

Date: 04 July 2023
Our ref: 440480
Your ref: EN070007



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Dear Sirs

NSIP Reference Name / Code: HyNet Carbon Dioxide Pipeline / EN070007
User Code: HYCO-SP005

Response to the Examining Authority's Second Written Questions

Examining authority's submission deadline DL5 with a date of 04 July 2023

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Please find the attached Table 1 which details Natural England's responses to the ExA second written questions.

For any further advice on this consultation please contact me on the details below and copy to consultations@naturalengland.org.uk.

Yours faithfully

Angela Leigh

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Table 1: Natural England response to Examiner's second written questions ref ExQ2			
ExA question ref	Question addressed to	Question	Answer
Q2.4.1	Surveys Applicant/ CWCC/ FCC/ Natural England (NE)/ Natural Resources Wales (NRW)/ IPs	<ul style="list-style-type: none"> • The absence of ecological surveys beyond the order boundary limits for barn owls and badgers are referred to by CWCC in their detailed correspondence received at Deadline 2 and it has highlighted concerns of incomplete surveys in respect of Bats and Barn Owls. As such CWCC consider the assessments of importance levels and value/ sensitivity of receptors are taken to be as being based on incomplete data sets. In addition, it notes the need for clarifications in respect of surveys of other identified receptors. The ExA would ask: <ul style="list-style-type: none"> i. CWCC clarify which specific locational receptors it is referring to? ii. Whether CWCC take the view that all the information it has referred to is in fact necessary to inform a decision, or is it instead considered to be desirable in nature? iii. What are the specific reasons for any further surveys/ data being a necessary requirement of the Applicant? iv. What recommended distances (relative to the DCO area) for species specific ecological survey or additional data would need to be factored, bearing in mind any local or national best practice or professional expertise available to the Council? Provide clear reference to the source or ecological expertise involved. <p>Does CWCC wish to add any ecological information it has knowledge of to the examination record with these above issues in mind?</p>	Natural England understands this question is for CWCC and so has no further comment at this time.

<p>Q2.4.4</p>	<p>Survey/ mitigation</p> <p>Applicant/ CWCC/ FCC/ NE/ NRW/ IPs</p>	<ul style="list-style-type: none"> • The Applicant indicates updated surveys will take place at detailed design stage and mitigation is sufficient to safeguard or otherwise mitigate identified receptors within the Order Limits and beyond. But how is it clear mitigation would be effective without full survey information being available to first inform this? • Do IPs find the Applicant's position appropriate? 	<p>Natural England is satisfied with the applicant's proposals to undertake further surveys at the detailed design stage.</p>
<p>Q2.4.5</p>	<p>Likely Significant Effects (LSE) to protected fauna</p> <p>CWCC/ FCC/ NE/ NRW/ Woodland Trust/ IPs</p>	<ul style="list-style-type: none"> • Does CWCC/ IPs agree that the direct/ indirect effects arising to protected fauna from the pipeline route could either be managed/ avoided (where it is possible) and subsequently mitigated if needed? If not, please state why not outlining the specific areas of disagreement. • What formal mechanisms could be applied to ensure that direct/ indirect effects arising from any survey absence or ecological data shortcoming is properly managed/ accounted for through the DCO? 	<p>Natural England considers that any effects from the scheme can be avoided/reduced or mitigated.</p>
<p>Q2.4.6</p>	<p>Biodiversity Enhancement/ Biodiversity Net Gain (BNG)</p> <p>CWCC/ FCC/ NE/ NRW/ Woodland Trust/ Welsh Government/ IPs</p>	<ul style="list-style-type: none"> • The Applicant's 'Draft BNG Strategy Update' received at Deadline 2 [REP2-042] states that they are seeking to finalise a deliverable plan with key stakeholders prior to the submission of the BNG Assessment Report at Deadline 5. As part of that intended programme, the Applicant has indicated this would comprise the following: <ul style="list-style-type: none"> - Identification of landowners for BNG for Welsh Woodland. - Confirmation of English and Welsh sites for other required habitat offsets. - Initial data check of baseline via a desktop study. - Review and checking of third-party survey data. - Agree format of legal agreements to secure ongoing management of BNG. - Undertake final assessment based upon agreed habitat enhancement/ creation interventions and outline long-term management. 	<p>The draft intentions in the strategy update appear to be adequate. Assuming the review/check of 'third party survey data' refers to reviewing recent baseline surveys of off-site gain sites undertaken by landowners/other ecologists.</p> <p>Note that the long-term management of sites should cover at least 30 years and include details of monitoring as well as management, and also details of remedial actions/contingencies e.g. for any failures to meet objectives/targets of the management.</p> <p>Other local nature strategies which may present potential opportunities and that BNG and ecological enhancements should align with include; Cheshire West and Chester ecological network, Cheshire and Warrington Natural Capital Audit and Investment Plan, Cheshire West and Chester Wildflower and Grasslands Strategy, Cheshire West and Chester Parks and Green Space Strategy.</p>

