

# HyNet North West

## APPLICANT'S COMMENTS ON SUBMISSIONS RECEIVED AT DEADLINE 5

HyNet Carbon Dioxide Pipeline DCO

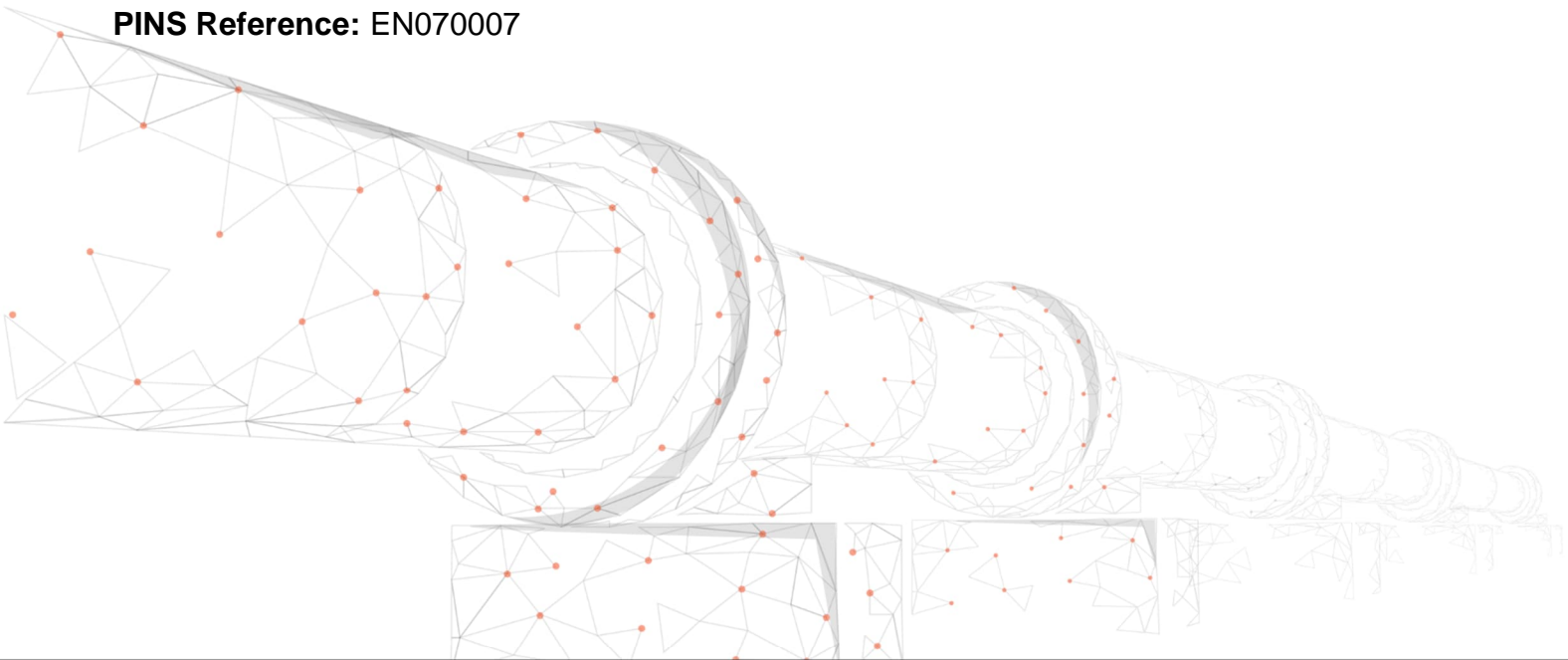
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# 1. INTRODUCTION

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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 Submissions submitted at Examination Deadline 5.

