041] Deadline 2 submission, the depth of the pipeline will be no less than 1.2m from the top of the pipe to the channel bed / base of the flood defence structure unless agreed by the EA.</p>	<p>The Applicant acknowledges this response and has no further comments.</p>
2.8.12	<p>Whilst the applicant has suggested [REP2-041] this could be secured through a set of Protective Provisions, given the pipeline depth will be determined at the detailed design stage and our concern lies with ensuring the detailed design / pipeline depth is informed / supported by refined environmental assessments (i.e. (but not limited to) assessment of ground conditions; WFD; ecology), we would suggest that this is secured under a DCO requirement. Please see further comments below under 'Schedule 2 Requirements – Part 1 (Requirements) Requirement 4 (Scheme Design)'.</p>	<p>The Applicant refers to its response on this point at Deadline 4 in Written summaries of oral submissions made at any Hearings held week commencing 5 June 2023 [REP4-264], part 3 paragraph 2.13. In summary that provides that 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.</p>
	<p><i>Schedule 2 Requirements – Part 1 (Requirements) Requirement 4 (Scheme Design)</i></p>	
2.8.13	<p>We note Requirement 4 establishes matters for the detailed design stage of the proposed development in line with the general arrangement plans supplied. We would request, either as part of draft Requirement 4 or a separate Requirement if preferred, that wording is included to recognise that the depth / layout of the pipeline at watercourse / flood defence crossings are informed and supported by a refined WFD Assessment, with specific regard to hydromorphology / ecology, and site-specific ground investigation / assessment. It is recognised that the current ground investigation</p>	<p>These matters would be addressed by the appointed Construction Contractor at the detailed design stage and secured through a FRAP application, which would be undertaken in consultation with the Environment Agency.</p>

Reference	IP's Comment	Applicant's Response
	reporting is limited, where the applicant intends to undertake additional investigation / assessment at the detailed design stage.	
2.8.14	It may also be found, following on from site-specific / detailed assessment work, that a depth of 1.2m from the top of the pipe to the channel bed may not be sufficient to ensure there is no detrimental impact on watercourses / flood defence structures or to ensure any potential future works / improvements to watercourses (i.e. WFD mitigation measures) where identified are not hindered. We advise this can only be determined once such detailed assessments are undertaken and greater understanding of site conditions is realised.	The Applicant refers to its response on this point at D4 in Written summaries of oral submissions made at any Hearings held week commencing 5 June 2023 [REP4-264], part 3 paragraph 2.13. In summary that provides that for trenchless crossings, the depth will be greater and will be determined on a case by case basis having regard to, inter alia, the maintenance operations occurring at each location.
	<i>Schedule 2 Requirements – Part 1 (Requirements) Requirement 5 (Construction Environmental Management Plan)</i>	
2.8.15	As raised in the EA's previous deadline submissions [REP1-062] [REP3-045], we have highlighted that insufficient ground investigation and associated assessment work has been undertaken to inform potential considerations required under the Construction Environmental Management Plan (CEMP) and associated management plans, forming the Annexes of this document.	The Applicant does not agree that the investigations are insufficient. The Applicant notes that the current plans are outline and the detailed plans will be informed by further investigations where those are required.
2.8.16	Of note, is the potential presence of emerging contaminants (i.e. Per and Polyfluoroalkyl Substances (PFAS)) which may require specialist remedial techniques dependant on the nature / scale, if found, and consideration of additional permits / consents that may be required. In addition, the draft DCO seems to be based on the assumption that the site investigation works and limited assessment undertaken to date is sufficient (see additional comments under 'Schedule 2 Requirements – Part 1 (Requirements) Requirement 9 (Contaminated Land and Groundwater)').	
2.8.17	We would highlight that it is essential that there is recognition that the findings from the additional ground investigation / assessment work intended to be undertaken (as recommended in the applicant's Ground Investigation Report [APP-135 to APP-137] and an action under the REAC [REP2-017] ES ref. D-LS-020) informs the CEMP and associated management plans. We advise that this assessment work will influence the technical matters / considerations that will need be addressed under the CEMP (i.e. (but not limited to) the Material Management Plan; Waste Management Plan; Soil Management Plan; Dewatering Management Plan; Groundwater Management and Monitoring Plan and Surface Water Management and Monitoring Plan).	
2.8.18	Therefore, given the above, it is pertinent that there is recognition that the additional ground investigation / assessment, to be undertaken, inform the forthcoming CEMP and associated documents under DCO Requirement 5. We would advise considering a requirement to update the REAC under this DCO requirement, to ensure additional measures / actions that may be required based on the findings of the forthcoming	As stated in the Applicants Comments on Submissions Received at Deadline 3 [REP4-263], the Applicant can clarify that the ground investigation work will be undertaken at the detailed design stage, the results of which will be used to inform the design and any associated and relevant commitments within the OCEMP [REP4-237] or detailed CEMP at that time, depending upon the status of the live document.

Reference	IP's Comment	Applicant's Response
	detailed site-specific assessment work are captured and presented in the CEMP at the detailed design stage.	
<i>Schedule 2 Requirements – Part 1 (Requirements) Requirement 9 (Contaminated Land and Groundwater)</i>		
2.8.19	<p>The EA hold an interest in DCO Requirement 9 (Contaminated Land and Groundwater) due to our role on ensuring the protection of 'controlled waters'. We have the following comments to make for the ExA's consideration on the current wording of DCO Requirement 9:</p> <p>We do not agree with the current wording that has been suggested for DCO Requirement 9 (Contaminated Land and Groundwater) as the wording supports a position whereby the majority of the ground investigation work will be undertaken after the detailed design stage of the project and ('in the event that contamination is found at any time when carrying out the authorised development'). We would refer to our previous deadline submissions [REP1-062] [REP3-045] where we have outlined the inadequacy of the information provided to date in regards to informing the detailed design stage, where it has been recognised by the applicant that additional site investigation / assessment work is required [REP2-041].</p>	Known contamination will be addressed under the CEMP, including contamination found during investigation to inform the detailed plans. Only unknown contamination found during construction is covered by this requirement.
2.8.20	<p>We advise that we require the majority of the intrusive ground investigation and assessment work to be carried out prior to the detailed designed stage to ensure such information on local environmental conditions are fully understood and to assist in informing the detailed design stage of the project (please see further comments under Schedule 2 Requirements – Part 1 (Requirements) Requirement 4 (Scheme Design)). Without this information in detail, we are unable to advise the project team on a number of environmental issues ranging from, but not limited to; risk; appropriate pipeline layout (inc. depth) groundwater and surface protection; waste and soils management; contamination, including possible remediation solutions.</p>	The Applicant notes that the current plans are outline and the detailed plans will be informed by further investigations where those are required. This is entirely normal within a DCO where detailed design will not be carried until consent is granted.
2.8.21	<p>Gathering this information after the detailed design phase could to lead to delays in the project as we ask for further information, assessment, and where necessary remediation to ensure that controlled water receptors are adequately protected. This should be looking to address information gaps or gather additional, detailed, information on problems which had been previously identified from the work that has been undertaken in the Phase 1 Preliminary Risk Assessment [APP-117 to APP-120] and Ground Investigation Report [APP-135 to APP-137].</p>	
2.8.22	<p>The current wording of Requirement 9 does not provide any scope for the above and reads as though a definitive understanding the pipeline corridor conditions has already been established and all relevant risks to controlled waters have been assessed. If this is the case, contrary to the applicant's recognition that additional site investigation / assessment work is required (i.e. as recommended in the Ground Investigation Report [APP-135 to APP-137] and identified as an action within the REAC [REP2-017] ES ref.</p>	Known contamination will be addressed under the CEMP, including contamination found during investigation to inform the detailed plans. Only unknown contamination found during construction is covered by this requirement.

Reference	IP's Comment	Applicant's Response
	D-LS-020), we would suggest that this is possibly based on the current insufficient ground investigation / assessment work undertaken to date and assumptions made in the Phase 1 Preliminary Risk Assessment [APP-177 to APP-120].	
2.8.23	We advise whilst Phase 1 Preliminary Risk Assessments / desk studies do provide some indication of historic land uses or contamination issues, or potentiality of both, equally, they have their limitations as not all contamination issues are recorded, and some historic (and current) land uses are withheld due to the sensitivities surrounding their use. Such studies provide initial context / understanding of site conditions which provides a steer as to where additional site investigation / assessment work is required. Once sufficient site investigation / assessment work has been undertaken, this will inform requirements for any remedial works, where necessary (in addition to assisting in determining where permits / consents may need to be obtained and providing supporting information for the CEMP / associated Annexes).	
2.8.24	Further to this, we note DCO Requirement 9 does not currently include provision for the submission of a validation plan, alongside any remediation strategy(s) required, to establish how the applicant / undertaker will demonstrate the remedial works have been successful and detailed in any subsequent verification reporting (i.e. monitoring requirements / compliance criteria). Therefore, we advise the inclusion of the requirement to submit a validation plan within DCO Requirement 9.	The Applicant refers to its response on this point at D4 in Written summaries of oral submissions made at any Hearings held week commencing 5 June 2023 [REP4-264], part 3 paragraph 2.17.
2.8.25	We agree with the stance that the applicant should request approval from the relevant authority, where advice from the EA may be sought / required from a 'controlled waters' perspective, on any verification report(s) required to demonstrate the success of any remedial work(s). This is to ensure the applicant / undertaker has complied with the validation plan established as part of the remediation strategy and an opportunity to rectify any issues identified as part of the verification process.	
2.8.26	In virtue of the above, we believe the current wording of DCO Requirement 9 is contrary to good practice as described in the Land Contamination Risk Management (LCRM) Guidance Document by the EA (2021). We note during Issue Specific Hearing 2, the ExA requested the EA to provide the LCRM Guidance Note to enable consideration of this information as part of the DCO Examination Process which is available here: <a href="https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm">https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm</a> . We would request the ExA / applicant to consider as part of any future revision of the draft DCO, alternative wording for DCO Requirement 9 that follows the framework provided in LCRM.	The Applicant considers that the current wording of dDCO [REP4-008] Requirement 9 is in general accordance with LCRM, and that a verification plan would be included within any remediation strategies required.
2.8.27	We wish to highlight to the ExA that under the 'Verificaiton Report' section of the LCRM, undertakers of remedial works are required to identify regulators or other organisations that need to be consulted on the verification report (including Local Authorities and the EA): <a href="https://www.gov.uk/government/publications/land-contamination-risk-">https://www.gov.uk/government/publications/land-contamination-risk-</a>	

Reference	IP's Comment	Applicant's Response
	management/lcrm/lcrm-stage-3-remediation-and-verification#remediation-and-verification-reportingrequirements.	
	<i>Schedule 2 Requirements – Part 1 (Requirements) Additional EA Commentary</i>	
2.8.28	<p>In addition to the above DCO Requirements, where the EA provided oral representation as part of Issue Specific Hearing 2, we have the following additional comments for the ExA / applicant to consider on other Requirements included within the draft DCO:</p> <p><u>DCO Requirement 16 – Restoration of Land</u></p> <p>As highlighted in our commentary above, 'under Environment Agency Written Submission for Issue Specific Hearing 1 (6th June 2023)', we are aware of the applicant's intention to mimic baseline conditions 'as far as practicable' where proposed works impacts channels and banks (REAC [REP2-017] ES ref. D-BD048). We would request provision is included in the REAC to ensure where reinstatement to baseline condition is not 'practicable' and where 'such other condition', as in the current wording of DCO Requirement 16, is implemented, that compensatory measures for watercourses / flood defence structures impacted by proposed trenched crossings may be necessary.</p> <p>Therefore, we would advise the ExA that the EA hold an interest in DCO Requirement 16, in so far as this relates to the reinstatement of watercourse / flood defence structures where trenched crossings have been proposed. We would request the applicant provides clarity on the definition of 'such other condition' and consideration of compensatory measures in the event reinstatement to baseline conditions is found to not be feasible.</p> <p>As above, we would also request the applicant seeks enhancements, where possible, as part of the reinstatement proposals where trenched crossings on watercourses are proposed.</p>	<p>This would be controlled by both the voluntary land agreement, and in the case of main rivers, the permit issued by the EA. The EA accordingly has more than adequate control over this aspect already and a DCO amendment is not necessary or justified.</p> <p>With regards to enhancements and reinstatement proposals, the Applicant can confirm that where watercourses are subject to trenched crossing techniques, a range of reinstatement and enhancement measures are proposed (see items D-BD-048, D-BD-049, D-BD-059, D-BD-060, D-WR-028 and D-WR-062 of the OCEMP <b>[REP4-237]</b> as secured by Requirement 5 of the dDCO <b>[REP4-008]</b>). Measures include the reinstatement of channels and banks to mimic baseline conditions where possible and enhancements to the riparian zone to off-set impacts, such as additional tree and shrub planting, the introduction of geotextiles and seeded matting to further enhance the watercourse banks.</p>
2.8.29	<p><u>DCO Requirement 18 – Decommissioning Environmental Management Plan</u></p> <p>We note the undertaker will be required to submit a Decommissioning Environmental Management Plan (DEMP) prior to the end of the operation of the proposed pipeline under DCO Requirement 18. We raised in our additional Deadline 1 submission [REP1-084] that there may be concerns with the pipeline being left in-situ in the absence of limited ground investigation / assessment work undertaken to date. In addition, we note the decommissioning proposals have been 'scoped-out' of the current WFD Assessment [APP-165]. However, given the details of such proposals are only high-level at this stage, we recognise that there would be limited value in undertaking such an assessment in the absence of the final details.</p> <p>We would, however, request additional wording is considered within DCO Requirement 18 to ensure the DEMP is supported by a WFD Assessment, where necessary, to demonstrate decommissioning proposals (i.e. whether the pipeline remains in-situ as</p>	<p>This would prejudice the legal framework in place some decades into the future and is not appropriate. As with EIA and HRA, the Applicant will have to comply with all legal requirements in force at the time on 'subsequent approvals'.</p>

Reference	IP's Comment	Applicant's Response
	currently proposed or is potentially removed in sections) are WFD compliant and would not result in a detriment to WFD classification or hinder objectives to attain 'good status'.	
	<i>Schedule 10 – Protective Provisions</i>	
2.8.30	The applicant has acknowledged receipt of the EA's preferred Protective Provisions where the disapplication of the North West Region Land and Drainage Byelaws (enforced through the Water Resources Act 1991) is being sought through the draft DCO. We would request further discussion with the applicant or confirmation the draft EA Protective Provisions provided are acceptable and subsequently reflected in any further revision to the draft DCO.	The draft protective provisions have been returned to the EA with comments for their consideration.

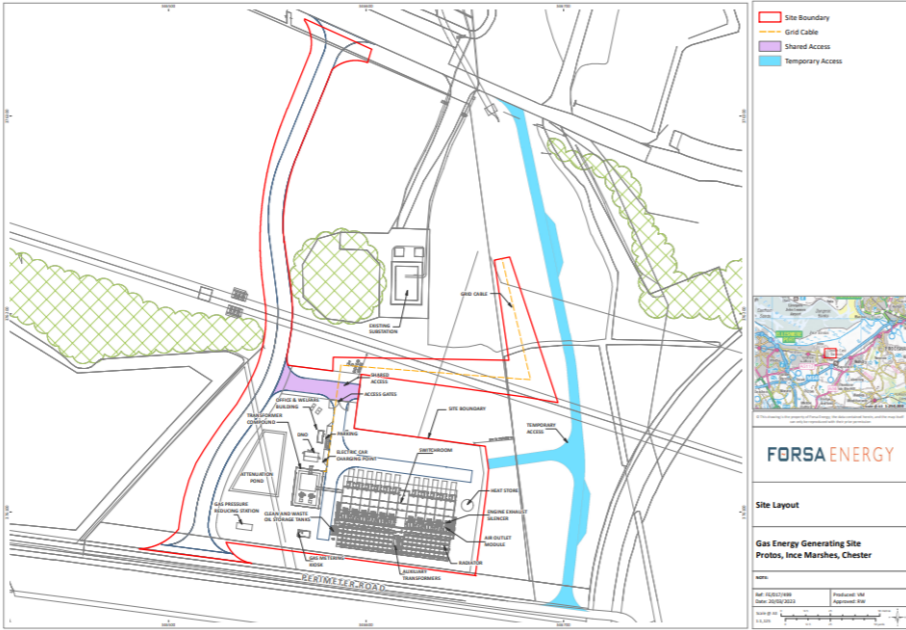
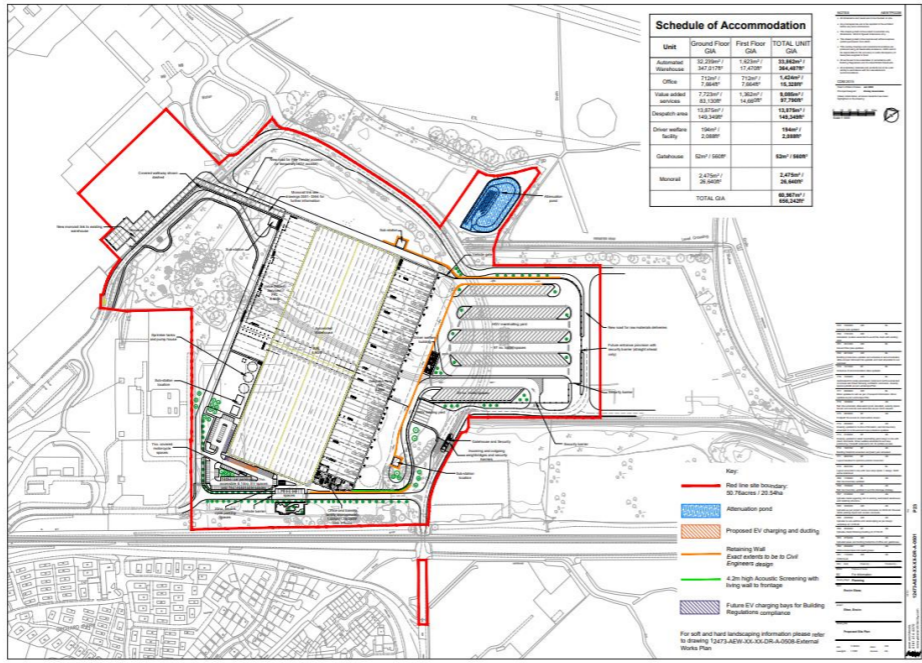


**Table 2.9: Applicant's Comments on Evershed's Sutherland on behalf of Encirc Limited - Deadline 4 Submission [REP4-280]**