		<ul style="list-style-type: none"> • Do IPs feel the above draft intentions are extensive enough? • Bearing in mind local nature strategies which have been evidenced at earlier stages are there any potential missed opportunities without further inclusion? • What else could be done to maximise ecological enhancements or BNG proposals? 	<p>The Natural Course Ecological Network Tool can also be used to highlight strategic opportunities to create lowland wetland and woodland habitats.</p>
<p>Q2.4.7</p>	<p><i>Biodiversity Enhancement/ BNG</i></p> <p>Applicant/ CWCC/ FCC/ NE/ NRW/ Welsh Government/ Woodland Trust/ IPs</p>	<ul style="list-style-type: none"> • Nature markets referred to in UK Government guidance could provide a realistic channel for making further improvements that benefit nature. Local planning authorities can assist with such proposals by formulating/ providing: <ul style="list-style-type: none"> - biodiversity action plans; - green infrastructure strategies; - catchment management plans; - biodiversity opportunity areas; and - local nature partnership documentation. • Any proposal would also need a secure relevant land by legal agreement managing the habitat for at least 30 years. This could be achieved through a planning obligation (s.106) or a conservation covenant with a responsible body. The land could be subsequently registered as a biodiversity gain site from November 2023. Current guidance outlines that the biodiversity units could be allocated to a development before or after they are registered. • What scope is there for nature markets to be used to deliver biodiversity enhancement? • Would IPs want to assist such proposals in any active engagement with the Applicant? • Has the Applicant considered such an approach, in tandem with the range of nature strategies mentioned by IPs in responding to the ExA's first written questions? 	<p>'Nature markets' referred to here would include established nature markets, such as the UK Woodland Carbon Code, UK Peatland Code and Nutrient Credits, and also potentially emerging nature markets (some funded by NEIRF), such as the Rivers Trust Water Stewardship/Replenishment project.</p>

		<ul style="list-style-type: none"> The ExA requests that full consideration of emerging/ developing nature markets be given in the draft BNG Strategy (as an additional last resort option), alongside it being broadened to incorporate an ecological enhancement strategy given the specific terminology used in wider Welsh and English environmental law/ policy applicable to the scheme (including s.6 of the Welsh duty). 	
Q2.4.8	Trees Applicant/ CWCC/ FCC/ NE/ NRW/ Woodland Trust/ IPs	<ul style="list-style-type: none"> It is noted by the ExA that in the absence of a finalised detailed design, definitive extents of hedgerow and tree losses, across the Order Limits, cannot be confirmed. How does the Applicant justify this approach from an ecological/ habitat management perspective given there are also further survey requirements which may be triggered? How can the ExA reasonably rely upon the worst-case scenario information within the ES? Or the other related ecological impact information and supporting BNG calculations provided without a detailed design and the full effects of the development being first established? Are all trees and hedges within the Order Limits considered to be at risk of direct impacts or removal now detailed within Table 9.11 LSEs during the construction stage within Chapter 9 - Biodiversity [AS-025]? 	Natural England does not have any comments to make regarding this question.
Q2.4.9	Trees Applicant/ CWCC/ FCC/ NE/ NRW/ IPs	<ul style="list-style-type: none"> A 'Trees and Woodland Strategy Toolkit' has been published during 2023 with the aim to equip Local Authorities so they can plan, create or update their own Trees and Woodland Strategies and harness the long-term benefits that trees can bring to local communities. All relevant Councils are requested to acknowledge the advice now issued. All parties within the Examination are invited to make use of all best practice provision and reference currently available. 	Natural England does not have any comments to make regarding this question.