## 1.2. THE DCO PROPOSED DEVELOPMENT

- 1.2.1. HyNet (the Project) is an innovative low carbon hydrogen and carbon capture, transport and storage project that will unlock a low carbon economy for the North West of England and North Wales and put the region at the forefront of the UK's drive to Net-Zero. The details of the project can be found in the main DCO documentation.
- 1.2.2. A full description of the DCO Proposed Development is detailed in Chapter 3 of the consolidated Environmental Statement (ES) **[REP4-029]**, submitted at Deadline 4. On the 12 July 2023, the ExA accepted the Applicant's Change Request 3, subsequently the description of the development will be updated in accordance with Change Request 3 Environmental Technical Note **[CR3-019]**, towards the end of 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 5.
- 2.1.2. The Applicant has not responded to the following submission made at Deadline 5, 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 5 Submission - Cover Letter **[REP5-029]**
  - Cheshire West and Chester Council – Deadline 5 Submission - Enforcement Policy - 16 July 2014 **[REP5-032]**
  - Flintshire County Council – The Forestry Commission's Managing England's woodlands in a climate emergency referred to in Q2.5.2 of ExQ2 **[REP5-036]**
  - Flintshire County Council – Deadline 5 Submission - Awel y Môr, Offshore Wind DCO REP8- 049 'NRW Statement of Common Ground' as referred to in Q2.4.6 **[REP5-037]**
  - Flintshire County Council – Deadline 5 Submission - Corporate Complaints Policy referred to in Q2.3.2 of ExQ2 **[REP5-038]**
  - Flintshire County Council – Deadline 5 Submission - Response to Table 2-2 and 2-3 (Applicant's comments at DL4) **[REP5-039]**
  - Flintshire County Council – Deadline 5 Submission - Urban Tree and Woodland Plan 2018- 2033 referred to in Q2.4.7 of ExQ2 **[REP5-040]**
  - Flintshire County Council – Deadline 5 Submission - Natural England's Guidance on dealing with the changing distribution of tree species referred to in Q2.5.2 of ExQ2 **[REP5-041]**
  - Flintshire County Council – Deadline 5 Submission - Awel y Môr, Offshore Wind DCO REP8- 016 'Schedule of Mitigation and Monitoring' as referred to in Q2.4.6 **[REP5-042]**
  - Turley on behalf of Peel – Deadline 5 Submission - Protective Provisions **[REP5-046]**
  - National Highways – Deadline 5 Submission - Late Submission - Accepted at the discretion of the Examining Authority - Regulation of Street Works in Strategic Road Network **[REP5-051]**
- 2.1.3. In addition, where a submission does not comment on a particular matter or points are 'noted' or 'resolved', 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 has responded to the Deadline 5 Submission (Late Submission) from National Highways **[REP5-050]** in Appendix A of this document.

**Table 2.1 – Applicant's Comments on Submission Received at Deadline 5 from Canal & River Trust – Cover Letter [REP5-027]**

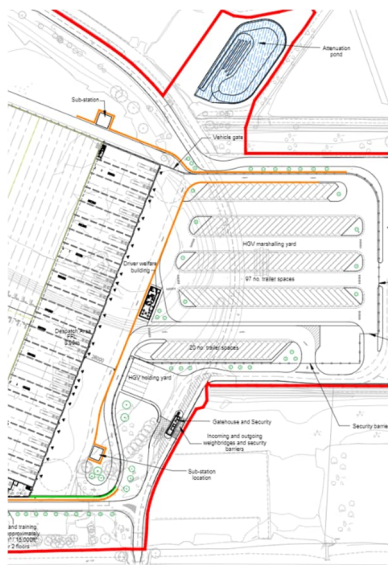
Reference	IP Submission	Applicant's Response
2.1.1	<p><u>Statement of Common Ground (SoCG)</u></p> <p>The Trust and the applicant have made no further progress in relation to the draft Statement of Common Ground (SoCG). Both parties have agreed that the SoCG will not be submitted to the ExA at Deadline 5, but instead aim for Deadline 6. By which time it is hoped that progress will have been made on the main outstanding matters within the SoCG, which are linked to the protective provisions for the Canal &amp; River Trust and land rights and reaching agreement on these. The Trust is keen to work with the applicant to find common ground on the outstanding matters.</p>	<p>The Applicant concurs with the position set out in this response from the Trust and will continue to engage with the Trust on the SoCG [REP3-030], Protective Provisions and reaching a voluntary agreement on Compulsory Acquisition. The Applicant considers that good progress on protective provisions has been made, however these will not be completed until the voluntary land agreement is finalised.</p>
2.1.2	<p><u>Protective Provisions for the Trust</u></p> <p>The Trust received a response to the draft protective provisions on 27th June 2023 and we are currently considering the suggested revisions and comments. The Trust is keen to work with the applicant to agree the outstanding matters.</p>	
2.1.3	<p><u>Compulsory Acquisition</u></p> <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 applicant has confirmed that they will be providing a revised offer to the Trust.</p> <p>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>	

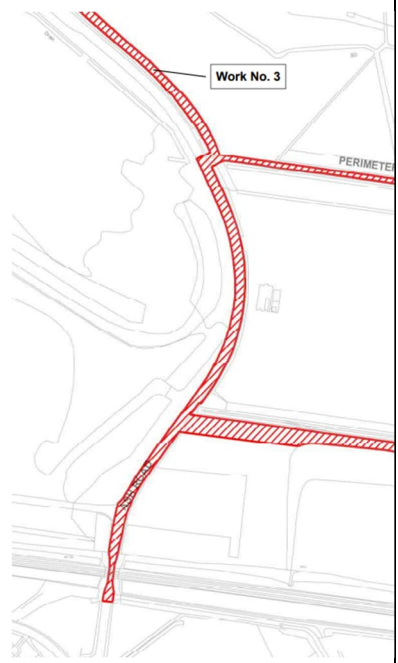
**Table 2.2 – Applicant's Comments on Submission Received at Deadline 5 from Cheshire West and Chester Council (CWCC) [REP5-031] (Response to Table 2-6 of the Applicant's Comments on Submissions Received at Deadline 3 [REP4-263])**