Reference	Encirc Reference	Encirc Deadline 4 Representation	Applicant's Response
<b>Access through the Encirc Facility</b>			
2.9.1	1.3	At the Hearings, Encirc explained that uninterrupted access to the Encirc Site is essential to the operation of Encirc's business and therefore it is essential that Encirc retains all rights of access which it currently enjoys. The DCO proposes permanent rights of access to Works No.1 through Encirc's facility from the north from Grinsome Road (via plots 1-01, 1-02 then 1-03 and 1-04), and from the south from Ash Road (via plots 1-06a, 1-06b, 1-06c then 1-06 and 1-21).	The Applicant confirms this information is correct.
2.9.2	1.4	Encirc considers that the southern access from Ash Road, which was included as part of CR1, will result in the removal of the need to have a connection through the Encirc site between plot 1-06 and 1-02/1-03. At the hearings, it was suggested that this connection is removed from the draft DCO if not required to provide certainty and comfort for Encirc in terms of access to the site. No connection currently exists between land plots 1-06 and 1-02/1-03, and any such amendment of the internal security fencing line would result in breaches of Encirc's obligations as HMRC bonded warehouse under the provisions on the Customs and Excise Management Act 1979 and subordinate legislation (please see appendix 3 to this submission which provides a short outline of the meaning of an HMRC bonded warehouse). Encirc is also subject to the COMAH Regulations a summary of which is also contained in Appendix 3.	<p>The Applicant confirms that the primary construction and operational route to plot 1-22 will be via Ash Road. Based on this change as outlined in Change Request 1, the Applicant is now submitting a proposal as part of Change Request 3 in which a section of the plot 1-06, which extends from the current railway sidings to plots 1-02 and 1-03, will be separated and labelled 1-06d. This will then be categorised as "Temporary Possession of Land". This is required as a secondary access route for construction access, if construction vehicles are restricted from passing under the railway, north of Ash Road.</p> <p>The Applicant is aware of the proposed development on this land and is progressing an agreement and Protective Provisions discussions with Encirc to ensure that an "A to B" secondary construction access is maintained.</p> <p>The Applicant is also progressing an agreement and Protective Provisions discussions with Encirc regarding the right to access a route directly between plots 1-02/1-03 and 1-06 (to be labelled 1-06d in Change Request 3). The Applicant is proposing options to Encirc through these discussions to avoid breaking the fence line. The Applicant notes the details provided in Appendix 3 (shown in 2.9.17 through to 2.9.26 in this document), and in the event that breaking the fence is required, the Applicant will work with Encirc to ensure that compliance with the applicable legislation is maintained including suitable risk controls (during construction and subsequent operations) with respect to the COMAH designation of the site and points noted in 2.9.22 to 26 below.</p>
2.9.3	1.5	Encirc hopes that discussions with the applicant in respect of Protective Provisions and an associated private Agreement will result in agreement to Horizontal Directional Drilling (HDD) below the rail lines at land plots 1-19, 1-20, 1-22 and 1-23 which will help to lessen the impact of the project on Encirc. On this basis, it was agreed that the permanent rights over 1-21 can be downgraded to temporary.	The Applicant shares Encirc goal of agreeing mutually acceptable drafting in the ongoing Protective Provisions and agreement conversations. The Applicant agreed to review the change of the provision of rights change of 1-21 to temporary possession of land. Unfortunately, on detailed review this Plot has been included with permanent acquisition of rights, as this plot includes a field access in the Northwest corner. In the event this land is not developed in the future, the Applicant plans to use this access to get to the pipeline and therefore no change to the designation is planned in Change Request 3. However, the Applicant has drafted a provision to give assurance under Protective

Reference	Encirc Reference	Encirc Deadline 4 Representation	Applicant's Response
			Provisions that if a route to 1-22 is secured for operational checks, then permanent acquisition rights of this plot (or part of this plot) will not be required or utilised.
2.9.4	1.6	HGV movements to Encirc's site via Ash Road are currently restricted by planning permission ref. 18/04948/S73, under which the Glass Manufacturing and Filling Plant operates. Thus, Encirc considers that for access to plots 1-06a, 1-06c, 1-06 and 1-21 should remain for monitoring and maintenance purposes only (subject to Protective Provisions ensuring the continued operation of Encirc's rail terminal and the planned further development of rail infrastructure).	The Applicant agrees with this assessment and notes that these plots have been included as Permanent Acquisition of rights for operational access to plot 1-22. The Applicant also refers to the response given in 2.9.3 in relation to the requirements for plot 1-21.
2.9.5	1.7	Encirc considers that the northern access through its site, along plots 1-01 and 1-02 is not necessary to provide a road connection to the Ince AGI. A current proposal, subject to a planning application before Cheshire West and Chester Council by Forsa Energy (21/04024/FUL) will provide a direct access route from Grimstone Road to the Perimeter Road (as shown on the site plan at Appendix 1). This alternative access to the Ince AGI precludes the need to access the perimeter road through Encirc's facility via plots 1-01, 1-02, and 1-03.	The Applicant is aware of these plans and is in active conversations with Peel NRE regarding the provision of initial and alternative means of access to the Ince AGI and adjacent pipeline easement. The Applicant is progressing conversations on this topic with Encirc via an agreement and Protective Provision drafting.
2.9.6	1.8	Encirc requires that rail access to its facility is maintained at all times. Encirc has legal obligations to bring a proportion of its raw materials to site by rail. Access to land around the railhead and rail operations must be safeguarded at all times throughout the construction and operation phase of the Project.	The Applicant notes this point. The Applicant notes that a trenchless crossing technique has been employed at this site such that the operational impact to Encirc is minimised. The Applicant is expecting that non-intrusive surveys on the railway will be required at points before, during and after construction activities. These activities have some flexibility, and the Applicant will discuss scheduling of these activities to minimise impact to Encirc's operation.
		<b>Future Development</b>	
2.9.7	1.9	Encirc's representations to DL3 and CR1 made clear its future development plans (automated warehouse, new rail sidings and intermodal area, and hydrogen powered furnace), all of which are either with the local planning authority or well publicised. This future development at the Encirc Site is essential to the future of the Encirc business. These development intentions and their relationship to the submitted DCO were explained at the Compulsory Acquisition Hearing on 7th June 2023.	The Applicant confirmed that it has engaged with Encirc on these topics, (please refer to the Statement of Common Ground as submitted at Deadline 5, latest version <b>[REP2-033]</b> ), and that the Applicant is actively working with Encirc to allow both developments to come forward.
2.9.8	1.10	The site plan for Encirc's automated warehouse development proposal is attached at Appendix 2. A full planning application for this development was submitted in February 2023. The site plan shows that rights of access through Encirc's facility, as shown on the Land Plans, are incompatible with these development proposals.	The Applicant notes that the main overlap of the two schemes pertains to the North section of 1-06 (planned to be referred to as 1-06d in Change Request 3). An A to B access structure for this plot is proposed and further detailed in the response to 2.9.2 above.

Reference	Encirc Reference	Encirc Deadline 4 Representation	Applicant's Response
2.9.9	1.11	The site plan at Appendix 2 shows that the internal route marked up for means of access through Encirc's site will be rerouted and no longer exist as shown along plots 1-06 and 1- 06a. Plots 1-02 and 1-03 also intersect the site and would be incompatible with Encirc's proposed development.	The Applicant refers to responses given to 2.10.4 and 2.10.10 above.
2.9.10	1.12	As part of Encirc's automated warehouse development, the security gatehouse will be placed on land marked as plot 1-06a. Access beyond the gatehouse is restricted in accordance with conditions imposed by HMRC. Encirc's obligations in this respect will need to be complied with at all times.	The Applicant notes this and is progressing these discussions with Encirc via Private Agreement and Protective Provision drafting.
2.9.11	1.13	As explained at Issue Specific Hearing 1, the depth of the pipeline underneath Encirc's facility must not sterilise its future development plans. Encirc's plans for rail development are well publicised in recent rail trials between sites, and new rail sidings and an intermodal Pg 3/3 26711967v1 area are in the initial design phase for the site, which will see a new rail facility located approximately 300m along the existing rail lines on site.	<p>The Applicant has sought to speak to Encirc's technical authority with respect to the rail crossing as outlined in the Statement of Common Ground with Encirc as submitted at Deadline 5, latest version <b>[REP2-033]</b>. The Applicant awaits feedback on their elected technical authority.</p> <p>The Applicant is currently reviewing the future development of the railway siding potential development over the pipeline easement, and plans to continue discussions on a suitable agreement.</p>
		<b>Agreed Next Steps</b>	
2.9.12	1.14	During the Issue Specific Hearings on 8th June 2023, it was agreed that the Applicant would insert Protective Provisions in favour of Encirc. Encirc is hopeful that through these protective provisions the parties will be able to find a way in which the Project can be implemented whilst protecting the operation of the Encirc facility, maintaining the required access to the Encirc Site, and ensuring that Encirc's future development plans can be brought forward. However, until the issues outlined in this relevant representation are resolved with the Applicant, Encirc maintains its objection to the DCO.	The Applicant confirms that Protective Provisions discussions have been initiated, with Encirc receiving a first draft for comment.
2.9.13	1.15	Encirc is engaging with the Applicant in respect of the Protective Provisions and will keep the Examining Authority updated in this regard.	The Applicant confirms this and has no further comments at this time.
2.9.14	1.16	We have received notification of Accompanied Site Visits on 7th and 8th August, whilst noting that the itinerary has been said, if it is possible Encirc would ask that the Encirc site is included in the visit with a representative of Encirc present to allow the site constraints to be illustrated.	The Applicant has no further comments on this matter at this time.

Reference	Encirc Reference	Encirc Deadline 4 Representation	Applicant's Response																																								
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2.9.16		 <table border="1" data-bbox="1181 877 1344 1056"> <thead> <tr> <th>Unit</th> <th>Ground Floor GFA</th> <th>First Floor GFA</th> <th>TOTAL UNIT GFA</th> </tr> </thead> <tbody> <tr> <td>Warehouse</td> <td>10,200m<sup>2</sup></td> <td>1,000m<sup>2</sup></td> <td>11,200m<sup>2</sup></td> </tr> <tr> <td>Warehouse extension</td> <td>147,310m<sup>2</sup></td> <td>17,470m<sup>2</sup></td> <td>164,780m<sup>2</sup></td> </tr> <tr> <td>Office</td> <td>7,200m<sup>2</sup></td> <td>7,200m<sup>2</sup></td> <td>14,400m<sup>2</sup></td> </tr> <tr> <td>Warehouse extension</td> <td>11,100m<sup>2</sup></td> <td>1,000m<sup>2</sup></td> <td>12,100m<sup>2</sup></td> </tr> <tr> <td>Dispensary area</td> <td>145,340m<sup>2</sup></td> <td>1,000m<sup>2</sup></td> <td>146,340m<sup>2</sup></td> </tr> <tr> <td>Garage</td> <td>2,000m<sup>2</sup></td> <td>2,000m<sup>2</sup></td> <td>4,000m<sup>2</sup></td> </tr> <tr> <td>Garage extension</td> <td>1,000m<sup>2</sup></td> <td>1,000m<sup>2</sup></td> <td>2,000m<sup>2</sup></td> </tr> <tr> <td>Motorway</td> <td>2,470m<sup>2</sup></td> <td>2,470m<sup>2</sup></td> <td>4,940m<sup>2</sup></td> </tr> <tr> <td>TOTAL GFA</td> <td></td> <td></td> <td>362,240m<sup>2</sup></td> </tr> </tbody> </table>	Unit	Ground Floor GFA	First Floor GFA	TOTAL UNIT GFA	Warehouse	10,200m <sup>2</sup>	1,000m <sup>2</sup>	11,200m <sup>2</sup>	Warehouse extension	147,310m <sup>2</sup>	17,470m <sup>2</sup>	164,780m <sup>2</sup>	Office	7,200m <sup>2</sup>	7,200m <sup>2</sup>	14,400m <sup>2</sup>	Warehouse extension	11,100m <sup>2</sup>	1,000m <sup>2</sup>	12,100m <sup>2</sup>	Dispensary area	145,340m <sup>2</sup>	1,000m <sup>2</sup>	146,340m <sup>2</sup>	Garage	2,000m <sup>2</sup>	2,000m <sup>2</sup>	4,000m <sup>2</sup>	Garage extension	1,000m <sup>2</sup>	1,000m <sup>2</sup>	2,000m <sup>2</sup>	Motorway	2,470m <sup>2</sup>	2,470m <sup>2</sup>	4,940m <sup>2</sup>	TOTAL GFA			362,240m <sup>2</sup>	The Applicant refers to responses given to 2.9.2 and 2.9.8 above.
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		<b>Bonded Warehouse</b>																																									
2.9.17	1.	A bonded warehouse is a secure space in which goods liable to import duty and VAT are stored. Customs duty and VAT payments on these items are deferred until the goods are sold or removed from the bonded warehouse.	The Applicant refers to its response to 2.9.2 above.																																								

Reference	Encirc Reference	Encirc Deadline 4 Representation	Applicant's Response
2.9.18	2.	The key use of a bonded warehouse is to manufacture and/or store goods without the implication of VAT/duty until the goods are released. The payment of the VAT/duty will then be made when the goods leave the warehouse or can be 'duty suspended' (i.e. the goods get handed over to the retailers in a 'duty suspended' state and the retailer pays the duty/tax at the point of sale).	
2.9.19	3.	Bonded warehouses are strictly controlled by HMRC and all goods must be fully documented before entering. Rules must be strictly followed and there are regular checks to ensure that such warehouses are being used properly.	
2.9.20	4.	As set out in the Government guide, 'Managing your customs warehouse' (Managing your customs warehouse - GOV.UK (www.gov.uk), Customs warehouse stock records must always show the current stock of goods under the procedure (real time).	
2.9.21	5.	Given the rules and regulations which must be complied with and the need for accurate records to be kept, it is essential that Encirc can effectively manage access to its site to ensure that these obligations can be complied with and its business can operate effectively.	
		<b>Control of Major Accident Hazards (COMAH) Regulations 2015</b>	
2.9.22	6.	The COMAH Regulations were introduced to help both prevent and moderate the impact of accidents involving dangerous substances. These regulations mainly impact the chemical industry, but also apply to storage facilities.	The Applicant refers to its response to 2.9.2 above.
2.9.23	7.	Under the Regulations, every operator is subject to a duty to take all measures necessary to prevent major accidents and to limit their consequences for human health and the environment and also must demonstrate to the competent authority that it has taken all measures necessary as specified in these Regulations.	
2.9.24	8.	Operators must have in place major accident prevention policies which can be effectively implanted to prevent or limit the impact of a major accident.	
2.9.25	9.	It is therefore essential for Encirc to have control over its site boundaries and site access and to ensure that it can comply with its obligations under the COMAH Regulations.	
2.9.26	10.	The Encirc facility involves large operation with 2x 900 tonnes per day glass furnaces being run which involve dangerous substances. In this context, site security/control and access are vital.	

**Table 2.10: Applicant's Comments on Fisher German on behalf of E and J Williams - Deadline 4 Submission [REP4-282]**

Reference	Fisher German on behalf of E and J Williams Deadline 4 Representation	Applicant's Response
	<b>Mitigation land</b>	
2.10.1	The proposal sets out the requirement for approximately 10 acres of Messrs Williams land holding at Magazine Lane, Ewloe to be used for permanent environmental mitigation. The proposal dissects two fields extending to circa 20 acres which effectively renders the balance of the two fields unsuitable for future agricultural purposes.	The Applicant has discussed this point with the landowner. The Applicant would provide the landowner with suitable access rights through the mitigation land to any useable areas of agricultural land, in the event the land is no longer feasible to use for agricultural purposes the Applicant would deal with this through a claim for severance in line with the compensation code.
2.10.2	The proposal removes circa 20 acres from agricultural production. The land is considered to be a first-class block of agricultural land being generally level, fertile, arranged in four conveniently sized field enclosures, capable of growing good yields of both arable and grass crops with good access onto Magazine lane.	The Applicant notes the comments and refers to their response in 2.10.1
2.10.3	The loss of such land will effectively render the remaining two fields as an unviable unit in view of the distance (12 miles) which Messrs Williams have to travel from their main holding in Mold to farm this land.	The Applicant does not agree with this comment. The landowner would be left with circa 23.5 acres of viable agricultural land including a southern block unaffected by the scheme within this area. However, the Applicant will continue to engage with the landowners to discuss any additional mitigation solutions that may be possible.
2.10.4	It should be noted that this area of the project already has a significant area of land proposed for environmental mitigation, namely in the vicinity of the nearby Alltami Brook and therefore it is felt that additional environmental mitigation on prime agricultural land is unnecessary and unjustified.	<p>The Applicant has undertaken a comprehensive Arboricultural Impact Assessment, as presented within Appendix 9.11 [REP4-118], which categorises tree features (individual trees and tree groups) into one of several categories in line with the British Standard (BS) 5837:2012 – Trees in Relation to Design, Demolition and Construction. From this, the Applicant has calculated a reasonable worst-case scenario of potential tree feature losses that could arise as a result of construction of the DCO Proposed Development. Working on the basis of a 3:1 ratio of replacement (three trees for every one lost), the Applicant has calculated the extent of land required to accommodate mitigation and compensation tree planting across the DCO Proposed Development. The Applicant has selected a 3:1 ratio as this aligns with, and better, the recommended minimum 2:1 (planted:lost) ratio within Cheshire West and Chester Council's Tree and Woodland Strategy (available online), and has applied this across both sides of the border acknowledging that Flintshire County Council do not currently have any ratio recommendations, only that suitable replacements are sought (TWH1 Development Affecting Trees and Woodlands). Acknowledging the narrow nature of the Order Limits, opportunities to secure meaningful mitigation are reduced and therefore the Applicant has prioritised strengthening and enhancing existing green infrastructure in both England and Wales.</p> <p>This approach accords with relevant policy drivers and ecological strategies within both council areas (in particular STR13 of the Flintshire Local Development Plan 2015-2030 and Local Planning Policy DM44 – Ecological Network within Cheshire West and Chester). The land in question was selected on the basis that creation of woodland (and scrub) mosaic habitat across this parcel would strengthen the woodland corridor bounding the Alltami Brook and provide an additional green corridor to the wider landscape, noting that the eastern periphery of the mitigation area exhibits a</p>

Reference	Fisher German on behalf of E and J Williams Deadline 4 Representation	Applicant's Response
		well-established and mature hedge and tree line providing further links to the wider landscape for fauna.
2.10.5	The proposal to include the aforementioned land for mitigation was never discussed with Messrs Williams prior to the DCO being submitted and no opportunity has since been provided to discuss alternative locations away from the land in Magazine Lane.	<p>The Applicant notes as per the Schedule of Negotiations of Land Interests <b>[REP4-014]</b> Heads of Terms for the proposed mitigation land had been issued on 23 September 2022 to the landowner. The Applicant acknowledges that detailed discussions regarding the mitigation land began with the landowner in March 2023 and the Applicant has continued to engage with the landowner on a regular basis since then.</p> <p>As discussed in its response to 2.11.4 above, the Applicant has selected the land in question as this represents one of the best opportunities to create a substantial contiguous parcel of woodland habitat mosaic that ties into existing green infrastructure, located along the Alltami Brook and the wider landscape. This will additionally provide a corridor that facilitates movement of fauna to the wider landscape (through the connection into existing hedgerows and tree lines to the east), supporting ecosystem resilience and movement of species through a secured corridor. This aligns with Flintshire's policy STR13 that includes the need to "<i>Promote opportunities to enhance biodiversity and ensure resilience</i>" and "<i>Maintain, enhance, and contribute to green infrastructure.</i>"</p>
<b>NVZ Compliance</b>		
2.10.6	The land in Magazine Land provides an important block of additional land to support the main dairy holding in Mold and in particular enables additional land capacity for the spreading of slurry from the dairy herd. At present, regulations, namely The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (as amended) limit the amount of slurry that can be spread with a threshold of 190kg/Ha. That is already expected to be lowered to 170kg/Ha.	The Applicant notes the requirement for the landowner to comply with The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021. The Applicant acknowledges the importance of additional land to the landowner and would refer back to their response in 2.11.3 above.
2.10.7	Any loss of land not only reduces the number of animals that can be kept on the holding but there also needs to be a sufficient area of land on which to spread the resultant slurry. With the expected lowering of the Nitrogen limit, this issue becomes more pressing. A loss of slurry spreading capacity will effectively render the holding non-compliant and exposed to prosecution. To reduce the risk of non-compliance there will be a requirement to reduce stock numbers which will have a negative knock-on effect to business turnover and ultimately farm profitability.	The Applicant notes this is a compensation point and if a valid claim is made will be assessed on a case-by-case basis and dealt with in line with the compensation code.