		<ul style="list-style-type: none"> Do relevant Councils have any plans or potential aspirations to formulate such strategies in the coming fiscal periods, in light of the Examination matters for discussion or otherwise? 	
Q2.5.1	<p>Mitigation/ Design</p> <p>Applicant/ CWCC/ FCC/ NRW/ NE/ Woodland Trust /IPs</p>	<ul style="list-style-type: none"> The new tree and landscaping provision anticipated in the DCO scheme could be more robust in the safeguards available against any climatic or environmental condition changes triggering future failure. The Applicant is requested to thoroughly review this element of the scheme provision with the aim to lengthen replacement periods along with a tighter future management provision which is formally secured. The aim of the approach is to ensure all replacement and new planting is effective as possible, with the highest environmental outcomes possible realistically achieved. The point would also be applicable to any off-site landscaping element yet to be tabled but indicated as being subject to ongoing discussion. 	Natural England does not have any comments to make regarding this question.
Q2.5.2	<p>Mitigation/ Design</p> <p>Applicant/ CWCC/ FCC/ NRW/ NE/ Woodland Trust/ IPs</p>	<ul style="list-style-type: none"> What provision/ commitments can be made for fast growing trees? And if so, how could that be formally committed to and secured? How can new planting species selection be conducive in dealing with both climate change pressures and reinforcing native wildlife? Are the public organisations involved in the Examination able to provide further recommendations towards species/ resilience matters with locational specific advice in mind? If so, your comments are invited. 	Natural England has no specific comments to make with regards to planting. We advise reference is made to existing Tree and Woodland Strategies and consideration of the Mersey Forest Plan.
Q2.11.1	<p>European sites</p> <p>NE/ NRW/ IPs</p>	<ul style="list-style-type: none"> The locations of European sites identified by the Applicant relative to the Proposed Development are depicted on Annex A Figure 9.1.1, Sheets 1, 2 and 3 of ES Appendix 9.1 [CR1-054]. 	Natural England acknowledges this question and welcomes the HRA being updated in line with our previous advice.

		<ul style="list-style-type: none"> NE in its Deadline 1 response [REP1-070] mentions additional European sites lie within 10km of the application site and suggest the Habitats Regulations Assessment (HRA) Report could be amended for clarity. Please amend this document accordingly and submit at the next Deadline. 	
Q2.11.5	LSE NE	<ul style="list-style-type: none"> On which qualifying features of which sites do NE consider a LSE could arise from noise disturbance. 	<p>In Natural England's previous advice we had concerns regarding noise disturbance impacts to birds associated with the Dee Estuary SPA/Ramsar, and Mersey Estuary SPA/Ramsar, with LSE for redshank due to the proximity of the development to the areas of where significant numbers of redshank were found during the wintering bird surveys.</p> <p>We note that the LSE screening and Appropriate Assessment of the HRA have now been updated (Version C, dated May 2023) with regards to noise disturbance, and suitable mitigation has been included to limit disturbance to birds whilst works are undertaken on the River Dee crossing. Natural England is satisfied that this addresses our previous comments.</p>
Q2.18.1	Applicant/ EA/ NRW/ NE/ Canal and River Trust/ IPs	<ul style="list-style-type: none"> Invasive plant species may/ may not be present in the area or on the land affected by the DCO development. The ExA notes that there does not appear any mechanism specifically dealing with invasive plant species during construction which constitute a 'Controlled Waste' should they be found and need to be removed/ disposed. (i.e., 'Japanese Knotweed' affected soil would amount to a Controlled Waste). <p>What formal mechanisms within the DCO would be in place to deal with invasive plants such as Japanese Knotweed should that be identified at any stage.</p> <p>Is survey work to investigate the presence of invasive plant species needed at this stage? If not, state why not.</p>	<p>Natural England advises the use of the following guidance with regards to managing Japanese Knotweed: How to stop Japanese knotweed from spreading - GOV.UK (www.gov.uk)</p>

		Do additional specific requirements/ commitments specifically for invasive plant survey work or removal and disposal need to be included into the DCO for invasive plant species? If not, state why not.	
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