Previous Ref	WR Ref	The Council's Written Representation (WR) Deadline 1	Applicant's Deadline 2 Comments	Council's Response at Deadline 3	Applicant's Deadline 4 Comments	Council's Response at Deadline 5	Applicant's Response
<b>Economic Impacts</b>							
2.2.2	2.2	The Council recognises the Project's wider potential economic benefits in the region however there are some concerns raised in regard	The Applicant notes this response from CWCC. In respect to the Protos Plastics Park, the Applicant refers to the responses given to [REP1-075] (document reference:	This matter is detailed in Part 6 of the Council's Local Impact Report [REP1A-002]. Whilst the Council is aware of the ongoing	The Applicant notes the response from CWCC. The Applicant is engaging with Encirc Limited (see SoCG [REP2-033]) on a regular	The Council notes the Applicants ongoing engagement with Encirc and Peel and reserves its position on this matter	Please refer to the latest version of the Applicant's Statement of Common Ground (SoCG) with Peel NRE [REP4-248].

Previous Ref	WR Ref	The Council's Witten Representation (WR) Deadline 1	Applicant's Deadline 2 Comments	Council's Response at Deadline 3	Applicant's Deadline 4 Comments	Council's Response at Deadline 5	Applicant's Response
		<p>to the localised impacts. The Project has the potential for direct and indirect impacts upon existing local businesses including the delivery of safeguarded sites in the Local Development Plan (LDP). an approved plot and building of the Protos Plastics Park approved under planning permission 21/04076/FUL. This site is safeguarded through the Local Development Plan for employment uses and the DCO would sterilise part of the site</p>	<p><b>D.7.16)</b> and <b>[REP1-074]</b> (document reference: <b>D.7.19)</b> submitted at Deadline 2, regarding the site based impacts to the Protos Plastics Park and to the Peel SoCG <b>[REP1-027]</b> to be reissued at Deadline 2, in which these their concerns (including site access and potential sterilisation) are being addressed with that particular IP through frequent commercial discussions</p> <p>The Applicant notes the infrastructure delivered by the DCO proposal will be critical for the future development of businesses in Cheshire (as well as Flintshire). A number of the land-owning businesses impacted directly or indirectly are to some extent reliant on the development for their future plans. In the Ince-Stanlow area companies such as Peel NRE, Essar Oil UK, and Encirc, are land owners directly impacted but either require the CO<sub>2</sub> pipeline to be constructed for it to be used to transport CO<sub>2</sub> from their / their tenants' production facilities or plan to use Low Carbon Hydrogen (from the Stanlow Manufacturing Complex), which requires 97% of CO<sub>2</sub> to</p>	<p>negotiations with landowners, it is noted that the Applicant has not addressed the issue of the direct impact from the potential loss / sterilisation of part of a strategic site, and with no alternatives or suggestions put forward to resolve this matter the Council would maintain its concerns on this matter.</p> <p>In addition to the access issue raised regarding the Protos Plastics Park, as outlined in paragraph 6.8 of LIR <b>[REP1A-002]</b> the Council also note that the Project's permanent access at Ince, Work No. 03 of the Works plans within Part1 of Schedule 1 of the dDCO <b>[REP1-004]</b>, could also potentially impact upon a proposed significant expansion of the adjacent Encirc glass manufacturing facility which is on a site safeguarded under the LDP for employment use (EP2 and EP2A). Full permission is sought, and currently being determined by the Council with a decision</p>	<p>basis through commercial discussions. The issue regarding access for both project is one of the points discussed by the parties and a commercial agreement and protective provisions are in negotiation between the parties to ensure that both developments can coexist.</p> <p>The Applicant notes its development, provides a critical piece of infrastructure that will enable the future development of Encirc Limited's sites, as it allows for Low Carbon Hydrogen fuel production. This is an enabling project that will ensure the prosperity of Encirc limited and other businesses located in CWCC's authority.</p>	<p>until the parties have come to a resolution</p>	