**Table 2.11: Applicant's Comments on Fisher German on behalf of J Wrench and Son - Deadline 4 Submission [REP4-283]**

Reference	Fisher German on behalf of J Wrench and Son Reference	Fisher German on behalf of J Wrench and Son Deadline 4 Representation	Applicant's Response
		<b>Construction compound</b>	
2.11.1	2.	Messrs Wrench are aware of the requirement for a site compound within close proximity to the farming operation at Beeches farm. The size and extent of compound is critical in order to plan the farm's grazing and forage areas for the dairy herd. To date very limited consultation has taken place with Messrs Wrench over the size, exact position and duration of the proposed compound on the farm which is critical from a business planning perspective and also informing the current milk purchasers if part of the dairy herd requires housing for a period in excess of winter management needs as set out in the milk contract.	The Applicant notes the comments made regarding the compound however disagrees that consultation has been limited. The Applicant notes the IP has been aware of the requirement for a compound since negotiations commenced in September 2022 as per the Schedule of Negotiations of Land Interests [REP4-014]. The Applicant during various meetings has informed the landowner of the location and expected size of the compound as detailed within the land plans [REP4-004]. The Applicant undertook a site visit on 26 May 2023 with the landowner and discussed the compound location, expected size and duration, whilst also noting the exact details will be established through detailed design. The Applicant noted the concerns of the landowner and agreed to undertake a farm impact assessment which was carried out on 12 June 2023.
		<b>Route Alterations</b>	
2.11.2	3.	Messrs Wrench are aware of a proposed variation to the route of the pipeline but have not had consultation as to how any such route alteration will affect the day-to-day operation of the farm, in particular the impact to the use of the slurry store and farm access track.	The Applicant has made no variation to the pipeline in this location. The Applicant notes, that based on consultation with the IP, Proposed Change 11 was included in Change Request 1 - namely <i>"Extension of the Order Limits to include a new private access track at Work No. 32A. Reduction of the Order Limits to remove an access track from the B5129 at Work No. 33 (Applicant Reference PS13) "</i> .  This was carried out in consultation with the IP and in response to mitigate the Development's potential impact on his farming business.



**Table 2.12: Not in use**

**Table 2.13: Applicant's Comments on Fisher German on behalf of Messrs A White Events Limited - Deadline 4 Submission [REP4-284]**

Reference	Fisher German on behalf of Messrs A White Events Limited Reference	Fisher German on behalf of Messrs A White Events Limited Deadline 4 Representation	Applicant's Response
		<b>Construction compound</b>	
2.13.1	2.	<p>Greenacres Animal Park is a local attraction hosting a selection of farm and zoo animals, set within 80 acres. The Park includes an indoor soft play area, licensed bar/cafe, education room, gift shop and hosts various events throughout the year. A fundamental element of the attraction is the fully narrated tractor ride across a hard standing roadway throughout all the designated fields. The proposed pipeline route will effectively remove this element of the attraction throughout the construction phase and in view of the inability to relocate the ride it will significantly reduce the turnover of the business. In view of this, it is anticipated that the business will have to make job cuts. Messrs. A White Events Limited are still waiting to receive clarification as to how the aforementioned concern will be dealt with and what alternative options have been considered.</p>	<p>The Applicant shall maintain access across the working spread at agreed crossing points, sequencing works to avoid severance to the tractor ride route. The Applicant views this as no different to maintaining access across the pipeline corridor for severed agricultural fields or grazing land which is occurring across the pipeline length.</p> <p>The justification for routing options is laid out in the Assessment of Alternatives, Chapter 4 of the ES [REP4-029]. Due to the location of the Greenacres Animal Park, avoiding disruption the aforementioned tractor ride fields would have required the selection of a different strategic route corridor.</p>

**Table 2.14: Applicant's Comments on Flintshire County Council – Deadline 4 Submission [REP4-285]**

Action Point Number	Action	FCC Response	Applicant's Response
<i>Issue Specific Hearing 1 (ISH1)</i>			
ISH1-AP1	To consider, and keep under constant review, whether any further developments subject to planning permission need to be declared for cumulative impact consideration purposes and to update the Examining Authority. Ongoing throughout the Examination.	<p>Planning permission reference FUL/000097/23 for 'Formation of enclosure to screen HGV Trailers' at 2 Sisters Food Group, Glendale Avenue, Sandycroft CH5 2QP was granted on 14th March 2023. This approved development would affect works no. 34A for temporary construction access.</p> <p>Planning permission reference FUL/000111/22 was approved for 'Retrospective construction of a slurry tower with cover' at Newbridge Farm, Holywell Road, Ewloe, Deeside CH5 3BS. This retrospective permission would affect Works No.41 and 42 of the proposed development. The developer is aware of this permission and it is subject to one of the changes proposed in Change Request No1.</p> <p>Planning application reference: FUL/000472/23 for the erection of 5no. holiday Pods has been submitted. The application is currently being consulted upon and is under consideration. FCC are in the process of determining the application and the applicant has been made aware of the application.</p> <p>FCC confirms that the Examining Authority and the applicant will be notified of any further planning permissions that maybe granted throughout the Examination.</p>	<p>In accordance with the criteria for selection of developments for consideration in the Inter-Project Effects Assessment, outlined in Chapter 19 of the ES [REP4-062], FUL/000097/23, FUL/000111/22 and FUL/000472/23 are not of a nature or scale to meet the criteria for consideration of assessment in the long-list of Other Developments.</p> <p>The Applicant was aware of, and, through the SOGC [REP4-262], is in discussion with 2 Sisters Food Group who made application FUL/000097/23. Furthermore, in response to FUL/000111/22 the Applicant has amended the Order Limits in Change Request 1 as described in its notification letter [AS-060].</p>
ISH1-AP3	Undertake a further review of community benefit/ cultural benefits possible relative to law, as well as national and local policy in England and Wales, in tandem with item 2.	<p>FCC has stated in previous representations [RR-035] and [REP1-077] that the applicant should provide a community benefit fund for those communities affected by the proposed development. Whilst it is acknowledged that there is no legal mechanism for the applicant to provide such a fund, it is voluntarily possible, as is the case in the various projects in North Wales that have been consented under the DCO regime.</p> <p>FCC notes the applicant's response to ExA1 [REP1-044] and that they confirm that the applicant is preparing a voluntary Community Benefit Fund proposal for the benefit of communities along the pipeline route in England and Wales. This would be in addition to the current community based projects located near to the Point of Ayr Terminal.</p> <p>The ExA has requested that the applicant and the local authority undertake a further review of community benefit, including cultural benefit.</p>	<p>The Applicant notes that the community benefit proposal is <b>voluntary</b> and outside of the DCO process. It is accordingly not appropriate to set that out here.</p> <p>The ExA requested a review of policy against the application. That application does not include the community benefit proposal but rather the inherent benefits of the proposal. That review has been set out in (document reference: <b>D.7.49</b>). The Applicant cannot claim policy compliance or support for the application from a <b>voluntary</b> fund outside the DCO and therefore does not consider the submission by FCC, which is predicated on the fund being necessary to make the development acceptable in planning terms rather than voluntary, is applicable.</p>

Action Point Number	Action	FCC Response	Applicant's Response
		<p>PPW11 states with regards to Community Benefit that (para 5.9.24) "The Welsh Government supports renewable and low carbon energy projects which provide proportionate benefit to the host community, or Wales as a whole". Para 5.9.26 goes on to state that "<i>Some benefits can be justified as mitigation of development impacts through the planning process</i>". In addition, developers may offer benefits not directly related to the planning process."</p> <p>PPW11 para 5.9.28 goes on to state that the Welsh Government supports the principle of securing financial contributions for host communities through voluntary arrangements. FCC notes that PPW states that such arrangements must no impact on the decision-making process, and should not be treated as a material consideration, unless it meets the tests set out in Circular 13/97: Planning Obligations.</p> <p>One of the well-being goals in the Well-being of Future Generations (Wales) Act 2015 relates to the cultural well-being of Wales. A large proportion of the application area transects areas of secondary and primary coal. Furthermore, the Point of Ayr Terminal where, subject to planning permission, carbon dioxide would be captured and compressed is sited at the location of a former colliery. Therefore, the area has a strong cultural heritage in the coal mining industry.</p> <p>It is considered that, a Community Benefit Fund which promoted the cultural heritage of the coal mining industry would contribute towards the objectives of one of the well-being goals of the Well-being of Future Generations (Wales) Act 2015 to help to preserve the legacy of the former coal mining communities.</p> <p>As PPW no longer requires Local Authorities to safeguard coal resources, the safeguarding areas as set out in the constraints plan of the adopted Local Development Plan does not include areas underlain by coal resources. Therefore, FCC does not have an objection to the proposed pipeline on minerals safeguarding grounds.</p> <p>It would be appropriate and fitting if the developer's community benefit fund focused on providing information, and interpretation relating to the cultural and industrial heritage linked to the former coal mining in the area (including in a bilingual format) which has historical importance to the application area. This would like to the Well-being goals of the Well-being and future generations (Wales) Act 2015 by promoting heritage and the Welsh Language.</p>	

Action Point Number	Action	FCC Response	Applicant's Response
		<p>Another sector which the community benefit fund could provide grant funding for could include a skills and innovation fund to support low carbon/zero carbon energy such as investment into green hydrogen projects and funding local college/university courses to provide training in low/zero carbon technologies.</p> <p>FCC have provided the ExA in their response to the ExAQ1 [REP1-077] some examples of large infrastructure projects that have associated community benefit funds such as the Gwynt y Mor and Burbo Bank offshore windfarm projects.</p>	
ISH1-AP4	<p>Highlight any outstanding technical points concerning: 1. Derogation issues raised by NRW; 2. suitability of riparian enhancement for additional areas raised by all parties; and 3. Any flood risk management details not addressed at the Hearing.</p>	<p>With respects to Point 1 and 2, FCC would respectfully request to defer a response to DL5 if at all possible, please.</p> <p>With respects to Point 3 of this AP, FCC does have concerns with regards to how the applicant will engage within the Sustainable Urban Drainage Approval Board (SAB) approval process with regards to temporary and permanent hard standing areas such as construction compounds and tracks. FCC are unable to find a statement from the applicant confirming that they would fully comply with the Council's SAB Approval Process. FCC would like to receive confirmation from the applicant that, should consent be granted, they will fully comply with the FCC SAB approval process by submitted the necessary documentation and paying the requisite fee. At present, there is insufficient detail with regards to what is proposed for temporary and permanent works</p> <p>Furthermore, the application lacks detail with regards to Ordinary Water Course Consents. As the applicant has not yet finalised the detailed design for the pipeline at this stage, FCC do not have the evidence to fully understand and assess the impacts of the proposed pipeline, and associated works would have on the watercourses.</p> <p>The impacts cannot be assessed as a principle due to the fact that the exact line of the pipeline, and how it would cross the ordinary water courses is not yet known.</p> <p>The Council therefore cannot accept the disapplication of the provisions relating to Ordinary Watercourse Consent (as envisaged by Article 8(c) of the draft Development Consent Order) [REP3-005] without protective provisions being in place. FCC as LLFA have submitted a separate document to address ISH1- AP4 point 3 in relation to comments from the Lead Local Flood Authority. Please cross reference to Appendix 1.</p>	<p>The Applicant will review the comments on Point 1 and 2 once submitted. The Applicant is also submitting a Without Prejudice WFD Derogation case for Alltami Brook Crossing report (document reference: <b>D.7.38</b>) and a Hydrogeological Impact Assessment report (document reference: <b>D.7.36</b>), at Deadline 5, to provide further information regarding WFD compliance and the need for a derogation case.</p> <p>In relation to Point 3, the Applicant will fully comply with the FCC SAB approval process by submitting the necessary documentation and paying the requisite fee.</p> <p>The Applicant reiterates its request that FCC consider the outline plans and sub-plans under the requirements and advise what if any further information if any the detailed plans to be produced would need to include.</p>

Action Point Number	Action	FCC Response	Applicant's Response
ISH1-AP5	Submit copies of relevant policies/ strategies, discussed at the Hearing, as relevant to the Proposed Development	<p>The update of Planning Policy Wales (PPW) was reference in ISH1 as a consultation. Welsh Government has recently undertaken a consultation of PPW with regards to a targeted policy changes on Net benefit for biodiversity and ecosystem resilience.</p> <p>Welsh Government have confirmed that this update of PPW will not be published until Autumn 2023 therefore it is likely that this will be published after the Examination has closed.</p>	The Applicant has no further comments on this matter.
<i>Issue Specific Hearing 2 (ISH2)</i>			
ISH2-AP4	<p>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.</p> <p>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.</p>	FCC is in discussion with the applicant as stated but rather than revising the current provisions in Article 11(3) consideration is being given by both parties to including the need for reinstatement in the protective provisions for local highway authorities set out in Schedule 10 Part 7 of the DCO. The Council continues to seek a 24-month period in accordance with the specification for reinstatements in Flintshire (being THE SPECIFICATION FOR THE REINSTATEMENT OF OPENINGS IN HIGHWAYS 2nd Edition 2006). This is required under a street works licence (Section 72 New Roads and Street Works Act 1991. The street authority may by notice require an undertaker who has failed to comply with his duties under this Part with respect to reinstatement to carry out the necessary remedial works) and FCC takes the view that it should also apply where such work is carried out pursuant to the DCO.	The Applicant understands that this point is now resolved as the principle of this has been agreed to be included in the Protective Provisions.
ISH2-AP9	The ExA asked both CWCC and FCC to comment on the	FCC in response [REP3-046] questioned the wording of Requirement 4(2) with regards to the mechanism of approval.	The Applicant notes that this is entirely standard wording in DCOs where an element of flexibility to produce the detailed design is required.

Action Point Number	Action	FCC Response	Applicant's Response
	<p>observations made by them concerning R4 containing an element of 'self-approval'. CWCC and FCC both asked to come back to the ExA in writing on this matter, as their appeared to be a discrepancy in the wording of the response provided. CWCC and FCC to clarify their position re R4, in writing, at DL4.</p>	<p>FCC confirms that this point should have been raised in relation to Requirement 20 with respects to the amendments to approved details. The latest version (E) of the draft Development Consent Order now includes additional wording (4) to allow for a longer period of time to approve at amendments subject to written consent.</p> <p>Concern however is expressed in relation to this wording with regards to seeking a written consent from the undertaker to extend the time periods to determine. If the discharging authority requests a longer period of time and the undertaker does not agree to any such request, the application would be affectively deemed to be consented. FCC therefore does not agree to the current wording. Alternative wording is required to ensure that the undertaker does allow reasonable requests for time extensions, and to ensure that any refusals of requests for additional time does not lead to deemed approvals.</p>	<p>The general arrangement plans are, at this stage, indicative pending detailed design. The details of the above ground elements will be submitted to the relevant LPA for approval under the requirements. The Applicant considers that 'general accordance' with the plans for the underground elements is a judgement it is best placed to make as engineering and safety considerations will drive that design which will not have, for example, operational visual impacts.</p>
ISH2-AP12	<p>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.</p>	<p>FCC assume that the ExA is asking the review of timescales in requirement 22 (rather than 21) and 24. An increase from 42 days to 56 days to determine the applicants made under requirements is welcomed. Concern however is expressed in relation to the current wording with regards to seeking a written consent to extend the time periods to determine. If the discharging authority requests a longer period of time and the undertaker does not agree to any such request, the application would be affectively deemed to be consented. FCC therefore does not agree to the current wording. FCC still maintain that a request for further information within 10 days (Requirement 24(2) and (3)) is unreasonable and additional time is required. FCC would continue to question the need for this requirement all together. FCC would question if there is a need for this requirement. It adds additional pressure to the process when the Local Authority are already very under resourced, as are statutory consultees. FCC are aware of the pressures that the applicant and developer will have, however, FCC consider this requirement is an unnecessary burden on the local authority. However, if the ExA deem this requirement essential, additional time should be considered, and alternative wording is required to ensure that the undertaker does allow reasonable requests for time extensions, and to ensure that any refusals of requests for additional time does not lead to deemed approvals.</p>	<p>The Applicant's further submissions on this point are set out in the SoCG with Natural England <b>[REP4-246]</b>, part 3, paragraph 2.29.</p>
ISH2-AP13	<p>With regard to any agreements securing</p>	<p>A draft deed of agreement made under Section 111 of the Local Government Act 1972 has been drafted by the applicant to endeavour</p>	<p>The Applicant has no further comments on this matter at this time.</p>

Action Point Number	Action	FCC Response	Applicant's Response
	<p>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?</p>	<p>to secure the delivery of off-site biodiversity net gain in relation to the DCO Proposed Development. The draft agreement proposes a biodiversity contribution made by the developer to the Local Authority for maintenance and/or improvements to hedgerow habitats, pond habitat, and rivers habitat creation, management and site maintenance for example. FCC can confirm that we are currently in discussions with the developer with regards to this matter.</p>	
<p><i>Other DCO Matters not specifically raised as Action points</i></p>			
<p>Article 23 – Human Remains</p>	<p>ExA raised a question with FCC with regards to Human Remains</p>	<p>FCC can confirm that there are no further comments with regards to this Article.</p>	<p>The Applicant has no further comments on this matter.</p>
<p>Page Numbers</p>		<p>FCC notes that the latest version of the draft DCO (Revision E) no longer has page numbers. It would be extremely helpful if the DCO had page numbers</p>	<p>Noted. This will be corrected at a future deadline.</p>



**Table 2.15: Applicant's Comments on Flintshire County Council – Deadline 4 Submission - Written summaries of oral submissions made at any Hearings held during the week commencing 5 June 2023 (ISH1) [REP4-286]**

Reference	FCC Reference	FCC Response	Applicant's Response
	<b>2.</b>	<b>Agenda Item 2</b>	
2.15.1	2.1	FCC confirmed to the Examining Authority (ExA) that FCC would continue to liaise with the applicant with regards to any planning applications and planning permission that may be submitted in the future in the Development Consent Order Limits. FCC would also keep the ExA informed of any developments that may be permitted in the Order limits.	The Applicant notes the response and has no further comments on this matter.
	<b>3.</b>	<b>Agenda Item 3 - Biodiversity</b>	
2.15.2	3.1	Amanda Davies, FCC's ecologist confirmed that FCC has been liaising with Cheshire West and Chester Council (CWAC)'s ecologist with regards to the metric requirement to provide Biodiversity Net Gain in England. Amanda Davies confirmed that this is not a requirement in Wales.	The Applicant notes the response and has no further comments on this matter.
2.15.3	3.2	Amanda Davies confirmed to the Examining Authority that the Local Development Plan Policies relevant to the application in relation to biodiversity are, Strategic Policy STR14 which seeks to conserve, protect and enhance Flintshire's natural environment and biodiversity. Policy EN6 provides a detailed criteria-based policy which includes a mitigation hierarchy with regards to providing enhancements. The Policy requires measures to create, restore and enhance nature conservation and habitats.	The Applicant believes this should reference Policy STR13: Natural and Built Environment, Green Networks and Infrastructure, not STR14: Climate Change and Environmental Protection.
2.15.4	3.3	Welsh Government has just completed a consultation on Planning Policy Wales with regards to a targeted policy change on net benefit for biodiversity and ecosystems resilience, (incorporating changes to strengthen policy on Sites of Special Scientific Interest, Trees and Woodlands and Green Infrastructure).	The Applicant notes the response and has no further comments on this matter.
2.15.5	3.4	Discussion took place with regards to how the applicant could increase the amount of biodiversity net gain.	The Applicant notes the response and has no further comments on this matter.
2.15.6	3.5	Amanda Davies, FCC's ecologist suggested that there are opportunities through the European Protect Species Licences for example for great crested newts to enhance the terrestrial and aquatic habitats. Also, there are opportunities for connecting habitats through hedgerow improvements to identify where hedgerows can be enhanced to link habitats. There are other opportunities in the wider area beyond Flintshire for a nature recovery plan which would involve working with other organisations such as the wildlife trust. There are ongoing projects but nothing specific.	The Applicant can confirm that opportunities for enhancement will be considered and explored during the development of the detailed design and construction stages, as captured by item D-BD-066 within the Outline Construction Environmental Management Plan (OCEMP) [REP4-237] secured by Requirement 5 of the dDCO [REP4-008]. Enhancement opportunities will be considered within European Protected Species Licences, where these are considered appropriate.