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			<p>be captured and transported using the CO<sub>2</sub> pipeline.</p> <p>Looking further into the future, the CO<sub>2</sub> Transport Pipeline will be an asset for local industry and land owners and (as part of future developments and conditional on future consents being given) is likely to attract businesses to develop and/or expand their operations in the region, including the Protos Plastics Park.</p> <p>In general response to Economic Impact, the Applicant would like to draw the ExA's and CWCC's attention to the Applicant's Response to the ExA's ExQ1 at Deadline 1 <b>[REP1-044]</b> Q1.16.1 (Pages 106-107), which outline the economic benefit to the region the development will provide (as summarised in the text below):</p> <ul style="list-style-type: none"> <li>• <i>42,000 jobs created / maintained in North West England and North Wales</i></li> <li>• <i>Creation / maintenance of 55,000 UK jobs by 2030</i></li> <li>• <i>6,000+ UK Construction jobs in any given year until at least 2030</i></li> </ul>	<p>likely within the next couple of months, under application no. 22/03693/FUL, for the erection of an automated warehouse (Use Class B2/B8), ancillary office space, an automated link between the automated warehouse and existing facility, a driver welfare building, HGV marshalling yard, security building and other associated works.</p> <p>As shown below, the permanent access under dDCO Work No. 3 would cut through the proposed HGV parking area and would potentially affect the proposed access layout.</p> 			

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				<p>Extract from Proposed site plan 12473-AEXX-XX-DR-A-0501 Rev P23 of application no. 22/03693/FUL</p>  <p>Work No.3, EN070007-D.2.4-WP-Sheet 1 (Rev D) [REP2-005].</p> <p>The Council would welcome engagement and constructive dialogue from the Applicant on these matters.</p>			
<b>Mineral Safeguarding</b>							
2.3.4	2.4	The Project will directly impact several Mineral Safeguarding Areas (MSAs) for sand and gravel. The desk-based Minerals Resource	The Applicant considers that commitment D-MW-006 of the REAC [CR1-109 and REP1-015], as secured by Requirement 5 of the dDCO [REP1-004], in relation to	The Minerals Resource Assessment (MRA) [APP-131 /132] or the need for any subsequent management plan for the management of minerals	The Applicant has considered the comments from CWCC in production of the Outline Materials Management Plan submitted at Deadline 4	The Council has the following comments to make in relation to the Outline Materials Management Plan	The Applicant can confirm that paragraph 2.4.5 of the Outline Materials Management Plan [REP4-266] will be updated, and

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		<p>Assessment (MSA) [APP-131&amp; APP132] identifies the pre-extraction of such mineral would not be economically viable but incidental extraction is. It is noted that detailed ground investigations of their actual depth and quality have not been undertaken. In consideration of the finite nature of the sand and gravel reserves and in view of the fact that such materials will also likely be required as part of the construction of the development itself such that incidental extraction would be a viable option, the Council ask that a minerals management plan form a clear part of the development's CEMP and therefore be included as part of the OCEMP [AS-055] and directly required as part of the wording of any Requirement of the DCO and particularly Requirement 5.</p>	<p>following guidance within the Materials Management Plan (MMP), would include the re-use of suitable mineral resources such as sand and gravel incidentally extracted during construction. An Outline MMP will be submitted before the end of Examination.</p>	<p>is not specified / referred to in the draft DCO (Requirement 5), OCEMP [REP1-17] or REAC [REP1-015].</p> <p>REAC Commitment D-MW-006 [REP1-015] states "<i>The Construction Contractor will implement, and follow guidance within, the Materials Management Plan (MMP) in accordance with the CL:AIRE Definition of Waste: Code of Practice</i>". The Applicant states that this commitment in the MMP would include re-use of 'suitable mineral resources'.</p> <p>The Council notes the above REAC commitment D-MW-006 [REP1-015] appears to principally relate to the handling of waste and does not specify the use of incidentally extracted minerals. The use of the word 'mineral' is absent and there is no reference to the recommendations of the MRA in and commitments of the REAC or OCEMP. It is not currently explicit if and how the use of</p>	<p>(document reference: <b>D.7.32</b>).</p> <p>The Applicant also notes the following REAC commitment, specifically the third point in relation to resource streams;</p> <p><b>(D-MW-001 of the Register of Environmental Actions and Commitments (REAC), Document Reference: D.6.5.1).</b></p> <p>Application of circular economy principles by the Construction Contractor implemented in the detailed CEMP including:</p> <ul style="list-style-type: none"> <li>- Designing solutions to prevent the generation of waste where feasible, and to send waste for recovery, wherever possible.</li> <li>- Considering all Stages of construction, operation and decommissioning in a lifecycle approach.</li> <li>- Identification of resource streams that might be considered by-products (i.e. not</li> </ul>	<p>(OMMP) submitted at Deadline4 [REP4-266]:</p> <ul style="list-style-type: none"> <li>• The OMMP references the Minerals Resource Assessment (MRA), however, it does not specifically require its findings to be taken into account or undertaken. In this respect the Council ask that the OMMP is amended to directly reference the MRA and should include the requirement to provide copy to Construction Contractors.</li> <li>• The Council is in general agreement with the proposed content of the necessary minerals assessments, as set out under paragraph 2.4.5. of the OMMP [REP4-266], however, it would comment that consideration of mineral resources should be made at a Project level (spatially and over the construction period) and not just on stage-by-</li> </ul>	<p>submitted prior to the end of Examination, as follows:</p> <p><i>'The MMP, that will be produced by the Construction Contractor(s), will include a mineral assessment and must be produced in accordance with the Minerals Resource Assessment [REP4-130 and REP-131]. This will assess mineral resources for the DCO Proposed Development and include;...'</i></p>