Reference	FCC Reference	FCC Response	Applicant's Response
2.15.7	3.6	When the Examining Authority asked about priority habitats such as peatland. FCC confirmed that peatlands are not a feature of Flintshire, unlike Denbighshire and parts of Conwy.	The Applicant notes the response and has no further comments on this matter.
2.15.8	3.7	A discussion took place with regards to concerns raised by CWAC with regards to the range of ecological surveys for certain species, however Amanda Davies confirmed that Flintshire was satisfied with the range proposed, and that there are proposals for ongoing checks and surveys.	The Applicant notes the response and has no further comments on this matter.
2.15.9	3.8	When the Examining Authority asked FCC's ecologist with regards to the aquatic environment, Amanda Davies confirmed that Flintshire have not raised any concerns with regards to the aquatic environment and that no additional surveys would be required.	The Applicant notes the response and has no further comments on this matter.
	4.	<b>Agenda Item 4 - Trees</b>	
2.15.10	4.1	Flintshire County Council confirmed to the Examining Authority that there was nothing further to add wither regards to the comments on trees.	The Applicant notes the response and has no further comments on this matter.
	5.	<b>Agenda Item 5 – Private Water Supplies</b>	
2.15.11	5.1	FCC confirmed that as a Local Authority, Flintshire will be made aware of any new private water supplies in the Flintshire area and FCC will commit to provide an update to the Examination if those circumstances arose.	The Applicant notes the response and has no further comments on this matter.
	6.	<b>Agenda Item 5 – Community Benefit</b>	
2.15.12	6.1	FCC made an oral representation on the views of the County Council in relation to the need for the applicant to enter into a voluntary community benefit fund, building on written evidence already provided to the Examining Authority. Whilst there may not be a legal requirement for the applicant to provide such a fund, the Council strongly believe that the developer should provide a voluntary fund such as those provided by developers of other large infrastructure projects in North Wales. FCC would welcome further discussions with the developer.	The Applicant notes FCC's request and as previously advised is working to provide a voluntary proposal for a community benefit fund, and the form such a proposal might take. As any funding would be provided on a voluntary basis and not tied to the DCO, the review and approval cycle is not currently following the same timescale as the DCO process. However, the Applicant has had some early discussions with some FCC members and is happy to continue to engage on this outside of the DCO process, as the proposal develops.

**Table 2.16: Applicant's Comments on Flintshire County Council - Deadline 4 Submission - Written summaries of oral submissions made at any Hearings held during the week commencing 5 June 2023 (CAH) [REP4-287]**

Reference	FCC Reference	IP Submission	Applicant's Response
	2.	<b>Agenda Item 3- Individual objections, issues and voluntary agreements</b>	
2.16.1	2.1	FCC confirmed that there had been limited negotiation by the Applicant. FCC has received some Head of Terms and is looking for further engagement with the Applicant to understand the effect that the proposed development will have on FCC land in operational terms including the land to be acquired. FCC's land is principally highway but there are areas of freehold land.	The Applicant notes the comments from FCC and has since held a positive meeting to discuss the Heads of Terms on 22 June 2023. The Applicant and FCC agreed to continue with regular engagement moving forwards in order to reach a voluntary agreement.

**Table 2.17: Applicant's Comments on Flintshire County Council - Deadline 4 Submission – Appendix 1 [REP4-288]**

Reference	FCC Reference	FCC Response	Applicant's Response
		<b>Lead Local Flood Authority (LLFA) Land Drainage Consent Provisions</b>	
2.17.1	1.1	The following points are provided by Flintshire County Council (FCC) as the Lead Local Flood authority (LLFA). Under the Land Drainage Act 1991, any alterations or new connections to an ordinary watercourse requires formal land drainage consent from the LLFA. Building any structure, even a temporary structure or planting trees and shrubs within 8 meters of a watercourse in Flintshire is not permitted without consent from FCC. The land drainage consenting process is to ensure that any proposed works do not endanger life, property, or existing infrastructure by increasing the risk of flooding nor cause harm to the water environment and nature conservation. As a statutory regulator, the LLFA seeks to keep watercourses as open channels without obstructions to flow wherever is reasonably possible.	The Applicant notes this response.
2.17.2	1.2	The HyNet CO2 Pipeline application seeks to remove the requirement for land drainage consent. Article 8 (c) of the draft DCO seeks to disapply the provisions of Sections 23 and Section 30 of the Land Drainage Act 1991.	The Applicant notes this response.
2.17.3	1.3	Following a review of the submitted documentation, to protect our interests FCC currently have the following comments.	The Applicant has responded to the points separately.
2.17.4	1.4	Document D.6.3.18.5 FCA Part 1 Rev A Table 1 Watercourse Crossings [APP-168] on Page 17 states there are 12 Ordinary Watercourse crossing/intersection points within Flintshire. It may be suggested that following further site investigation and excavation works as the scheme progresses, further culverted ordinary watercourses may be discovered. There are several significant ordinary watercourse crossings within the proposals that possess known areas of surface water flood risk associated. It is considered that there is insufficient information within FRA, surface water drainage strategy or the D.6.5.4 Outline Construction Environmental Management Plan (OCEMP) [APP-228] evidenced at this time to fully understand and assess the impacts that the pipeline and associated works would have on the watercourse both for temporary and permanent works.	<p>The Applicant has submitted an Outline Surface Water Management and Monitoring Plan (OSWMMP) (document reference: <b>D.7.43</b>), which provides recommendations and guidance to the Construction Contractor on the requirements and measures to manage surface water quality, volumetric control, discharge locations and flood risk from temporary works such as construction compounds.</p> <p>In addition, the OSWMMP also provides preliminary guidance for working near watercourses and the management of flood risk during the construction phases from known areas of flooding from surface water flooding, fluvial and tidal flooding.</p> <p>The Flood Consequences Assessment <b>[REP4-180]</b> assesses the risk of flooding to the permanent works only, and the OSWMMP outlines the mitigation measures to be adopted by the Construction Contractor for the temporary works to prevent impacts on flood risk and watercourses.</p> <p>The Construction Contractor will also provide their Risk Assessment and Method Statements for the detection and prevention of impacts on buried utilities (charted and uncharted) before the construction phases to ensure that there is no impact (on assets such as culverts).</p>

Reference	FCC Reference	FCC Response	Applicant's Response
2.17.5	1.5	In order to fully assess the impact and risks of the works on the intersections of ordinary watercourse, FCC would request the below detail be provided where practically possible. The below is a summary of what FCC as LLFA would typically request as part of any land drainage consent application.	The information requested by FCC would be provided as part of the FRAP / consenting regime for crossing, or working on, over, or near, watercourses. Such information will be progressed at detailed design.
2.17.6		Location of the Proposed Works: FCC need to be able to easily identify where the proposed works will be carried out. The applicant should give details of; The location of the site; The name of the watercourse (if named); The National Grid Reference (12 figures)	Refer to row 2.17.5 above.
2.17.7		Description and purpose of the proposed works.	Refer to row 2.17.5 above.
2.17.8		Plans and Sections: The proposals shall include in-depth drawings and plans, showing Ordnance Datum Newlyn (the height above sea level).	Refer to row 2.17.5 above.
2.17.9		Location Plan: This must be at an appropriate scale and be based on an Ordnance Survey map. It must clearly show the general location of the site where the proposed work will be carried out and include general features and street names. It must also identify the watercourse or other bodies of water in the surrounding area.	Refer to row 2.17.5 above.
2.17.10		Site Plan (general arrangement): A plan of the site showing: The existing site (including any watercourse), the proposals, the position of any structures which may influence local river hydraulics (including bridges, pipes and ducts, ways of crossing the watercourse, culverts and screens, embankments, walls, outfalls and so on), and existing fish passes or structures intended to allow fish to pass upstream and downstream. The plan should be drawn to an appropriate scale, which must be clearly stated.	Refer to row 2.17.5 above.
2.17.11		Cross Sections: Where works encroach into any watercourse, you should provide cross sections both upstream and downstream of the proposed works. Cross sections should be drawn as if looking downstream on the watercourse and should include details of existing and proposed features and water levels.	Refer to row 2.17.5 above.
2.17.12		Longitudinal sections: Longitudinal sections taken along the centre line of the watercourse are needed. These must show the existing and proposed features including water levels, bed levels and structures. They should extend both upstream and downstream of the proposed work.	Refer to row 2.17.5 above.
2.17.13		Detailed drawings: These are to show details of the existing and proposed features such as the following; The materials to be used for any structures, the location of any proposed service pipes or cables which may affect the future maintenance of the watercourse, details of any tree, shrub, hedgerow, pond or	Refer to row 2.17.5 above.

Reference	FCC Reference	FCC Response	Applicant's Response
		wetland area that may be affected by the proposed works, details of any planting or seeding, dams and weirs. (FCC need a plan showing the extent of the water impounded (held back) under normal and flood conditions to assess the possible effect on land next to the river. The plan must also show any land drains to be affected.)	
2.17.14		Construction details: Separate consents are required for the permanent works and any temporary works that do not form part of the permanent works. Temporary works could include, for example, cofferdams (watertight enclosures) across a watercourse, or temporary diversions of water while work is carried out. For any temporary work, FCC need to know how it is proposed to carry out the work. A "method statement" should be provided that includes details of the specific measures to be taken to keep disruption to a minimum and reduce any unwanted effects while the work is being carried out. <i>FCC understands that over pumping where possible is suggested, can the developer confirm what the alternatives would be if this method is not feasible? Can the developer also confirm that application will be made for SAB approval where required?</i>	Refer to row 2.17.5 above.
2.17.15		A Risk Assessment should be included for all activities pertinent to both temporary and permanent works.	Refer to row 2.17.5 above.
2.17.16	1.6	Until the necessary information has been provided, FCC request appropriate protective provisions to safeguard our position as the statutory regulator for ordinary watercourses under the Flood and Water Management Act 2010.	Refer to row 2.17.5 above.
2.17.17	1.7	FCC as LLFA also recognises the D.6.5.13 Environmental Report - Outline Surface Water Drainage Strategy [APP-241], which shows the preliminary drainage design for the compounds. Hydraulic calculations have been provided demonstrating appropriate attenuation storage for the compounds for all storm events up to and including 1 in 100 year plus CC%, with restricted run off rates limited at greenfield run off rates.	The Applicant acknowledges the response and has no further comment.
2.17.18	1.8	FCC as LLFA can confirm the proposals are acceptable in principle, however FCC would take this opportunity to highlight to the developer that further investigation may be required on site to ensure the chosen outfalls for the development compounds are sustainable. Site investigations should confirm the route offsite, to ensure surface water flows are sustainably drained for the lifetime of the development and prevent against any exacerbation of localised flood risk. Confirmation of invert levels etc will need to be in place prior to construction.	The Applicant acknowledges and agrees the response and has no further comment.

**Table 2.18: Applicant's Comments on Flintshire County Council - Deadline 4 Submission - Written summaries of oral submissions made at any Hearings held during the week commencing 5 June 2023 (ISH2) [REP4-289]**

Reference	FCC Reference	FCC Response	Applicant's Response
	<b>2.</b>	<b>Agenda Item 2 – Articles and Schedules of the Draft DCO</b>	
2.18.1	2.1	FCC confirmed that there are some concerns with regards to the application and modification of legislative provisions at Article 8(c) of the draft DCO with regards to the land drainage requirement provisions.	The Applicant acknowledges the response from FCC but reiterates its request that FCC considers the outline plans and sub-plans under the requirements and advise what if any further information if any the detailed plans to be produced would need to include.
2.18.2	2.2	With regards to Article 10, FCC confirmed that there is no street permit scheme in Flintshire County Council.	The Applicant acknowledges the response from FCC and considers no further response is required.
2.18.3	2.3	With regards to Article 11, FCC have raised concerns with the applicant over Article 11(3) with regards to the restoration to reasonable satisfaction concerning streets that have been altered by the development. Under the Street Works Act there is a period of two years where the Local Highway Authority could notify the person/applicant who has carried out the works of a defect and the applicant would have to remediate it. FCC have been in discussions with the applicant with regards to this period, and revising those provisions. The applicant is proposing a 12 month period. FCC would not at present accept this Article in its current wording.	The Applicant has confirmed that the defect period of 2 months is agreed and understands this to resolve the concern.
2.18.4	2.4	In relation to Article 19, FCC maintain concerns with regards to the disapplication of the requirement to submit a consent to the Local Authority for altering an Ordinary Watercourse. FCC would like to be assured that all documentation that would be required for an ordinary watercourse consent be provided as part of this requirement as it does not appear to be detailed in the draft development consent order, or specified in the requirements specifically.	The Applicant notes that the outline sub-plans for the outline CEMP were only submitted and made available for review by the Council at Deadline 5 so there has not yet been an opportunity for the Council to advise if they are now satisfied.
2.18.5	2.5	With regards to Protective Provisions set out in Schedule 10, Part 7 with regards to the Protective Provisions for the Local Highway Authority, FCC confirmed that the Local Highway Authority and the applicant would be meeting to discuss these protective provisions.	The Applicant and the Councils held a call focused on highways and protective provisions on 14 June. Discussion on the wording of that is ongoing.
	<b>3.</b>	<b>Agenda Item 3 – Schedule 2 of the draft DCO – Requirements</b>	
2.18.6	3.1	Requirement 3; Stages of authorised development – FCC confirmed that a definition of a 'stage' would be required.	This has been added in revision G of the dDCO [REP4-008].
2.18.7	3.2	Requirement 5 (e); Material Management Plan. FCC have maintained the view that the Material Management Plan should include the term 'minerals'. The applicant has assured FCC that an outline Material Management Plan will be	The Applicant notes that in its discussions with FCC it had understood FCC would be content if the plan covered the appropriate minerals grounds. The Applicant considers it unnecessary and disproportionate to change the name of the

Reference	FCC Reference	FCC Response	Applicant's Response
		provided for comment at a subsequent deadline. FCC reserves the right to comment on this document as and when it is published.	document in all of the ES and related documents where the scope and content is agreed to be appropriate.  The Applicant notes that the outline sub-plans for the outline CEMP were only submitted and made available for review by the Council at Deadline 5 so there has not yet been an opportunity for the Council to advise if they are now satisfied.
2.18.8	3.3	Requirement 8; Surface Water Drainage. FCC have concerns with regards to this requirement and the surface water drainage strategy as at this stage, the applicant cannot provide sufficient detail and that this is a high-level strategy. FCC has concerns that any works required to an ordinary water course would not necessarily be included in the documentation. FCC would like to see more detail with regards to these ordinary water course crossings.	There is no detail at this time as the detailed design has not yet been undertaken. The Applicant has requested that FCC provide a list of the detail it would be seeking at detailed design stage. That list is still awaited.
2.18.9	3.4	Requirement 9; Contaminated land and ground water. FCC confirmed that the FCC Contaminated Land Officer is happy with the drafting on the requirement.	The Applicant acknowledges the response from FCC and considers no further response is required.
2.18.10	3.5	Requirement 16 and 17; Restoration of Land. FCC maintain that a five year aftercare period should be applied in this requirement as opposed to 12 months. The concern relates to potential settlement during the years post restoration. An annual aftercare review should also be applied for a period of 5 years to ensure that the land has been restored to the satisfaction of the planning authority, and that the land has been adequately restored.	The Applicant has set out its position on this point in detail in its deadline 4 submissions and refers to <b>[REP4-264]</b> , part 3 at paragraph 2.22 onwards.
2.18.11	3.6	Requirement 18; Decommissioning. The same reasoning would apply with regards to post restoration aftercare on above ground sites that are decommissioned in the future.	
2.18.12	3.7	Requirement 24; Further information and timescales. FCC maintain that a period of 10 days is too short a time-period when the Local Authority would be reliant on external bodies to respond. This adds additional pressure to the process when the Local Planning Authority.	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.
	<b>4.</b>	<b>Agenda Item 4 – Article 44 of the draft DCO – Certification of Plans</b>	
2.18.13	4.1	FCC considers that all the appendices of the Construction Environmental Management Plan should be listed in Article 44 – certification of plans.	The Applicant has added a reference to the CEMP's appendices in its definition and does not consider listing them in article 44 to be necessary.
	<b>5.</b>	<b>Agenda Item 5 - Consents, licences and other agreements</b>	



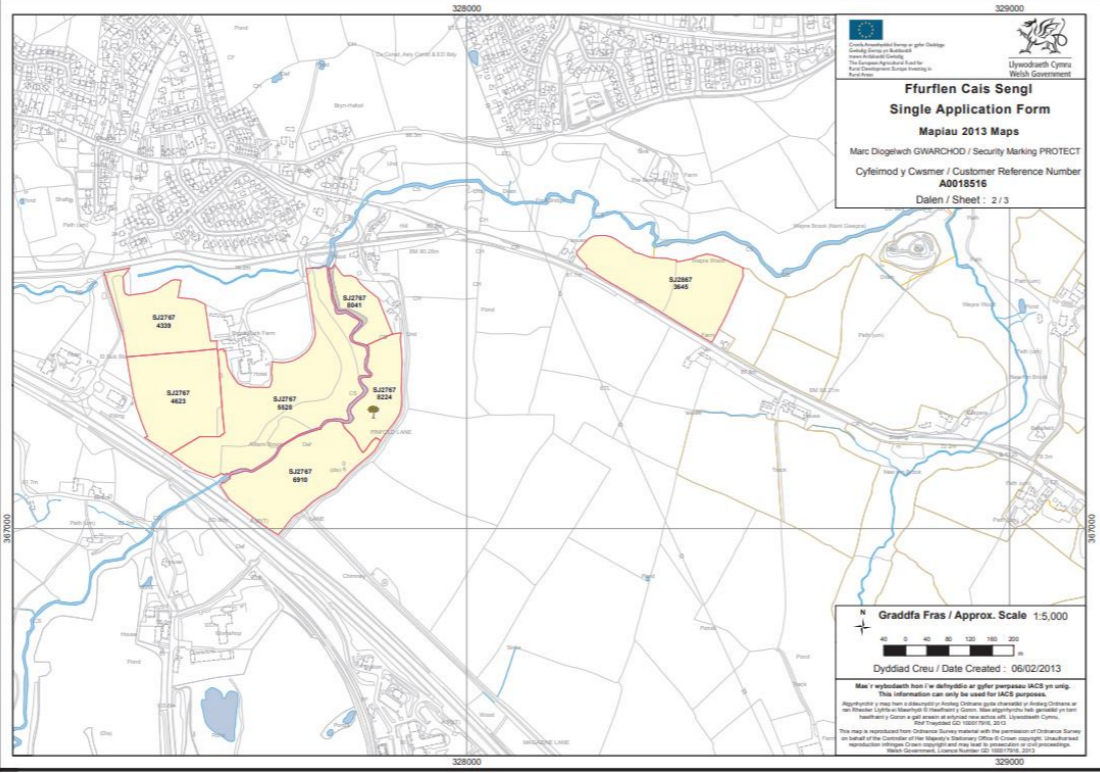
Reference	FCC Reference	FCC Response	Applicant's Response
2.18.14	5.1	FCC confirm that discussions have been taking place between the applicant and FCC's Countryside Services Manager and Ecologist with regards to securing off-site biodiversity enhancements. The legal officer had not been party to the discussions and have not had sight of a draft agreement.	The Applicant confirms that these discussions are ongoing.