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				<p>incidentally extracted mineral resources should be undertaken.</p> <p>The Council also notes that the MRA [APP-131&amp; APP132] is currently only desk based and as such, the Council requests that when ground investigations are undertaken as part of the Project the impacts on the existing MRA should be considered and potential for prior extraction or incidental extraction and re-use of minerals should be considered further in order to safeguard / re-use minerals.</p> <p>To address this, the inclusion of detail of minerals safeguarding in the MMP is supported, the Council would however ask the following clarifications / inclusions are provided in any submitted plan:</p> <ul style="list-style-type: none"> <li>• Clear reference to the findings of the MRA with commitments for any further necessary ground investigations.</li> <li>• A definition of what a 'suitable mineral</li> </ul>	<p>wastes, as per applicable legislation) and reused or recycled</p>	<p>stage basis. In this way the recovery of incidentally extracted mineral resource can be maximised, and the re-use of other site-won materials can also be maximised and the generation of waste material for off-site disposal can be minimised.</p>	

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				<p>resources' would represent?</p> <ul style="list-style-type: none"> <li>• Detail of process should the extracted material not be suitable as it was, but could be screened or sorted then used - clarification of is and how that would that be done?</li> <li>• Where extracted mineral can be re-used, on the site or elsewhere?</li> </ul> <p>It is noted that the Applicant states that an outline MMP will be submitted before the end of Examination.</p> <p>For the above reasons, the Council reserves its right to make further comments relating to minerals safeguarding after reviewing the draft MMP.</p>			
<b>Trees</b>							
2.3.5	2.5	The potential loss of up to 6 veteran trees is of significant concern. Veteran trees are irreplaceable, and their loss cannot be mitigated against therefore the Council would advise that all veteran trees are	As part of early design commitments, efforts have been made by the Applicant to avoid sensitive habitats and features, wherever possible, including Ancient Woodland and veteran trees.  For example, Commitment D-BD-008 in the REAC [CR1-109 and REP1-015] states 'Design	The Council acknowledges the proposed change request in respect reducing impacts upon veteran trees with potential for 'zero losses'. As the Council would object to the removal of any	As raised during Issue Specific Hearing 1 on the 6 June 2023, the Applicant has revisited the three trees detailed as 'at risk, aiming to retain' and has committed to retaining these trees with protection measures.	Subject to the acceptance of Change Request 1, the Council welcomes the Applicant amending the Arboricultural Impact Assessment Report with the retention and protection of all identified	Change Request 1 was accepted by the Examining Authority on 24 April 2023 [PD-016]. A consolidated version of the Arboricultural Impact Assessment was submitted at Deadline 4 [REP4-118].

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		retained, and protection measures are put in place as part of the CEMP and LEMP. The tree protection measures for all other trees should also form part of any approved LEMP and CEMP.	<p><i>of the DCO Proposed Development has included use of trenchless crossing techniques to avoid and reduce adverse effects on Ancient Woodland present within the Order Limits.</i></p> <p>Through this approach, the Applicant has sought to avoid direct impacts (i.e. the felling of trees) to ancient woodland, specifically at Northop, and maintain the integrity of the woodland.</p> <p>Areas of ancient woodland have been avoided and removed from the Order Limits and/or buffered wherever practicable from construction. This also includes the ancient woodlands of concern that the Trust has referenced.</p> <p>The latest design refinements as set out in the Change Request and assessed in the ES addendum <b>[CR1-124]</b> have reduced the number of veterans trees to be directly removed to zero. Three veteran trees are assessed as being 'at risk of removal but aiming to retain' due to potential root encroachment, however mitigation will be implemented to allow their protection. As such, the ES addendum <b>[CR1-124]</b> states that the '<i>Proposed Development will seek to protect and retain all veteran trees during construction</i>'. Mitigation will be detailed within a site-specific</p>	veteran trees this position is supported. However, whilst noting the above, the Council does note that three trees remain at risk and there is no commitment for the retention of all veteran trees.	The Applicant has prepared a revised Appendix 9.11 - Arboricultural Impact Assessment <b>[APP-115]</b> and <b>[CR1-058]</b> as submitted at Deadline 4 capturing this change.	veteran trees. The Council reserves its position on this issue until the procedural decision has been made by the ExA as to its acceptance of Change Request 1 and the Council has had the opportunity to review the revised Arboricultural Impact Assessment Report.	

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			<p>Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP). which will be approved by the Local Planning Authority as committed to in the REAC (D-LV-014), as secured by the CEMP within Requirement 5 of the dDCO <b>[REP1-004]</b>.</p> <p>Further detail regarding mitigation is under discussion between the Applicant and the with Woodland Trust, with the intent to reach an agreed position in a SOCG (document reference: D.7.2.24) to be submitted at Deadline 3.</p>				
Land Contamination							
2.3.7	2.7	<p>The ground investigation reports [APP-135-137] identify that further contamination investigation is required around the Stanlow Refinery area (made ground). Whilst it is noted that the requirement for a suitable remediation strategy is to be produced following the additional ground investigation under the OCEMP [AS-055] it is however noted that there is no mention of the requirement for the validation of remediation works which is an essential part of any remediation plan. Similarly, this</p>	<p>Regarding the Stanlow Manufacturing Complex site, the Applicant is currently engaging with the site owner, Essar Oil UK, as documented in the SoCG <b>[REP1-032]</b>, regarding the handover conditions and responsibilities for any necessary remediation of any contaminated land prior to construction. The Applicant will revert to the CWCC once these agreements are in place prior to any ground investigation work commencement.</p> <p>In more general terms and excluding the specific site above, Environment Agency 'Land Contamination Risk</p>	<p>The Council notes the Applicant's intention to include verification in the REAC commitment D-LS-021 <b>[REP1-015]</b>. For clarification the Council notes that REAC commitment D-LS-021 <b>[REP1-015]</b> OCEMP reference D-LS 21 <b>[REP1-017]</b> has not been updated to include verification reporting for the approval of the relevant planning authority.</p> <p>The Council also notes the inclusion of verification reporting in Requirement 9 (5) of the</p>	<p>The Applicant refers the Council to its responses to the actions from ISH2 on the dDCO (document reference: <b>D.7.31</b>).</p>	<p>The Council notes that REAC commitment D-LS-021 <b>[REP2-017]</b>, as secured by the OCEMP <b>[REP2-021]</b> through Requirement 5 of the draft DCO <b>[REP3-005]</b>, was updated at Deadline 2 to state that the remediation strategy will include a verification report.</p> <p>The requirement for the approval of verification reports remains absent from Requirement 9 in the revised draft DCO (Revision G). The Applicant's Response to actions raised at the</p>	<p>The Applicant disagrees that its submissions <b>[REP4-265]</b> do not address the point and has nothing further to add to those. The Applicant notes that the Council has not specified how the response does not adequately address the matter and has not made any counter submission other than alleging inadequacy. There is accordingly no new substantive point made for the Applicant to respond to.</p> <p>The Applicant is currently engaging with the site owner, Essar Oil UK regarding the handover conditions and responsibilities for any necessary remediation of any</p>

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		requirement is needed for unexpected contamination under draft DCO Requirement 9.	<p>Management', LCRM (2021) guidance requires that a remediation strategy includes details of how the remediation will be verified through a verification report (part of the remediation strategy).</p> <p>The Applicant proposes to add reference to the inclusion of a verification report within the remediation strategy requirement in REAC <b>[CR1-109 and REP1-015]</b> commitment D-LS-021.</p>	updated dDCO <b>[REP1-004]</b> , however, as is noted in 2.3.35 below, the Council requires this to be submitted for approval for this to be acceptable.		Issue Specific Hearing (ISH2-AP10) <b>[REP4-265]</b> does not adequately address this matter.	contaminated land on the Stanlow Manufacturing Complex site prior to construction. The Applicant is also engaging with the EA to clarify how their existing controls over the Stanlow site will interact with the DCO.
2.3.8	2.8	Without the requirements for validation / verification reporting for any necessary remediation of both identified and unidentified contamination the Council raises concern as to demonstrating that necessary remediation has been undertaken. It is therefore asked that that the OCEMP [AS-055] and draft DCO Requirement 9 is amended to require the approval of validation reporting for any necessary remediation.	<p>Environment Agency 'Land Contamination Risk Management', LCRM (2021) guidance requires that a remediation strategy includes details of how the remediation will be verified through a verification report (part of the remediation strategy).</p> <p>The Applicant has added reference to the inclusion of a verification report within the remediation strategy requirement in REAC <b>[CR1-109 and REP1-015]</b> commitment D-LS-021.</p> <p>The Applicant updated Requirement 9 of the draft DCO <b>[REP1-004]</b> at Deadline 1 to include the submission of a verification report following completion of the works to the relevant planning authority.</p>				