**Table 2.19: Applicant's Comments on Stephens Scown on behalf of Stephen Oultram and Catherine Oultram – Deadline 4 Submission [REP4-292]**

Reference	Stephens Scown on behalf of Stephen Oultram and Catherine Oultram Reference	IP Submission	Applicant's Response
		<b>Loss of slurry store</b>	
2.19.1	1.	<p>The original pipeline route would require the removal of the slurry store at Newbridge Farm. The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (as amended) control the on-farm storage of organic manure. The schedules to the Regulations dictate what must be provided, including the requirement to be able to store 5 months' worth of slurry. A dairy farm cannot operate without a slurry store.</p>	<p>The Applicant acknowledges the comments. The Applicant is aware of the regulations stated and has submitted two options for the slurry tank as per Change Request 1. The Applicant has held conversations with Natural Resources Wales regarding ancient woodland at this location, however, they have advised that this issue is not within their remit and discussions should be progressed with Flintshire County Council. The Applicant has discussed the option of a minimal intrusive encroachment of 2m into the Ancient Woodland Protection Area, with surface access within the RPA thereafter, which would allow the slurry tank to remain in situ. FCC's forestry officer confirmed through a meeting and subsequent email correspondence that they have no objections to the proposals, given these are a conservative consideration of the RPA of the ancient woodland. This was also considered in the context of the proposed mitigation to safeguard ancient woodland (and trees in general), through the provision for an Arboricultural Method Statement, Tree Protection Plan and Arboricultural Clerk of Works during works, as required within the Outline Construction Environmental Management Plan (OCEMP) [REP4-237] secured by Requirement 5 of the dDCO [REP4-008]. The conversations and agreement of the approach has been captured within Table 3.6, item FCC 3.6.3 within the Statement of Common Ground – Flintshire County Council submitted at Deadline 5. In the event the slurry tank needed to be relocated, the Applicant would ensure the landowner has sufficient slurry storage capabilities to comply with the regulations through agreed pre-construction accommodation works.</p> <p>The Applicant has also given consideration to this point as detailed within the Ewloe routing and mitigation position paper which the Applicant intends to submit on or before Deadline 6.</p>
2.19.2	2.	<p>The steep bank to the rear of the building make it impractical to relocate the slurry store locally and there is no other suitable location on the holding.</p>	<p>The Applicant does not agree with the IP's assessment and understands there are options for the Tank to be relocated, temporary slurry provisions to be provided and appropriate compensation given to the IP (at the Applicant's cost), without the causing a risk of farm closure. The Applicant has carried out a farm impact assessments and plans to submit the summary of this to the IP and the Examination as part of a " Ewloe routing and mitigation position paper " to submit on or before Deadline 6.</p>

Reference	Stephens Scown on behalf of Stephen Oultram and Catherine Oultram Reference	IP Submission	Applicant's Response
2.19.3	3.	The developer, at the hearing, was unable to comment on the slurry store issue as a result of CR1. A separate representation has been made in respect of CR1.	The Applicant notes this response and shall reply in kind under the appropriate CR1 submission.
		<b>Temporary land take for construction compound</b>	
2.19.6	4.	At a meeting held with the developer team on 5 May 2023, the developer stated that three of four proposed contractors do not require the temporary construction compound at the farm. That must surely call into question the necessity of the temporary land take (in terms of the tests for compulsory acquisition) in a case where it seems to only be a preference for there to be a construction compound on the land. At the hearing, the developer confirmed that they are trying to remove that compound from the DCO although they would still require access (that could accommodate the current use).	The Applicant notes that the removal of the proposed compound is subject to CR3.
2.19.7	5.	Any requirement for the compound will require a reduction in stock numbers. The holding is fully utilised and the word 'temporary' is potentially misleading when it would be out of agricultural use for years rather than months. Even a temporary reduction in acreage will require a reduction in stock numbers, employment and risk the sustainability of the whole business.	<p>The Applicant notes the comments and that it is their intention to remove the compound as part of CR3. The Applicant will continue engagement with the landowner regarding this change request.</p> <p>The Applicant has also given consideration to this point which is detailed within the Ewloe routing and mitigation position paper which the Applicant intends to submit on or before Deadline 6.</p>
		<b>Segregation</b>	
2.19.13	6.	We attach a plan of the holding at Brook Park Farm. This is relevant for the land take (envisaged prior to CR1 and the increased permanent land take for CR2), both during works and permanently. This communication is restricted to matters raised at the hearing, but the point about segregation was valid before CR1 and CR2. The holding plan shows how the interaction between the permanent land take, the location of the brook and the woodland will create difficulties in moving stock on the holding, as well as considering the simple loss of area. The loss of land, of itself, will necessitate a reduction in mature and immature stock numbers. For a dairy farm, there is a minimum level of milk production, below which a processor will not contract to collect as the cost of transportation cannot be proportionally reduced based on the amount of milk being collected. If output is restricted because stock number send to be reduced, there will come a point where the farm cannot contract to have ANY	The Applicant acknowledges the comments and has given consideration to this point which is detailed within the Ewloe routing and mitigation position paper which the Applicant intends to submit on or before Deadline 6.

Reference	Stephens Scown on behalf of Stephen Oultram and Catherine Oultram Reference	IP Submission	Applicant's Response
		of its milk collected for processing. That would lead to the closure of the business entirely.	
		<b>Loss of grazing and spreading land</b>	
2.19.14	7.	There is a compounding issue relating to either the temporary or permanent loss of any land. The farm operates by collecting the organic manure from the stock, as slurry, at one time of the year and then spreading it on land at other times of the year as a fertilizer to support the grass crop that feeds the herd. It is a circular economy.	The Applicant acknowledges the comments and has given consideration to this point which is detailed within the Ewloe routing and mitigation position paper which the Applicant intends to submit on or before Deadline 6.
2.19.15	8.	At present, regulations limit the amount of slurry that can be spread with a threshold of 190kg/Ha. That is already expected to be lowered to 170kg/Ha.	
2.19.16	9.	Any loss of land reduces the number of animals that can be fed from what remains. The other side of the equation is that there also needs to be a sufficient area of land on which to spread the resultant slurry. With the expected lowering of the Nitrogen limit, this issue becomes more pressing. A loss of slurry spreading capacity will necessarily require a reduction in the stock numbers (thus reducing the amount of slurry that is generated in the first place). A loss of 50 acres would require a reduction of 25% in adult stock numbers (and thereafter a reduction of 15% in young stock numbers).	

Reference	Stephens Scown on behalf of Stephen Oultram and Catherine Oultram Reference	IP Submission	Applicant's Response
2.19.17			

**Table 2.20: Applicant's Comments on National Highways Limited - Deadline 4 Submission - Post hearing submissions of National Highways Limited in respect of ISH2 and CAH1 [REP4-290]**

Reference	National Highways Limited Reference	IP Submission	Applicant's Response
		<b>Compulsory Acquisition Hearing</b>	
2.20.1	2.1	As set out in previous submissions, National Highways notes that Compulsory Powers are sought in relation to land forming part of the SRN being the M53 and M56, including acquisition of the subsurface of the carriageway itself at two locations where the pipeline crosses the strategic	Please see row 2.7.8, Table 2.7 of the Applicant's Responses to Written Representations <b>[REP2-041]</b> submitted at Deadline 2.

Reference	National Highways Limited Reference	IP Submission	Applicant's Response
		road network – the SRN. To safeguard National Highways' interests and the safety and integrity of the SRN, National Highways continues to object to the inclusion of the Plots in the Order and to Compulsory Powers being granted in respect of them.	Please see row 2.2.6, Table 2.2 of the Applicant's Comments on Submissions Received at Deadline 2 <b>[REP3-033]</b> submitted at Deadline 3.  There is no interference with the highway use, no powers are sought to possess or control the operational highway, no works are proposed to highway itself and the NRWSA consent required under s61 is not disapplied.
2.20.2	2.2	National Highways considers that there is no compelling case in the public interest for the Compulsory Powers and that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that the permanent acquisition of land forming the SRN and the creation of new rights and restrictions over all of the Plots can be created without serious detriment to National Highways' undertaking. No other land is available to National Highways to remedy the detriment.	Please see row 2.7.8, Table 2.7 of the Applicant's Responses to Written Representations <b>[REP2-041]</b> submitted at Deadline 2.  Please see row 2.2.6, Table 2.2 of the Applicant's Comments on Submissions Received at Deadline 2 <b>[REP3-033]</b> submitted at Deadline 3.  National Highways has not provided any evidence whatsoever as to how or why serious detriment would arise in this case where there is no interference with the highway use, no powers are sought to possess or control the operational highway, no works are proposed to highway itself and the NRWSA consent required under s61 is not disapplied.
2.20.3	2.3	To safeguard National Highways' interests and the safety and integrity of the SRN, National Highways objects to the inclusion of the Plots in the Order and to Compulsory Powers being granted in respect of them and to any other powers affecting National Highways in the Order. The Plots constitute land acquired by National Highways for the purpose of its statutory undertaking. National Highways acquires the subsoil below the SRN for the very reason of retaining control over that land for the purposes of ensuring the integrity and stability of the highway and its safe operation. National Highways has concerns of potential interference with the integrity and stability of the SRN and there is a need for National Highways to have full control over such land for that purpose. This also further emphasises the need to include protective provisions in the form required by National Highways as these would assist in regulating the interference with the SRN.	Please see row 2.7.8, Table 2.7 of the Applicant's Responses to Written Representations <b>[REP2-041]</b> submitted at Deadline 2.  Please see row 2.2.6, Table 2.2 of the Applicant's Comments on Submissions Received at Deadline 2 <b>[REP3-033]</b> submitted at Deadline 3.  Simply because National Highways has chosen to acquire the subsoil below the SRN does not in and of itself mean acquisition of the subsoil, or rights in it, would cause detriment to the highway.  The Applicant has agreed in principle that protective provisions will be included. The drafting of this is under negotiation.
2.20.4	2.4	National Highways is under a duty to preserve its statutory duties and protect its own legal position and must preserve and maintain the integrity of the SRN. To limit in any way the safe running of the SRN compromises the ability of National Highways to do so.	Please see rows 2.20.1 – 2.20.3 above.
2.20.5	2.5	National Highways objects in particular to the Compulsory Acquisition of plots 5-06 (M56 motorway and verges), 5-09 (public road and verges) and 7-05 (M53 motorway and verges).	Please see row 2.7.9 – 2.7.11 of the Applicant's Responses to Written Representations <b>[REP2-041]</b> submitted at Deadline 2.
2.20.6	2.6	In order for National Highways to be in a position to withdraw its objection, National Highways requires:	The Applicant has agreed in principle that protective provisions will be included. The drafting of this is under negotiation. The Appendix to this document sets out the

Reference	National Highways Limited Reference	IP Submission	Applicant's Response
		<p>(a) the inclusion of protective provisions in the Order in the form previously provided by National Highways for its benefit; and</p> <p>(b) agreements with the Applicant that regulate (i) the manner in which rights over the Plots are acquired and the relevant works are carried out including terms which protect National Highways' statutory undertaking and agreement that compulsory acquisition powers will not be exercised in relation to such land; and (ii) the carrying out of works in the vicinity of the SRN to safeguard National Highways' statutory undertaking.</p>	<p>principal amendments proposed by the Applicant to the form of protective provisions provided by National Highways.</p> <p>The Applicant continues to seek to agree a voluntary agreement with National Highways.</p>
2.20.7	2.7	National Highways is in early discussions with the Applicant regarding both of these points at present and although there is no substantive update to date, National Highways will update the Examining Authority as discussions progress.	<p>The Applicant has agreed in principle that protective provisions will be included. The drafting of this is under negotiation.</p> <p>The Applicant continues to seek to agree a voluntary agreement with National Highways.</p>
2.20.8	2.8	National Highways has also previously set out its position with regard to alternatives to compulsory acquisition which are open to the Applicant and the reasons for which National Highways contends that the case for compulsory acquisition has not been made out.	<p>Please see row 2.7.9 – 2.7.11 of the Applicant's Responses to Written Representations <b>[REP2-041]</b> submitted at Deadline 2.</p> <p>The Applicant does not agree that use of section 50 of the NRWSA would be suitable as the trenchless installation is at considerable depth, and arguably below the indicative 'two spits' depth of the highway (or street) status. It will be within the underlying ownership of the subsoil (which belongs to NH but as owner, not as statutory function of highway status).</p>
2.20.9	2.9	National Highways notes the Examining Authority's second set of questions which are due for response by Deadline 5. In light of these questions National Highways reserves its position generally with regard to compulsory acquisition and will respond in full on this and the Applicant's submissions made at Deadline 3 at Deadline 5 on 4th July 2023.	The Applicant notes that National Highways reserves its position on this matter.
		<b>Issue Specific Hearing 2</b>	
2.20.10	3.1	National Highways identified a number of concerns regarding the draft DCO as presented by the Applicant and made clear that it had further comments in respect of other elements of the draft DCO for which it would follow up in writing.	<p>Please see the Applicant's responses in Table 2.21 to National Highways' detailed comments on the Articles of the Order.</p> <p>The Applicant reiterates that there is nothing in Schedule 1 or the ES project description that would involve or require works to the SRN itself. The Applicant is not and has not sought consent for any highway works to the SRN and has no element in its design which would or could require this. The Applicant continues to submit that it is inappropriate and misleading to read the DCO articles without having regard to the definition of authorised development and the works for which consent is actually sought. To instead base drafting on non-existent, entirely</p>
2.20.11	3.2	There is a general theme of concern that National Highways has, which all relate to safety issues. There are a number of articles in the draft DCO that give power to the applicant to enter, carry out works or otherwise interfere with the Strategic Road Network. Sometimes it is not clear on the face of the wording as there is no express reference to the SRN but the wording is	

Reference	National Highways Limited Reference	IP Submission	Applicant's Response
		sufficiently wide that these powers could extend to the SRN. Some of these powers were highlighted at the above hearing and are set out in further detail below and are potentially extremely wide powers for which National Highways has serious concerns.	theoretical works not identified, assessed or consented, and for which consent is not sought, there is no ES assessment and no street works are set out in the DCO schedule, is an unreasonable position.
2.20.12	3.3	There are different levels of 'protection' afforded to National Highways under each article. Some articles allow conditions to be attached whilst others do not. Where National Highways' consent is required under an article, a deemed consent provision is imposed if a decision is not made within a certain timeframe. This is not appropriate for the reasons set out in this response. Given the associated safety concerns, National Highways does not consider this to be a reasonable imposition.	The deemed consent provisions are considered necessary to remove the possibility for delay and provide certainty that the proposed development can be delivered by the undertaker in a timely manner. Ultimately, it is entirely within National Highways' control whether the deemed consent provisions are triggered.  The Applicant notes that, when National Highways is promoting its own DCOs, it routinely includes deemed consent provisions where the consent of other street or highway authorities is required. The Applicant refers to, amongst many recent examples, A417 Missing Link DCO 2022, A47 Wansford to Sutton DCO 2023, and A428 Black Cat to Caxton Gibbet DCO 2022.
2.20.13	3.4	National Highways requires that any interference with the SRN should be subject to its explicit consent with the ability to attach any necessary conditions. National Highways does appreciate the applicant will not want undue delay in the delivery of a nationally significant infrastructure project but it is National Highways' position that this shouldn't override National Highways safety concerns, particularly when those concerns relate to the safety of the travelling public (and so people potentially being put at risk). National Highways has approval processes in place for instances where third parties are looking to work on, or in the vicinity, of the SRN and do not consider it reasonable that this application should be able to bypass those approvals which have been put in place for very strong safety reasons.	Where Articles in the draft Order provide for consent to be obtained from a street or highway authority, they generally allow reasonable conditions to be attached to such consent.  The Applicant therefore considers that the Order provides National Highways with appropriate controls to address any safety concerns.  The Applicant has agreed in principle that protective provisions will be included. The drafting of this is under negotiation.
2.20.14	3.5	Given its concerns are safety related, it is imperative that due process is followed and time is taken to ensure that anything being signed off is adequately assessed. National Highways would find it very difficult to fully consider, determine and respond to such applications within some of the currently proposed timeframes and has concerns with deemed consent. A number of National Highways' functions are outsourced to consultants who operate under service level agreements with already agreed timeframes which National Highways needs to respect. In addition, and noting the Applicant's view that National Highways should prioritise this application given its national significance, the team within National Highways' North West region are currently dealing with a number of DCO applications which are at pre application stage. It will be impossible for National Highways to give each one the priority they will all expect, particularly if they are all asking for decisions within tight timescales and deemed consent if no response is given.	



Reference	National Highways Limited Reference	IP Submission	Applicant's Response
2.20.15	3.6	<p>As drafted the draft DCO does not include explicit reference to works to the SRN. However National Highways' understanding is that there will indeed be works to the SRN which are 'under' the SRN and therefore these works should be specified within the draft DCO. The New Roads and Street Works Act 1991 and National Highways' protective provisions both refer to works to the SRN including 'under' and on that basis it is unclear why the Applicant does not see that the works are to the SRN. Works under the carriageway of the SRN are still works to the SRN given the potential to interfere with the integrity of the highway.</p>	<p>The installation of the pipeline using trenchless installation under the SRN will be well below the target minimum depth of 1.2m. This crossing will be installed using trenchless techniques to prevent disruption to the use of the SRN. The depth of that installation will be defined based on inter alia ground conditions. A minimum depth of 4m has been agreed with NH, but this may be deeper.</p> <p>The Applicant does not agree that such installation constitutes works "to the SRN".</p> <p>Please see rows 2.2.1 – 2.2.5, Table 2.2 of the Applicant's Comments on Submissions Received at Deadline 2 [REP3-033] submitted at Deadline 3. In considering whether the works could be carried out under the NRWSA, the Applicant has made clear that it does not consider the proposed installation to constitute street works.</p> <p>It is noted that National Highways' protective provisions refer to works to the SRN including works 'under' the highway. However, National Highways' protective provisions do not alter the legal status of the subsurface.</p> <p>The Applicant can confirm that all works in the vicinity of National Highways assets will be undertaken in accordance with the DMRB Standard CD622, as agreed in the draft SoCG with National Highways [REP2-029]. Even where works will be below the highway, the Applicant agrees that NH has an interest in how they will be carried out and has agreed to provide such technical detail for their approval under the section 61 approval process as is required to satisfy National Highways that there is no danger to the highway.</p>
2.20.16	3.7	<p>In addition, National Highways is concerned that there are various articles within the draft DCO which are extremely wide and could encompass works beyond those works set out in the schedules. Further detail is given on this below.</p>	<p>Please see responses below and in Table 2.21.</p>
2.20.17	3.8	<p>Schedule 1 of the draft DCO gives the applicant extremely wide powers that would permit them carrying out potentially significant works to the SRN and the DCO in its current form would give National Highways no role in ensuring that any such works are carried out appropriately and safely.</p>	<p>The Applicant does not agree with this statement. There is nothing in the Works descriptions in Schedule 1 or the ES project description or assessment which would authorise works to the SRN.</p>
2.20.18	3.9	<p>National Highways wants to bring to the Examining Authority's attention the following wording which is potentially far reaching and would include works to the SRN. This is contained at the end of Schedule 1 of the current draft DCO:</p> <p>er works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which</p>	<p>The Applicant does not agree with National Highways that this wording would include works to the SRN.</p> <p>The draft Order authorises the works listed only where they are "in connection with Works No. 1 to 57N". As noted above, there is nothing in the Works descriptions in Schedule 1 which would authorise works to the SRN. This part of Schedule 1 only relates to the Works descriptions, and therefore cannot include works to the SRN.</p>