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<b>Draft Development Consent Order</b>							
2.3.12	Article 2	<p>Commence</p> <p><i>Issue</i></p> <p>The exemptions listed in the definition should not include any operational works</p> <p><i>Amendment Required/Comment</i></p> <p>The "erection of fencing to site boundaries or marking out of site boundaries, installation of amphibian and reptile fencing, the diversion or laying of services and environmental mitigation measures" should be excluded.</p>	<p>The Applicant understands that CWCC is seeking the deletion of the quoted wording from the exceptions. The Applicant does not agree and refers to the Applicant's Response to ExA's ExQ1, Q1.19.9 (page 121) <b>[REP1-044]</b>. The Applicant considers that the activities listed have very limited potential to have an impact which do not require detailed controls to be in place.</p>	<p>The Council shares the concerns raised within the ExA's question Q1.19.9 <b>[PD-014]</b> and consider that the 'excluded activities', which by definition constitute material operations in accordance with the 2008 Act, have the potential to result in significant impacts and as such require controls to mitigate any potential harm.</p> <p>The Council has reviewed the Applicant's response to Q1.19.9 <b>[REP1-044]</b>.</p> <p>Whilst the Council accepts that certain exceptions have been allowed on other recent DCOs, considering the proximity of this Project to residential uses, and its ecological sensitivities, the Council considers that the wording as presented by the Applicant has the potential to result in operations with potentially significant impacts.</p>	<p>The Applicant refers the Council to its responses to the actions from ISH2 on the dDCO (document reference: <b>D.7.31</b>) and the revisions made to the dDCO in revision G at Deadline 4.</p>	<p>Draft DCO (Revision G), submitted at Deadline 4 <b>[REP4-007]</b>, has been amended to include exceptions for temporary fencing and access. Whilst the Council welcomes this change it, however, maintains its concern with the exception remaining in the draft to include "diversion and laying of services". Please refer to the Council's response at DL3.</p>	<p>The Applicant has not, at this time, identified any services which need to be diverted. However, should such be identified in site investigations or preliminary works, they will require to be diverted as part of the pre-commencement works. Such diversions would be highly localised and controlled by the protective provisions in favour of the relevant undertaker. This is entirely standard and a necessary inclusion to ensure other works can be undertaken safely and timeously.</p>

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				<p>For example, the erection of fencing, and in particular permanent fencing as part of the above ground installations and any uncontrolled engineering operations, which would likely involve the use of heavy machinery, associated with the diversion or laying of services have the potential to result in more than very limited impacts especially where they occur near to residential and ecological receptors.</p> <p>For this reason, the Council's maintains that the "erection of fencing to site boundaries or the diversion or laying of services and environmental mitigation measures" should be excluded from any exception.</p>			
2.3.14	Article 8	<p>Disapplication of legislation <i>Issue</i></p> <p>Art 8(1)(c) disapplies s23 (prohibition on obstructions etc in watercourses) and s30 (authorisation of drainage works in connection with a ditch) of</p>	The permanent surface water drainage design requires to be approved under Requirement 8 (Surface Water Drainage) of the dDCO <b>[REP1-004]</b> . In line with the ethos and objective of the DCO regime, a separate consent should not be required	Requirement 8 does not deal with the disapplication of s23 and the approval needed by the Lead Local Flood Authority ( <b>LLFA</b> ). As this is a prescribed consent, the disapplication must be approved by the LLFA and they need to be consulted on and	The Applicant would be willing to consider protective provisions if necessary but would ask CWCC to provide some drafting for that. The Applicant would however also request that the Council review the outline strategy and CEMP	Please see the Council's response to Actions raised at issue specific hearing 2 ISH2-AP5 <b>[REP4-276]</b> : "The Council in its role as Lead Local Flood Authority ( <b>LLFA</b> ) continues to have	The Applicant has prepared an Outline Surface Water Management and Monitoring Plan <b>[REP5-021]</b> which provides guidance in relation to the management of flood risk during the construction phases in known areas of flood risk, including fluvial and surface water flood risk areas. It also