Reference	National Highways Limited Reference	IP Submission	Applicant's Response
		<p>fall within the scope of the work assessed by the environmental statement, including—</p> <p>(a) temporary works for the benefit or protection of land, watercourses or structures affected by the authorised development;</p> <p>(b) site clearance (including fencing and demolition of existing structures);</p> <p>(c) earthworks (including soil stripping and storage, site levelling and alteration of ground levels), and remediation of contamination if present;</p> <p>(d) works to alter the position of apparatus at or below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus; (e) watercourse and other temporary crossings;</p> <p>(f) means of access and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades, alterations and improvements of existing roads, tracks and footpaths / alteration of layout of streets to form temporary and permanent accesses, altering the level of any kerb, footway or verge within a street and surface treatments; diversions during construction of existing access routes and subsequent reinstatement of existing routes;</p> <p>(g) surface water management systems, temporary drainage during installations;</p> <p>(h) landscaping works/ landscaping, planting, vegetation removal, trimming and lopping of trees, tree planting and erection of permanent means of enclosure and boundary facilities including fences and gates, alteration of drains and ditches; / bunds, embankments, swales, landscaping, fencing and boundary treatments;</p> <p>(i) manholes, marker posts, underground markers, tiles and tape;</p> <p>(j) works for the provision or relocation of apparatus including cabling, water and electricity supply works, foul drainage provision; and</p> <p>(k) works of restoration.</p>	
2.20.18	3.10	<p>It would be unacceptable to National Highways for any third party to be granted such powers without National Highways being afforded appropriate protections to ensure that the usual policies and approval processes are adhered to. For this reason in addition to those concerns set out in the table below, National Highways requires protective provisions in the form previously submitted to both the Applicant and the Examining Authority to be included within the DCO. The list of articles to be included within the</p>	<p>The Applicant has agreed in principle that protective provisions will be included. The drafting of this is under negotiation.</p>

Reference	National Highways Limited Reference	IP Submission	Applicant's Response
		protective provisions 6 would need to be reviewed and extended to include those articles listed as a concern to National Highways but not covered in the protective provisions to date (being primarily articles 11, 14, 15, 29 and 33).	
2.20.19	3.11	National Highways are in discussions with the Applicant over the inclusion of protective provisions into the draft DCO but as stated at the hearing, to date are some distance apart. The absence of adequate protective provisions is a significant concern for National Highways. National Highways' Licence provides a duty on National Highways to "have due regard to the need to protect and improve the safety of the network as a whole for all road users". The DCO in its current form provides the Applicant with very wide powers that could be used to carry out works to the SRN. It is therefore of upmost importance to National Highways that adequate protections are secured to ensure that National Highways can comply with its statutory and Licence obligations. The draft DCO as currently before the Examination would not do that.	<p>The Applicant has agreed in principle that protective provisions will be included. The drafting of this is under negotiation.</p> <p>There is nothing in the Works descriptions in Schedule 1 which would authorise works to the SRN.</p> <p>If the undertaker's street works powers were to be exercised on the SRN, the Applicant considers that the Order provides National Highways with appropriate controls to address any safety concerns.</p>
2.20.20	3.12	The Applicant confirmed during hearings that they would adhere to DMRB which we presume was reference to the inclusion of references to the DMRB standard within the National Highways protective provisions. This commitment is welcomed but underlines even more so the need for the protective provisions as submitted by National Highways to remain as drafted to ensure they are complied with.	The Applicant can confirm that all works in the vicinity of National Highways assets will be undertaken in accordance with the DMRB Standard CD622, as agreed in the draft SoCG with National Highways <b>[REP2-029]</b> .

**Table 2.21: Applicant's Comments on National Highways Limited in respect of Articles - Deadline 4 Submission [REP4-290]**

The following table sets out the Articles within the dDCO which National Highways objects to in its current form (Revision E [REP3-005] as at the date of the hearings):

Article No and heading	Provisions of concern	Reasons	Applicant's Response
Interpretation	<p>“Street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street (streets, street works and undertakers)</p>	<p>This definition encompasses the SRN and therefore any article of the DCO that may allow the applicant to undertake works on “Streets” would encompass the SRN raising issues of safety of the travelling public and impact of such works on the operation of the SRN without the required safeguards in place provided by National Highways’ protective provisions.</p>	<p>The Applicant reiterates that there is nothing in Schedule 1 or the ES project description that would involve, consent or require works to the SRN itself. The Applicant is not and has not sought consent for any highway works to the SRN and has no element in its design which would or could require this. The Applicant continues to submit that it is inappropriate and misleading to read the DCO articles without having regard to the definition of authorised development and the works for which consent is actually sought. To base drafting on non-existent, entirely theoretical works not identified, assessed or consented, and for which consent is not sought, for which there is no ES assessment and no street works are set out in the DCO schedules is an unreasonable position</p> <p>Where the draft Development Consent Order (Revision G) [REP4-008] contains powers to carry out works to streets, appropriate protections are in place, as discussed below in relation to NH’s concerns regarding specific Articles.</p>
Article 10 - Street Works	<p>(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Part 1 (streets subject to street works) and Part 2 (streets subject to temporary street works) of Schedule 3 as is within the Order limits and may without the consent of the street authority—</p> <p>(a) break up or open the street, or any sewer, drain or tunnel under it;</p> <p>(b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;</p> <p>(c) remove or use all earth and materials in or under the street;</p> <p>(d) place apparatus under the street;</p> <p>(e) maintain, alter or renew apparatus under the street or change its position;</p> <p>(f) demolish, remove, replace and relocate any street furniture within the street;</p>	<p>National Highways would query why no works which are to be carried out ‘under’ the SRN seem to be included in Part 1 nor Part 2 of Schedule 3 given that pursuant to section 105 of the 1991 Act works would include those carried out ‘under’ the SRN.</p> <p>The current drafting keeps open the possibility for the Applicant to undertake works to the SRN. Therefore, National Highways’ form of protective provisions should be included in the event such works are required.</p> <p>National Highways’ protective provisions reference any work authorised by the proposed Order that is on, in, under or over the SRN to ensure any works are carried out in consultation with National Highways and makes provisions in the event there is non-compliance protecting National Highways’ position and the public purse. National Highways is required to ensure public money is spent appropriately and the protective provisions provide that protection in the event of default.</p>	<p>There are no works proposed to be carried out to the SRN. The Applicant is proposing to carry out trenchless installation of the pipeline underneath the SRN, at a depth which will be well below the target minimum depth of 1.2m. A minimum depth of 4m has been agreed with NH, but this may be deeper. The Applicant does not agree that such installation constitutes works to the SRN. Please see rows 2.2.1 – 2.2.5 of the Applicant’s Comments on Submissions Received at Deadline 2 [REP3-033] submitted at Deadline 3.</p> <p>Article 10(3) allows the undertaker to enter onto any other street whether or not within the Order limits. However, this is subject to Article 10(4) which prevents the exercise of such powers without the consent of the street authority. Article 10(4) allows the street authority to attach reasonable conditions to any such consent. The Applicant notes that it has identified no need or requirement to enter the SRN, rather it has designed the scheme to avoid this and the consequential interference with the highway use by prescribing a trenchless crossing. This appropriately</p>

Article No and heading	Provisions of concern	Reasons	Applicant's Response
	<p>(g) execute any works to provide or improve sight lines;  (h) execute and maintain any works to provide hard and soft landscaping;  (i) carry out re-lining and placement of road markings; (j) remove and install temporary and permanent signage; and  (k) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (j).</p> <p>(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.</p> <p>(3) Without limiting the scope of the powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of the authorised development, or for purposes ancillary to it, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works set out in paragraph (1).</p> <p>(4) The powers conferred by paragraph (3) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.</p> <p>(5) If a street authority that receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 42 days beginning with the date on which the application was received by the street authority, that authority will be deemed to have granted consent</p> <p>(6) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act save that "apparatus" includes pipelines (and parts thereof), fibre optic or other telecommunication cables, aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks, and electricity cabinets.</p>	<p>(3) This would allow the undertaker to enter onto any other street whether or not within the Order limits which is far reaching and as a result could encompass the SRN. This, therefore, raises questions of safety to users and the integrity of the SRN. Any works should be done in consultation with National Highways with the relevant safeguards in place as provided for in the National Highways protective provisions.</p> <p>The draft DCO has deemed consent should National Highways not respond within the period stated. National Highways would ask that deemed consent is not accepted given the fact that they may not be able to respond within tight timescales. National Highways' protective provisions gives 2 month timescales and deemed refusal if no response is given within this timescale. Given workloads (which includes other DCOs) and restrictions with outsourcing work, National Highways cannot always commit to responding within tight timescales and deemed acceptance could lead to risks to the safety and integrity of the SRN.</p>	<p>addresses National Highways' concerns regarding safety and integrity of the SRN.</p> <p>The Applicant considers that the deemed consent provisions in Article 10(5) are appropriate. The Applicant cannot accept a position whereby due to the delay of National Highways the undertaker could experience serious construction delays. The deemed consent provision is considered necessary to remove the possibility for delay and provide certainty that the proposed development can be delivered by the undertaker in a timely manner.</p> <p>The Applicant notes that National Highways routinely seeks deemed consent provisions when it is promoting its own DCOs. The Applicant refers to, amongst many recent examples, A417 Missing Link DCO 2022, A47 Wansford to Sutton DCO 2023, and A428 Black Cat to Caxton Gibbet DCO 2022. It is noted that National Highways generally allows a 28 day determination period before consent is deemed to have been granted.</p>
Article 11 Power to alter	(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may, for the purposes of constructing and	This would allow the undertaker in relation to constructing and maintaining the authorised development the ability to permanently or temporarily alter the layout of any street	Article 11(2) allows the undertaker to permanently or temporarily alter the layout of any street whether or not within the Order limits. However, this is subject to Article

Article No and heading	Provisions of concern	Reasons	Applicant's Response
layout, etc. of street	<p>maintaining the authorised development, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may.....</p> <p>(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed</p> <p>(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent</p>	<p>whether or not within the Order limit. This drafting is extremely wide and has the potential to impact the SRN. It is another reason why National Highways' protective provisions must be included within the draft DCO.</p> <p>There are deemed consent provisions if National Highways fails to notify the undertaker within 42 days from receipt of application – National Highways Protective provisions have a 2-month period and an automatic refusal if consent is not provided and so this drafting is unacceptable to National Highways.</p>	<p>11(4) which prevents the exercise of such powers without the consent of the street authority. Article 11(4) allows the street authority to attach reasonable conditions to any such consent. This appropriately addresses National Highways' concerns regarding potential impacts on the SRN.</p> <p>The Applicant has identified all the locations where it needs to form new accesses or carry out other works of minor alteration. No new accesses are proposed to or from the SRN and all of the accesses needed to deliver the development are listed in the draft DCO. There is no work in schedule 1 which would affect the SRN in this regard. The known street works are listed in the relevant schedules. The reserve power in here is to cover minor works connected with those, for example a visibility splay needs to be extended outside the red line, a drain in the local highway verge where an access is to be created needs minor realignment, a sign needs to be moved. There is nothing in schedule 1 or the ES which supports a realistic concern that SRN layout works would be required.</p> <p>The Applicant considers that the deemed consent provisions in Article 11(5) are appropriate. The Applicant cannot accept a position whereby due to the delay of National Highways the undertaker could experience serious construction delays. The deemed consent provision is considered necessary to remove the possibility for delay and provide certainty that the proposed development can be delivered by the undertaker in a timely manner.</p> <p>The Applicant notes that National Highways routinely seeks similar provisions when it is promoting its own DCOs. The Applicant refers to, amongst many recent examples, A47 Wansford to Sutton DCO 2023 article 14, and A428 Black Cat to Caxton Gibbet DCO 2022 article 14. Those DCO articles also provide for deemed consent, and it is noted that National Highways' DCOs allows other street authorities a 28 day determination period before consent is deemed to have been granted.</p>

Article No and heading	Provisions of concern	Reasons	Applicant's Response
Article 12 – Application of the 1991 Act	<p>Article 12 (4) and generally</p> <p>(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order— (a) section 56(d) (power to give directions as to timing of street works); (b) section 56A(e) (power to give directions as to placing of apparatus); (c) section 58(f) (restriction on works following substantial road works); (d) section 58A(g) (restriction on works following substantial street works); and (e) schedule 3A(h) (restriction on works following substantial street works).</p>	<p>We note that Article 12(4) disapplies sections of the 1991 Act and would ask that it is made clear where the draft DCO is silent on sections of the 1991 Act that it is made clear that these sections are not disapplied. We would also request that section 56 in particular is not disapplied.</p> <p>Article 12 is seeking a power such that the DCO would trump a usual provision of the 1991 Act. The 1991 Act was set up for very clear reasons to address historical problems in this area, setting out a clear code for street works and an appropriate statutory process to protect both highway authorities and statutory undertakers. As such its provisions should not be so easily overruled. It is National Highways' view that any exclusions of the 1991 Act need to be very clearly justified.</p>	<p>Article 12(4) clearly sets out the provisions of the 1991 Act which do not apply in relation to works executed under the powers conferred by the Order. Inclusion of a sub-article confirming that remaining provisions of the 1991 Act are not disapplied would be superfluous.</p> <p>The disapplication of Section 56 is common practice. The Applicant notes that this includes in National Highways' own DCOs. The Applicant refers to, amongst many recent examples, the A417 Missing Link DCO 2022 article 12, A47 Wansford to Sutton DCO 2023 article 11, and A428 Black Cat to Caxton Gibbet DCO 2022 article 11. It has also been disapplied in relation to pipeline DCOs – for example, the Southampton to London Pipeline DCO 2020 article 12.</p> <p>Section 56 provides that, if it appears to the street authority that street works are likely to cause serious disruption to traffic, which would be avoided or reduced if the works were carried out only at certain times or on certain days, the authority may give the undertaker a direction as to the times or days when the works may or may not be carried out.</p> <p>The exercise of Section 56 would be inappropriate to a project authorised by a DCO. Works under the Order are constrained by the ES project description and assessment, and no consent would be in place to carry out works outside the working hours set out in the ES envelope. Working hours and days are outlined in the OCEMP [D.6.5.4] and OCTMP [D.6.5.3], and will be controlled through the CEMP and CTMP approved under Requirements 5 and 6.</p> <p>In any case, the Applicant has not sought any power in the DCO to carry out works on the SRN which could disrupt traffic – all of the streets proposed for temporary closure or traffic management are listed and do not include the English SRN. The Applicant has proposed a trenchless crossing to avoid disruption on the SRN.</p>
Article 14 - Temporary	(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site, any street other than those referred to in Schedules 5 (streets to be	This would allow with the consent of the street authority any street with the within the Order limits if required in carrying out the authorised development to be temporarily	This is now Article 15 of the draft Development Consent Order (Revision G) <b>[REP4-008]</b> .

Article No and heading	Provisions of concern	Reasons	Applicant's Response
restriction of use of streets	<p>temporarily stopped up or restricted); and 6 (public rights of way to be temporarily restricted) without the consent of the street authority, which may attach reasonable conditions to the consent but such consent is not to be unreasonably withheld or delayed.</p> <p>(7) If a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.</p>	<p>stopped up, altered or diverted in addition to those set out in Schedule 5 and 6. This seems unnecessarily wide. National Highways would reasonably require input and the necessary safeguards to protect its position including for instance a scheme of traffic management, road safety audit, road space booking (if applicable) and a commuted sum to protect our position as per National Highways' protective provisions.</p> <p>If temporarily stopped up streets can be used as a temporary working site, then consideration must be given to the duration and any impacts on National Highways duty regarding the SRN in the event access is required. Whilst consent is required, deemed consent applies and this is not acceptable to National Highways for the reasons set out in this response.</p>	<p>Article 15(1) allows the undertaker to temporarily stop up, alter or divert any street. However, this is subject to Article 15(5) which prevents the exercise of such powers without the consent of the street authority. Article 15(5) allows the street authority to attach reasonable conditions to any such consent. This addresses National Highways' concerns regarding impacts on the SRN.</p> <p>The Applicant considers that the deemed consent provisions in Article 15(7) are appropriate. The Applicant cannot accept a position whereby due to the delay of National Highways the undertaker could experience serious construction delays. The deemed consent provision is considered necessary to remove the possibility for delay and provide certainty that the proposed development can be delivered by the undertaker in a timely manner.</p> <p>The Applicant notes that National Highways routinely seeks similar provisions when it is promoting its own DCOs. The Applicant refers to, amongst many recent examples, A417 Missing Link DCO 2022 article 15, A47 Wansford to Sutton DCO 2023 article 16, and A428 Black Cat to Caxton Gibbet DCO 2022 article 16. Those DCO articles also provide for deemed consent, and it is noted that National Highways allows other street authorities a 28 day determination period before consent is deemed to have been granted.</p>
Article 15 Access to Works –	<p>(1) The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</p> <p>(2) Subject to paragraph (3), the power set out in paragraph (1) may not be exercised without the undertaker having first obtained the consent of the street authority which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed, following consultation by the street authority with the relevant planning authority If the street authority which has received an application for consent under this paragraph fails to notify the undertaker of its</p>	<p>Any new access off the SRN poses safety concerns and under the Highways Act 1980 (s175B) National Highways approval is required to ensure that only safe and appropriate accesses are introduced. Whilst s175B does not apply if development consent is required under the Planning Act 2008 this is not, in National Highways' view, because highway authority consent is not required but rather that is expected to be appropriately covered under the DCO and the DCO would provide for such consent to be given, if appropriate. The deemed consent approval is again unacceptable to National Highways for reasons already given.</p>	<p>This is now Article 16 of the draft Development Consent Order (Revision G) <b>[REP4-008]</b>.</p> <p>As noted by NH, S175B does not apply to DCOs. The Applicant stresses again that no new accesses off the SRN are proposed, listed in the draft DCO, or described or assessed in the ES. NH has not set out any reason why the Applicant's access plan is deficient and it would need another access, or why that access would need to be from the SRN. The Applicant does not consider it could deliver a new SRN junction under this consent, it is simply not in scope and would require a material change to the application</p>



Article No and heading	Provisions of concern	Reasons	Applicant's Response
	<p>decision before the end of the 42 day period beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.</p>		<p>Article 16(1) is subject to Article 16(2), which prevents the exercise of such powers without the consent of the street authority. Article 16(2) allows the street authority to attach reasonable conditions to any such consent. This addresses National Highways' concerns regarding impacts on the SRN.</p> <p>The Applicant considers that the deemed consent provisions in Article 16(2) are appropriate. The Applicant cannot accept a position whereby due to the delay of National Highways the undertaker could experience serious construction delays. The deemed consent provision is considered necessary to remove the possibility for delay and provide certainty that the proposed development can be delivered by the undertaker in a timely manner.</p> <p>The Applicant notes that National Highways routinely seeks deemed consent provisions which it is promoting its DCOS, and generally allows a 28 day determined period before consent is deemed to have been granted.</p>
<p>Article 21 Authority to survey and investigate the land –</p>	<p>21.(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—</p> <ul style="list-style-type: none"> <li>(a) survey or investigate the land;</li> <li>(b) without prejudice to the generality of sub-paragraph (a), make trial holes or pits in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</li> <li>(c) without prejudice to the generality of sub-paragraph (a), carry out environmental, utility or archaeological investigations on such land; and</li> <li>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</li> </ul> <p>(3) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.</p>	<p>This Article would allow the undertaker to enter onto any land for the purposes set out in this article. The consent of the Highway Authority is qualified and deemed consent is granted after 28 days which is too short for National Highways. National Highways requests that the period is extended and that deemed consent provisions are not included for the reasons already set out. National Highways also requests that there is the opportunity to attach conditions as is the case with other articles within the draft DCO.</p>	<p>This is now Article 22 of the draft Development Consent Order (Revision F) <b>[REP4-008]</b>.</p> <p>To clarify, Article 22 would allow the undertake to enter onto any land <u>within the Order limits</u> for the purposes set out in the article. Article 22(5)(a) restricts the exercise of this on highways to require consent from the highway authority.</p> <p>The Applicant notes that National Highways routinely seeks similar provisions when it is promoting its own DCOs. The Applicant refers to, amongst many recent examples, A417 Missing Link DCO 2022 article 23, A47 Wansford to Sutton DCO 2023 article 23, and A428 Black Cat to Caxton Gibbet DCO 2022 article 22. Those DCO articles also provide for deemed consent, and it is noted that National Highways' DCOs allows other street authorities a 28 day determination period before consent is deemed to have been granted.</p> <p>Article 22(5) already permits the highway or street authority to attach reasonable conditions to their consent, and therefore no change to the DCO is required.</p>

Article No and heading	Provisions of concern	Reasons	Applicant's Response
	<p>(5) No trial holes, boreholes, excavations or horizontal cores may be made under this article—</p> <p>(a) on land located within the highway boundary without the consent of the relevant highway authority; or</p> <p>(b) in a private street without the consent of the street authority, which authority may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed</p> <p>(7) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent, that authority is deemed to have granted consent.</p>		
Article 26 - Compulsory acquisition of rights and restrictive covenants	(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.	Interests of National Highways are subject to compulsory acquisition and the Applicant is also seeking the compulsory acquisition of rights over land belonging to National Highways, or which it holds an interest. Article 26(1) could therefore result in the extinguishment of National Highways interests. Given National Highways role as the strategic highways company responsible for the SRN in England it is not acceptable for its interests to be extinguished in such manner which could make it impossible for National Highways to fulfil its statutory and Licence obligations.	<p>This is now Article 27 of the draft Development Consent Order (Revision G) <b>[REP4-008]</b>.</p> <p>Please see row 2.7.8, Table 2.7 of the Applicant's Responses to Written Representations <b>[REP2-041]</b> submitted at Deadline 2.</p> <p>The Applicant continues to seek to agree a voluntary agreement with National Highways. The Applicant is seeking to agree a land agreement with National Highways as landowner. The Applicant is seeking to obtain appropriate subsoil property rights for the installation and retention of the pipeline.</p> <p>The proposed development does not involve interference with the highway use, no powers are sought to possess or control the operational highway, no works are proposed to the highway itself, and the NRSWA consent required under s61 is not disapplied.</p> <p>The Applicant submits that the installation and operation of pipeline in the subsoil under a highway by trenchless techniques and subject to approval of the technical detail of that installation by the highway authority is not detrimental to NH.</p> <p>The Applicant can confirm that all works in the vicinity of National Highways assets will be undertaken in accordance with DMRB Standard CD622, as agreed in the draft SoCG with National Highways.</p>

Article No and heading	Provisions of concern	Reasons	Applicant's Response
Article 29 - Private Rights	<p>(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.</p> <p>(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) to be determined, in case of dispute, as if it were a dispute, under Part 1 of the 1961 Act.</p>	<p>Private rights are suspended and unenforceable which may have an impact on day-to-day operations if access is required as any rights will be suspended for as long as the undertaker remains in lawful possession.</p> <p>Given National Highways role as the strategic highways company responsible for the SRN in England it is not acceptable for its interests to be extinguished in such manner which could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p> <p>The compensation provisions are not sufficient from National Highways' perspective as we have a duty to safeguard the SRN.</p>	<p>This is now Article 30 of the draft Development Consent Order (Revision G) <b>[REP4-008]</b>.</p> <p>Please see response in row above.</p>
Article 33 – Rights under or over streets	<p>(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.</p> <p>(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.</p>	<p>There is no requirement to obtain the consent prior to doing so. Also, this can be exercised in connection with the authorised development and any other purpose ancillary to the authorised development. This seems to be wide ranging and could potentially interfere with the subsoil of the SRN. National Highways is concerned that such a wide power, without controls, creates significant safety concerns. Anyone seeking to carry out works above or below the SRN would ordinarily be expected to comply with various safety requirements so National Highways is concerned with the blanket power this article provides without the ability for National Highways to influence how any such works are carried out.</p> <p>It is clearly in the public interest to ensure that any works in the airspace above the SRN are appropriately authorised and National Highways must have a role to play in such. Similarly, any works beneath the SRN must be carried out with appropriate safeguards to ensure the integrity of the highway is not adversely affected.</p>	<p>This is now Article 34 of the draft Development Consent Order (Revision G) <b>[REP4-008]</b>.</p> <p>The purpose of Article 34 is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.</p> <p>The proposed development requires to cross streets and create new accesses onto existing streets in several places. This article allows those works to be undertaken without interfering with the ownership of land under and above streets which is often separately held from the highway authority interest in the street itself. This supports minimisation of use of compulsory powers and interference with surface interests and is therefore entirely appropriate and necessary.</p> <p>The Applicant again notes that it accepts and agrees that NH has a legitimate interest in approving the works under the SRN and that the section 61 process will be followed regardless of depth, The works under the highway will</p>

Article No and heading	Provisions of concern	Reasons	Applicant's Response
			<p>accordingly be appropriately authorised before they proceed.</p> <p>The Applicant notes that National Highways routinely seeks similar provisions when it is promoting its own DCOs. The Applicant refers to, amongst many recent examples, A417 Missing Link DCO 2022 article 33, A47 Wansford to Sutton DCO 2023 article 33, and A428 Black Cat to Caxton Gibbet DCO 2022 article 36. Those DCO articles do not contain a requirement to obtain consent prior to exercise of the powers.</p>
<p>Article 34 – Temporary use of land for carrying out the authorised development</p>	<p>(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 25 (time limit for exercise of authority to acquire land compulsorily)—</p> <p>(a) enter on and take temporary possession of—</p> <p>(iii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;</p> <p>(c) construct temporary works (including the provision of means of access), structures and buildings on that land</p> <p>(2) Not less than 3 months before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(iii)</p> <p>(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—</p> <p>(b) in the case of any land referred to in paragraph (1)(a)(iii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry</p>	<p>The undertaker can temporarily use any other Order land in connection with the authorised development subject to the time limit in Article 25. There is an obligation on the undertaker to serve a notice not less than 3 months before doing so. This might include the SRN which would allow the provision of means of access from the SRN. This also gives a power to construct new accesses. Such a wide power has the potential to cause National Highways significant concerns and could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p> <p>National Highways' Protective Provisions would require the consent of National Highways and details of any proposed road space bookings, if applicable and/or to submit a scheme of traffic management for National Highways' approval.</p>	<p>This is now Article 35 of the draft Development Consent Order (Revision G) <b>[REP4-008]</b>.</p> <p>The purpose of Article 35 is to allow the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the authorised development but which is not required permanently. Article 35 also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired.</p> <p>The inclusion of this article is important to ensure that the authorised development can be carried out efficiently and expeditiously following the making of the Order. The undertaker is entitled to either occupy and use land pending its permanent acquisition, or to temporarily occupy and use land that is not to be permanently acquired, with provision made for the restoration of the land and the payment of compensation to the affected landowners and occupiers for any loss or damage arising. These powers are considered to be reasonable given the status of the authorised development as a nationally significant infrastructure project.</p> <p>If the powers conferred by this article were not included then the undertaker would be forced to seek permanent rights over, or the permanent acquisition of, all of the land required for the authorised development, which would be disproportionate for those plots which have been identified as being suitable for temporary occupation and use.</p> <p>The Applicant notes that National Highways routinely seeks similar provisions when it is promoting its own DCOs. The Applicant refers to, amongst many recent examples, A417 Missing Link DCO 2022 article 34, A47</p>

Article No and heading	Provisions of concern	Reasons	Applicant's Response
			<p>Wansford to Sutton DCO 2023 article 34, and A428 Black Cat to Caxton Gibbet DCO 2022 article 37.</p> <p>The Applicant has agreed in principle that protective provisions will be included. The drafting of this is under negotiation.</p>

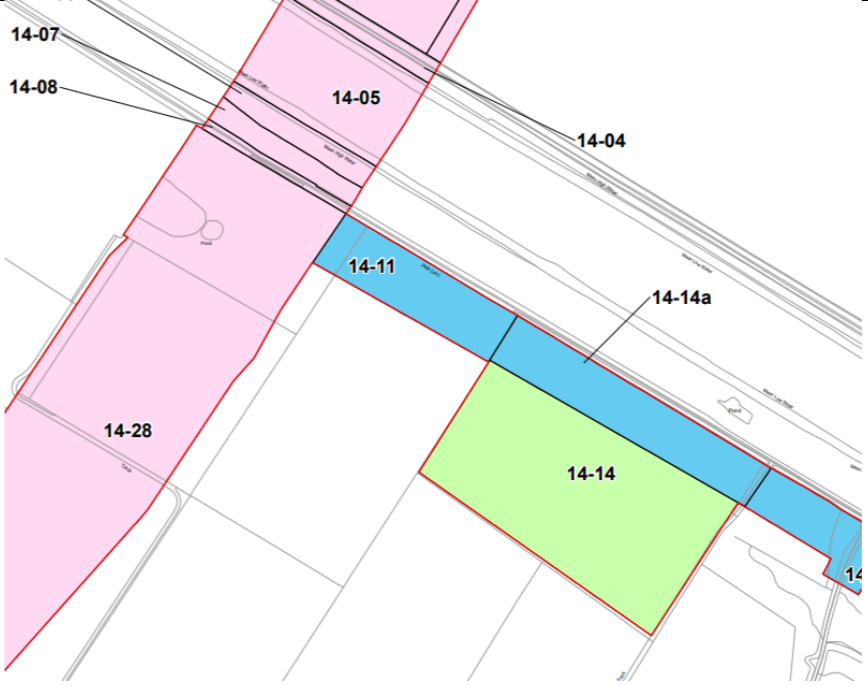
**Table 2.22: Applicant's Comments on Natural Resources Wales - Deadline 4 Submission [REP4-291]**


Reference	IP's Comment	Applicant's Response
	<i>2. Written summary of NRW's oral representation at the ISH1 on Environmental Matters</i>	
	<i>Item 3 – Biodiversity</i>	
2.22.1	NRW confirmed that a licence will be required under the Conservation of Habitats and Species Regulations 2017 in respect of disturbance to European Protected Species arising from the proposed development. NRW's permitting service, as the regulator, may only grant such a licence if the legislative requirements are met, which includes being satisfied that there is a licensable purpose and that the action is not detrimental to maintaining the species at favourable conservation status. NRW understands that the applicant intends to provide 'shadow' or 'draft' licence applications into the examination for NRW to consider. To date these have not been provided and NRW is currently not in a position to advise further.	The Applicant can confirm that shadow licence applications will be submitted to NRW at Deadline 5.
2.22.2	NRW confirmed in respect of the Barn Owl surveys, that the advice provided in its previous submissions for survey distances to extend to 100 metres and accordingly beyond the Order limits, is based on academic guidance, namely Goodship, N.M. and Furness, R.W. 2022 (MacArthur Green). Disturbance Distance Review: An updated literature review of disturbance distances of selected bird species. NatureScot Research Report 1283.	The Applicant notes this response and has no further comment.
	<i>Item 5 – Water Environment/ Water Framework Directive (WFD)/ Flood Risk/ Decommissioning</i>	
	<i>a) Water Framework Directive</i>	
2.22.3	NRW elaborated on the concerns set out in its written representations (REP1-071, para 1.1/p5 for a summary of the concerns, and para 8 for the detailed substantive comments) regarding the implications of the proposed development for compliance with the Water Environment ('Water Framework Directive') (England and Wales) Regulations 2017 (the Regulations), which transpose the Water Framework Directive ('WFD') in Wales. NRW's advice is that as a result of the applicant's proposals to lay pipelines that will cross the Alltami Brook watercourse, which involves excavation of the bedrock, there may consequently be deterioration in the status of the Wepre Brook waterbody. The applicant has adopted, and despite the advice from NRW, is maintaining a position that there is no risk of deterioration in this regard. NRW's advice is that insufficient information has been presented by the applicant to demonstrate that deterioration can be ruled out. Accordingly, NRW's advice is that the ExA should not be recommending giving consent unless the applicant can satisfy the derogation requirements of Regulation 19 of the Regulations, which transpose Article 4(7) of the WFD. The applicant therefore should provide an updated WFD compliance assessment either providing evidence that satisfies NRW that deterioration can be ruled out, or alternatively to present its case on the derogation.	The Applicant is in discussion with NRW in relation to this matter. In addition, the Applicant has undertaken a Hydrogeological Impact Assessment (HIA) (document reference: <b>D.7.36</b> ), submitted at Deadline 5, to provide a stronger evidence-base for WFD compliance. The evidence indicates that there is no pathway for there to be a loss of water flow due to there being an upwards hydraulic gradient.  However, given NRW's position, the Applicant has prepared a Without Prejudice WFD Derogation case for Alltami Brook Crossing (document reference: <b>D.7.38</b> ), submitted at Deadline 5, to satisfy the requirements of Regulation 19 of The Water Environment (Water Framework Directive) (England and Wales) Regulations 2019, which transpose the Article 4(7) tests.
2.22.4	NRW's lead specialist hydrogeologist, Stefan Le Roy, provided an explanation of the hydrogeological concerns in respect of the excavation and disruption of bedrock within	The Applicant has produced a Hydrogeological Impact Appraisal (HIA) (document reference: <b>D.7.36</b> ), submitted at Deadline 5, which addresses NRW's concerns regarding

Reference	IP's Comment	Applicant's Response
	<p>Alltami Brook which is immediately underlain by fractured bedrock (the Gwespyr Sandstone) wherein the groundwater flows are complex. The fractured bedrock can act as preferential pathways for the transmission of groundwater. The nature of the groundwater surface water interaction at the Alltami Brook crossing point is currently unknown as is the wider groundwater regime. There is no site-specific ground investigation data currently available to characterise the local geology, hydrogeology, the nature of the interaction with Alltami Brook and the hydrodynamic relationship, if any, between the Brook and anthropogenic features such as the infilled made ground known to be present in the land abutting the southern bank of the brook, local legacy mine workings and weak ground characterised by observed landslips. There is a potential for water flow loss from the Alltami Brook in and around the installed pipeline to ground. Any flow loss could have consequences for the viability of the brook. The local geology to the South has been altered by excavation and mine workings. The works required to install the pipeline at the crossing point will require the southern slope to be reworked/excavated as currently this ground does not visually appear to be sufficiently load bearing for the heavy plant required for the excavation and pipeline installation works. This is an added complication to the proposed engineering works.</p>	<p>the proposed open-cut approach at Alltami Brook. The HIA presents a conceptual model of the hydrogeology at the Alltami Brook. The main conclusion of the HIA is that there is no clear mechanism which would allow for a loss of flow to occur which would impact the Water Framework Directive (WFD) status of the Wepre Brook surface water body (which the Alltmai Brook is a tributary of).</p> <p>The points regarding the southern slope potential instability and implications for construction works are noted and will be addressed during detailed design.</p>
2.22.5	<p>NRW's WFD specialist, Helen Millband, explained that reduced flow in a watercourse can affect freshwater wildlife and water quality in a variety of detrimental ways and that physical interventions can change the shape and structure of the watercourse so that there is reduced habitat available for certain taxa like fish, invertebrates, or aquatic plants. Consequently, there may be reductions in dissolved oxygen in the water resulting in pollutants and nutrients becoming more concentrated in the absence of additional water potentially leading to adverse impacts on aquatic wildlife.</p>	<p>The Applicant is in ongoing discussions with NRW in relation to this matter. The Applicant has undertaken additional assessment of the hydrogeological conditions and has provided NRW with a copy of the Hydrogeological Impact Assessment report (document reference: <b>D.7.37</b>), as submitted at Deadline 5. The results of the HIA report indicate an upwards hydraulic gradient and therefore no pathway for the potential loss of water. In addition, any fractures exposed within the excavation for the trenched crossing would be sealed by high-pressure grouting techniques to create an impermeable seal, thereby preventing a pathway for potential water loss. Consequently, the Applicant does not consider there to be a risk to reduced water flows within the Wepre Brook water body and therefore no impacts to the shape and structure of the watercourse, habitat availability or impacts to biological elements or water quality.</p>
	b) Access to flood risk management infrastructure	
2.22.6	<p>A request was made by email to the Planning Inspectorate dated 5 June for this matter to be the subject of discussion at the ISH on 6 June, however this was not brought to the panels' attention prior to the hearing and the Examining Authority indicated that the concerns could be further addressed by written submissions.</p>	<p>The Applicant has no comments on this matter.</p>
2.22.7	<p>As highlighted in NRW's written representations (see Section 3, paragraphs 3.3 to 3.4) and deadline 2 submissions, there are a number of proposed temporary construction compounds within close vicinity of flood risk assets and main rivers. NRW requires unimpeded access to such flood risk management infrastructure. These concerns relate primarily to the construction phase, specifically the risk of physical impediment resulting from the temporary construction compounds.</p>	<p>The Applicant acknowledges the requirement for NRW to access flood defences. The trenchless crossing of the River Dee will also span the flood defences so there are no direct impacts to these defences. The trenchless crossing pits will be located in accordance with the OCEMP <b>[REP4-237]</b> commitment D-BD-019, as follows:</p>

Reference	IP's Comment	Applicant's Response
		<p>All entry and exit pits for all trenchless crossings will be sited a minimum of 8 m away from any main river bank top (and any defence structure on that watercourse), and 16 m away from any transitional (tidal) waters (and any defence structures on that watercourse).</p> <p>Stand-off distances around watercourses will be implemented prior to the commencement of works and clearly demarcated through the use of physical barriers (fencing, tape or similar). These include;</p> <ul style="list-style-type: none"> <li>• A minimum 8 m buffer will be demarcated around non-tidal ordinary or main river watercourses; and</li> <li>• A minimum 16 m buffer will be demarcated around tidal watercourses, i.e., the River Dee.</li> </ul> <p>With regards the crossing under the River Dee, this will be a minimum depth of at least 15m for Horizontal Directional Drilling or 8m for Micro-tunnelling (distance between the top of the casing and the riverbed).</p> <p>A response was provided to this question in Ref. 2.5.2 of the Applicant's Comments on Submissions Received at Deadline 2 <b>[REP3-033]</b>.</p>
2.22.8	<p>In its Deadline 3 submission, the applicant acknowledges that fencing required for the construction compound may comprise a physical impediment. The Applicant is seeking to address NRW's concerns by including Protective Provisions within the DCO which the applicant explains is intended to be of assistance to NRW. In summary, the protective provisions seek to provide access to NRW 'on reasonable request' and to consult NRW during the development of detailed design in order to ensure that the proposed design would not prevent or unduly restrict NRW in accessing or maintaining any of its assets. The Applicant submits that this is 'entirely appropriate' in the context of a working site which will include large excavations. The applicant refers to NRW's powers of access under s173 and Schedule 20 of the Water Resources Act 1991, under which access can ordinarily be ensured with 7 days' notice.</p>	<p>The Applicant suggests that this discussion has become somewhat sidetracked into powers of entry and especially the emergency powers.</p> <p>The Applicant does not acknowledge that the fencing for <b>construction compounds</b> would be a physical impediment to access to flood defences. The Applicant was making the point that it has legal obligations to meet as well and the existence of a power of entry does not mean that other parties cannot use land as needed. The core of a power of entry is to require access to be given <b>when required</b>, not for a theoretical access across all land to be maintained in a ready state at all times. To submit that it must be ready at all times is to submit that a gate or door can never be locked or that no landowner can fence land- that is not a credible position.</p>
2.22.9	<p>NRW disagrees with the approach taken by the applicant. NRW's concern is not whether it has the powers to access the flood risk infrastructure. Notwithstanding the fact that NRW would not need to provide notice under s169, s173 and Schedule 20 of the Water Resources Act 1991 for works carried out in an emergency, it may also generally rely upon its distinct powers under Art. 9 of the Natural Resources Body for Wales (Establishment) Order 2012 to carry out such engineering or building operations as it considers appropriate, without prior notice. Therefore, NRW considers it necessary to ensure that there will be no physical impediment to accessing the flood risk infrastructure as a matter of design.</p>	<p>The Applicant has no construction compounds located so as to prevent access to flood defences. The compound to the north of the river Dee is separated by two fields and a road. The compound to the south (in green in the excerpt below) is located on the far side of the access from the flood defences and again cannot physically impede access to them. NRW requested a reduction in the order limits in this area which the Applicant actioned specifically to exclude the flood defences on the north side of the blue plots.</p>
2.22.10	<p>The River Dee channel between Chester Weir and the estuary mouth is canalised with substantial earth embankment defences on both sides which reduce the risk of tidal flooding to a vast number of residential and commercial properties. A number of communities benefit from the presence of these defences. The Northern Embankment</p>	



Reference	IP's Comment	Applicant's Response
	<p><a href="http://www.naturalresourceswales.gov.uk">www.naturalresourceswales.gov.uk</a> <a href="http://www.cyfoethnaturiolcymru.gov.uk">www.cyfoethnaturiolcymru.gov.uk</a> Page 4 of 4 reduces the risk of flooding to communities including Garden City and Sealand, and the Hawarden Embankment reduces the risk of flooding to communities including Sandycroft, Pentre and Queensferry. Given the number of properties benefitting from the presence of the embankments, they are considered to be two of the key flood risk assets in North Wales. It is therefore imperative that NRW has unimpeded access to these embankments during the construction phase and otherwise.</p>	
2.22.11	<p>In summary, NRW cannot agree to deference being given to the applicant in the design stage of the proposed development. The applicant's assertion that NRW is being "overly controlling" in this regard fails to understand the importance of NRW's statutory functions and the flood risk implications presented as result of the development proposals. Accordingly, NRW's approval must be obtained for the design of the construction compounds where there is any risk of any physical impediment to access. A commitment by the applicant merely to consult with NRW is not adequate and unacceptable. NRW considers that such approval may be secured either by way of distinct requirement in the draft DCO or by inclusion of a provision to this effect in the CEMP, making clear, that construction of the compounds may not take place unless and until NRW has given approval. NRW submits that this is a proportionate and necessary approach.</p>	 <p>The works in the pipeline corridor in this location (pink) will be HDD pits which have been agreed to be at least 16m from the river. The compounds for those will be fenced as excavation is required, however each compound will be narrower than the order limits and set back from the river. NRW will literally be able to go around this fencing. The set back from the river is demonstrated by the lack of need to close rights of way along the flood defences. On both sides of the river, the AROW plans demonstrate that the public rights of way along the flood defences are being maintained open for use.</p>

Reference	IP's Comment	Applicant's Response
		 <p>The Applicant notes that it has no intention of or interest in blocking access to flood defences and there is no reasonable basis to assume it would. In any case, self-interest would require the Applicant to assist not hinder NRW as, being in proximity to the river, it would be very adversely impacted by any failure of the flood defences.</p> <p>The Applicant was asked to provide PPs for access by NRW and sought to do so. Rather than engaging with the Applicant on the drafting and noting that, for example what was sought was a provision that the track shown in blue in the excerpt above would not be blocked, NRW has instead sought a number of unnecessary and unreasonable requirements.</p> <p>The Applicant entirely accepts that NRW has powers of entry. Indeed that is partly why the Applicant submits that the requirements NRW are seeking are unnecessary. In a non-emergency scenario, NRW can require access on notice. In an emergency situation NRW can take access immediately – literally around the fence line. Where NRW did require something to be moved, they have the powers to require that already in the legislation cited, they do not need DCO drafting for that. In those circumstances, then, in the same way as a gate may need to be unlocked or farm equipment moved in other locations, the Applicant would take the necessary steps. The fencing concerned will most likely be Heras type modular fencing bolted together – this can be moved very quickly when needed and to class it as an unacceptable impediment is disproportionate and unrealistic.</p>
	<p><i>2. Update on progress on the Statement of Common Ground and the Options Appraisal report</i></p>	

Reference	IP's Comment	Applicant's Response
2.22.12	NRW has not been contacted by the applicant to progress the SoCG since 23 May 2023.	The Applicant has engaged NRW on specific matters in advance of the hearings with a view to capturing these within an updated Statement of Common Ground <b>[REP3-026]</b> . The Applicant has held several meetings with NRW (the most recent being on 26 <sup>th</sup> June 2023) in order to seek to make progress on the outstanding matters which would then be documented in the SoCG. The Applicant therefore considers the statement that there has not been any contact to be inaccurate.
2.22.13	NRW has been provided with the Options Appraisal report [REP3-039] submitted by the Applicant at DL3 and will provide comment on this, and if appropriate identify any issues agreed and not agreed when consulted by the applicant in respect of the SoCG.	The Applicant notes NRW's comment and awaits their further response.

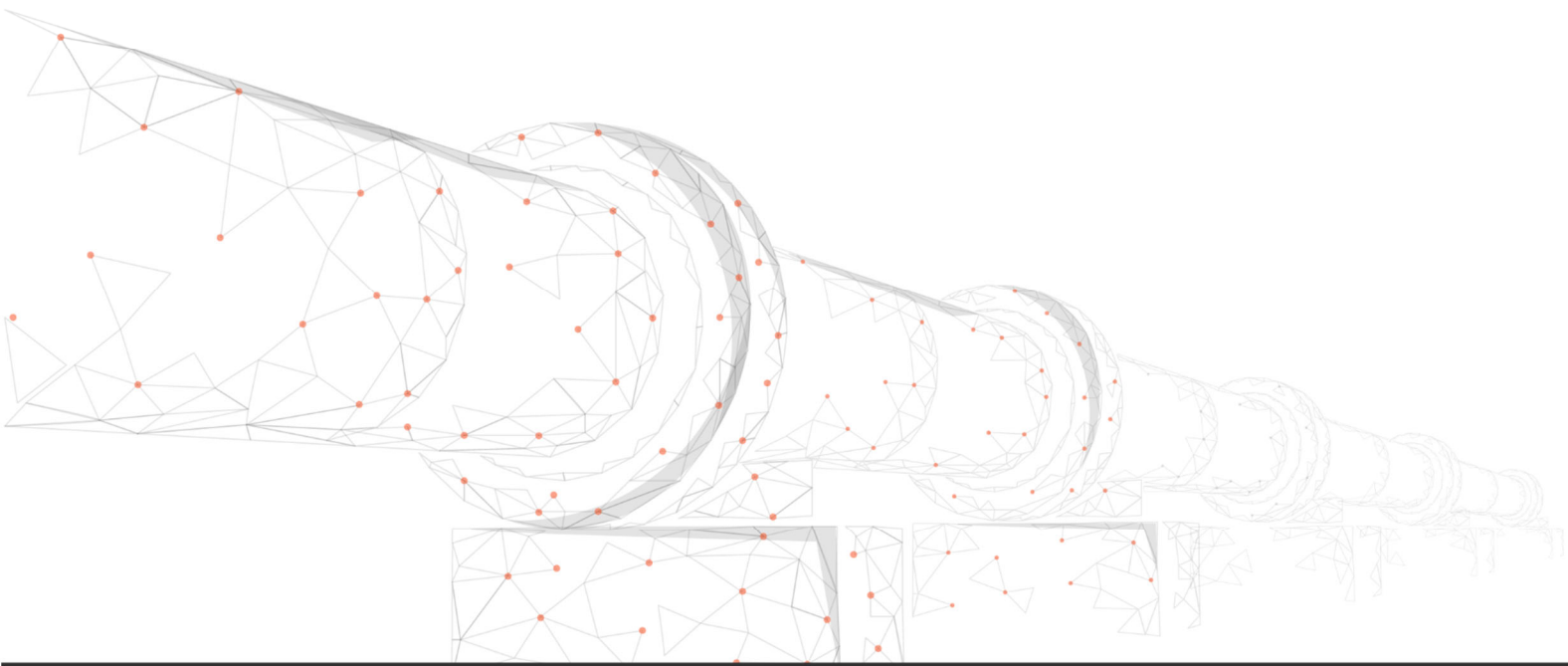
**Table 2.23: Applicant's Comments on Fieldfisher LLP on behalf of British Pipeline Agency Limited ("BPA") - Deadline 4 Submission [AS-075]**

Reference	IP Submission	Applicant's Response
2.23.1	<p>We represent BPA. BPA acts as agent and operator on behalf of the United Kingdom Oil Pipelines Limited ("UKOP"). UKOP operate a national pipeline system transporting a variety of fuels.</p> <p>The UKOP pipeline network transports around 35% of the UK's petrol and diesel and upwards of 60% of the UK's jet aviation fuel (including 40% of Heathrow's, over 90% of Gatwick's, all of Luton East Midlands' and Birmingham's jet fuel) and supplies a number of fuel terminals, including the largest inland UK fuel terminal (which is at Kingsbury).</p>	<p>The Applicant and BPA are in dialogue on Protective Provisions and these matters can be continued and concluded in those discussions.</p>
2.23.2	<p>The UKOP pipeline (the Mersey to Kingsbury pipeline) to be affected by the construction activities contemplated in the Order, is a high pressure pipeline which transports fuel (including petrol, diesel, jet fuel and heating fuels) from Stanlow to Kingsbury for storage and onward delivery to petrol stations and airports.</p> <p>The section of pipeline affected by the Order currently has over 90% utilisation, so any disruption (including any inability to repair or maintain the asset) would significantly impact the supply and storage of fuels across the UK, possibly for months.</p> <p>We have not been in communication with the Examining Authority to date in relation to the Order and we apologise for our late correspondence.</p>	
2.23.3	<p>We understand the deadline for a response to the statutory consultation was 22 March 2022. The Applicant served the consultation documentation on BPA (UK) Limited (the incorrect entity) rather than BPA (the correct entity) as agents of UKOP (the owner of the pipeline and related infrastructure).</p>	
2.23.4	<p>BPA subsequently received the consultation documentation in January 2023. Unfortunately however, this was received by its engineering department, who were unaware a relevant representation to the Order should have been lodged. Regrettably, the consultation documentation did not reach the 'correct' internal department at BPA until recently.</p>	
2.23.5	<p>We understand that BPA/UKOP have been registered as an interested party. We are now writing to update the Examining Authority on discussions between BPA/UKOP and the Applicant ("the Parties").</p>	
2.23.6	<p>Fieldfisher, on behalf of BPA, received draft protective provisions from Burges Salmon, acting for the Applicant, on 23 June 2023. It is hoped that acceptable protective provisions will be agreed between the parties. Such protective provisions, once agreed, should provide acceptable comfort to BPA/UKOP to the extent that any of its apparatus, (including live pipelines) are affected by the Order.</p>	

Reference	IP Submission	Applicant's Response
2.23.7	The agreement of protective provisions is of critical importance to ensure that the UKOP network retains all necessary protections and rights to enable it to repair maintain and operate the pipeline network in accordance with its statutory and regulatory framework.	
2.23.8	It has come to our attention that Article 6 of the draft Order wording (Power to Maintain the Authorised Development) allows (as part of the carrying out and maintaining of such authorised development) for vertical diversion of the HyNet Co2 line to a level where it could conflict with UKOP's live fuel line thereby posing significant health and safety risks.	
2.23.9	These health and safety concerns would be mitigated through appropriate protective provisions. We will update the Examining Authority on the progress of negotiations, but in the meantime, it is asked to note that this remains an outstanding issue between the Applicant and BPA/UKOP.	
2.23.10	In the interim, the parties have been reviewing, negotiating and seeking to agree the Statement of Common Ground.	The Applicant and BPA are in continuing engagement with regard to the Statement of Common Ground <b>[REP1-033]</b> .

# Appendices

**Appendix A: Table 2.20 - Applicant's Comments on National Highways Limited - Deadline 4 Submission - Post hearing submissions of National Highways Limited in respect of ISH2 and CAH1 [REP4-290]**



**TABLE 2.20 – APPENDIX**

This Appendix sets out the principal amendments to National Highways’ submitted Protective Provisions which are proposed by the Applicant. The Applicant is also seeking minor amendments which are not set out in this Appendix.

Paragraph	NH Draft PP	Applicant proposed amendment	Applicant reason for amendment	NH response
2	Definition of “as build information”	Deletion of entire definition	Definition relates to provisions regarding works to the SRN which are not relevant to the authorised development	
2	Definition of “bond sum”	Deletion of entire definition	Definition relates to proposed Paragraph 15 (Security), which is not considered to be proportionate as the undertaker is not proposing or seeking consent for any works to the SRN carriageway	
2	Definition of “cash surety”	Deletion of entire definition	Definition relates to proposed Paragraph 15 (Security), which is not considered to be proportionate as the undertaker is not proposing or seeking consent for any works to the SRN carriageway	
2	Definition of “commuted sum”	Deletion of entire definition	Commuted sums are payable only for maintenance of non-standard road works. No such works are proposed or required and the Applicant is not creating any new highway asset that NH would be liable to maintain. Relevant works and maintenance relate to the pipeline, for which only the undertaker will be carrying out maintenance. Payment of a commuted sum to NH for future maintenance is therefore not required	

2	Definition of “defects period”	Deletion of entire definition	Definition relates to provisions regarding works to the SRN which are not relevant to the authorised development	
2	Definition of “detailed design information”	Deletion of subparagraph (q) requiring “stage 1 and stage 2 safety audits and exceptions agreed”	Definition relates to provisions regarding works to the SRN which are not relevant to the authorised development	
2	Definition of “final certificate”	Deletion of entire definition	Definition relates to provisions regarding works to the SRN which are not relevant to the authorised development	
2	Definition of “the health and safety file”	Deletion of entire definition	Definition relates to provisions regarding works to the SRN which are not relevant to the authorised development	
2	Definition of “provisional certificate”	Deletion of entire definition	Definition relates to provisions regarding works to the SRN which are not relevant to the Authorised development	
2	Definition of “road safety audit”	Deletion of entire definition	Definition relates to provisions regarding works to the SRN which are not relevant to the authorised development	
2	Definition of “road safety audit standard”	Deletion of entire definition	Definition relates to provisions regarding works to the SRN which are not relevant to the authorised development	
2	Definition of “specified works”	Amendment of definition to remove inclusion of highway works and signalisation	Wording refers to works to the SRN which are not relevant to the authorised development	



2	Definition of "winter maintenance"	Deletion of entire definition	Definition relates to provisions regarding works to the SRN which are not relevant to the Authorised development	
3	General insertion	- Insertion of "...and National Highways acknowledges that the undertaker will not carry out works to the strategic road network itself"	Confirms that the authorised development does not include any consent for any works to the SRN carriageway, including no new accesses and no elements that require highway design or road safety audit	
6	Works outside the Order limits	Deletion of entire paragraph	Undertaker is not seeking consent for and has not assessed carrying out works to the SRN	
7(1) (new 6(1))	Prior approvals and security	<p>Deletion of prior approval provisions regarding works to the SRN, which are not relevant to the authorised development.</p> <p>Deletion of:</p> <ul style="list-style-type: none"> <li>- requirement not to commence specified works until a stage 1 and stage 2 road safety audit has been carried out;</li> </ul> <p>And in terms of the detailed design works to be submitted to and approved by National Highways, deletion of:</p> <ul style="list-style-type: none"> <li>- information relating to stage 1 and stage 2 safety audits;</li> <li>- details of the proposed road space bookings;</li> </ul>	Undertaker does not intend to carry out works to the SRN and extraneous provisions have therefore been deleted.	

		<ul style="list-style-type: none"> <li>- process for stakeholder liaison;</li> <li>- information regarding walking, cycling and horse riding assessment;</li> <li>- scheme of traffic management;</li> <li>- road safety audits;</li> <li>- commuted sum estimate;</li> <li>- maintenance operations;</li> <li>- collateral warranties</li> </ul>		
<b>7(2) (new 6(2))</b>	Exercise of DCO articles	Holding point that wording cannot be accepted until voluntary land agreement is reached		
<b>7(2) (new 6(2))</b>	Ability for NH to require the undertaker to provide details of proposed road space books and/or submit a scheme of traffic management	Insertion of “where such approval is reasonable and necessary for the safe operation of the undertaking of National Highways to continue without serious detriment and required under National Highways road booking space procedures”	Undertaker is not carrying out works to the SRN or any surface works requiring a road space or traffic management scheme for those works. Where the Applicant requires to move AILs or other large or slow moving vehicles the normal consents will be required as set out in the other consents and licences statement. Deletion of the provisions is suggested, or retention subject to the Applicant’s proposed amendment.	
<b>7(4)(c) (new 6(4)(c))</b>	Automatic deeming approval of	Amendment so if no response within 2 months approval is deemed to be accepted, rather than automatically deeming to be refused	The Undertaker cannot accept a position whereby due to the delay of NH the undertaker could experience serious construction delays. It is within NH’s control to prevent the deeming provisions being triggered.	

<b>8(3) (new 7(3))</b>	Construction of the specified works	Deletion of subparagraph (3)(b) regarding DMRB	Undertaker does not intend to carry out works to the SRN, and so this is not considered relevant.	
<b>8(6) and (7) (new 7(6) and (7))</b>	Process for remedying damage	Amendment to provide that any damage to the SRN is to be remedied by NH, who may recover costs through the indemnity provisions.	The undertaker will not be doing any works to the SRN, and so this provision should not be necessary. If any damage should be caused, the undertaker is not a highways designer or constructor, would not be in occupation of the SRN, and would not have any power to carry out these works without NH's authority. Any damage caused by the undertaker's works under the SRN would be remedied at the undertaker's expense under paragraph 11. The Applicant considers that, in that very unlikely circumstance, NH would be better placed to instruct the work required in what would be most likely an urgent or emergency situation.	
<b>8(10) (new 7(10))</b>	Provision for maintenance during construction of the specified works	Deletion of entire sub-paragraph	Undertaker does not intend to carry out works to the SRN or occupy the carriageway, and this is therefore not relevant	
<b>8 (new 7)</b>	New provision	Insertion of new subparagraph: "Powers granted to National Highways to undertake any works under this paragraph include works to make safe an area but do not include powers to undertake any works to, or that may affect, the pipeline."	To clarify that NH's powers under paragraph 7 do not include powers to undertake works to, or that may affect, the pipeline.	
<b>10</b>	Provisional	Deletion of entire clause	No closure or partial closure of any of the SRN is proposed and no powers are included in the draft	

	Certificate		DCO to do this because there is no part of the English SRN listed in the street works schedules where the Applicant can close the road without further consent, and therefore these provisions are not relevant.	
11	Opening	Deletion of entire clause	No new SRN is being consented or proposed; no opening of any of the SRN is proposed, and therefore these provisions are not relevant.	
12 (new 9)	Final condition survey	Amendment of trigger from applying for provisional certificate to being the completion of specified works.  Deletion of subparagraphs (2), (3) and (4) with amendment to clarify: "If the re-surveys carried out pursuant to paragraph 10(1) indicate that any damage has been caused to a structure or asset, National Highways may carry out the steps required to reasonably remedy such damage and may recover any expenditure it reasonably incurs in so doing."	Amendments required to detach this paragraph from the deleted provisional certificate paragraph.  Amendments also required to provide that any remedial works will be carried out by NH. The undertaker is not a highways designer or constructor, would not be in occupation of the SRN, and it is not appropriate to mandate it to carry out remedial works to the SRN.	
13	Defects Period	Deletion of entire clause	This provision follows on from the provisional certificate provisions, and is therefore not required.	
14	Final Certificate	Deletion of entire clause	This provision follows on from the provisional certificate provisions, and is therefore not required.	
15	Security	Deletion of entire clause	The requirement to provide security is not proportionate given the undertaker is not carrying	

			out works to the SRN.	
<b>16</b>	Commuted sums	Deletion of entire clause	This provision follows on from the security provisions, and is therefore not required.	
<b>20</b>	Land	Deletion of provisions regarding transfer of land within the SRN boundary.	Undertaker is not seeking consent to carry out works to the SRN, and this is therefore not relevant.	