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		<p>the Land Drainage Act 1991.</p> <p><i>Amendment Required/Comment</i></p> <p>The application does not provide sufficient details as to the drainage being proposed and without this detail the CWCC cannot agree to the disapplication of the consent process. A mechanism for the approval of these detail needs to be included within the DCO or a side agreement.</p>	<p>where this can be addressed through the DCO</p>	<p>approve all works that affect an ordinary watercourse. The Council expects Protective Provisions to be inserted into the draft DCO by the Applicant.</p>	<p>outline and consider if the required detail could be listed in there as has been proposed to FCC.</p>	<p>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>There is insufficient information within the Flood Risk Assessment, surface water drainage strategy (Requirement 8) or the OCEMP to fully understand and assess</p>	<p>outlines the requirements of a Flood Action Plan for works in flood risk areas. The Construction Contractor will prepare Risk Assessments and Method Statements, Surface Water Management and Monitoring Plan and CEMP to provide detailed information on the construction works around ordinary watercourses and in flood risk areas.</p> <p>The Applicant awaits the Council's comments on the outline sub-plans submitted at Deadline 5 which it considers addresses the points raised.</p>

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						<p>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> <p>The Council will provide the Applicant with a draft set of protective provisions for review.</p>	
2.3.15	Article 10	<p>Street Works <i>Issue</i></p> <p>Art 10(1) provides the undertaker with the ability to undertake works to streets (as specified in Part 1 (Streets subject to street works) and Part 2 (Streets</p>	<p>The Applicant notes that the dDCO <b>[REP1-004]</b> provides for street works to be undertaken without <u>further consent</u>, as the street where works are known to be needed are included within and the works authorised by the DCO.</p>	<p>The Council would welcome constructive dialogue with the Applicant on the Protective Provisions included in Part 7 of Schedule 10 to the draft DCO and the Council will be providing comments</p>	<p>The Applicant and CWCC have discussed the protective provisions following the hearing and further drafting being progressed.</p>	<p>Please see the Councils response to Actions raised at issues specific hearing 2 ISH2-AP3 <b>[REP4-276]:</b></p> <p><i>"The Council does not consider that there is any need for a pre-consultation stage to be</i></p>	<p>The Applicant agrees that this can be progressed outside of the DCO process. A draft PPA has been prepared for the Council's consideration.</p>

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		<p>subject to temporary street works) of Schedule 3) without the consent of the street authority.</p> <p><i>Amendment Required/Comment</i></p> <p>If any such works within a street, for which the street authority will be liable, are to be retained, there needs to be a mechanism for the street authority to inspect and approve these works before taking liability for them. Additionally, there is no requirement for the undertaker to ensure that the street is restored to the reasonable satisfaction of the street authority (NB. Note that this is included in Art 11(3) but not in Art 10).</p>	<p>The Applicant had anticipated that the local highway authority would seek protections on these points and included the first draft of the PPs to demonstrate it had considered that and provide a starting point for discussion, however it has had no comments on these from the authority.</p>	<p>on the Protective Provisions and negotiating with the Applicant throughout the Examination.</p> <p>The current drafting of the Protective Provisions does not specifically address the issue of restoration of a street.</p>		<p><i>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 Council is awaiting a draft PPA from the Applicant and will update the ExA as to progress."</i></p> <p>The Council met with the Applicant on 14 June 2023 and it is satisfied that it can agree practical solutions outwith the draft DCO.</p>	
2.3.17	Article 10(5)	<p>Street Works</p> <p><i>Issue</i></p> <p>Art 10(5) imposes a timescales for the street authority to respond to an application for consent for works as being "42 days beginning with the date on which the application was made"</p> <p><i>Amendment Required/Comment</i></p>	<p>The Applicant notes that the article follows standard, well precedented drafting, including the use of 'made' and on the time limit. The Secretary of State has repeatedly determined the wording used to be suitable and sufficiently clear, including in the very recently made A47 Wansford to Sutton DCO (February 2023), which include in article 14(4) "If a street authority which receives an application</p>	<p>At a meeting between the Council and the Applicant on 3 May 2023, the issue of timescales was discussed with the Applicant and it was suggested that suitable resources could be provided to the Council to allow works to be undertaken in advance of the formal submission.</p>	<p>The Applicant is preparing a proposal to put to the Councils for consideration.</p>	<p>The Council refers to its response on this matter within ISH2-AP3 submitted at Deadline 4 [REP4-276].</p> <p>The Council and the Applicant are in discussions, and the Council is awaiting a draft Planning Performance Agreement from the Applicant which will deal with the practicalities of</p>	<p>As stated in the Applicant's Comments on Submissions Received at Deadline 4 <b>[REP5-015]</b>, the Applicant confirms that this work is ongoing.</p> <p>A draft PPA has been prepared for the Council's consideration.</p>

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		<p>The period of 42 days is too short and CWCC require a minimum of 70 days to consider any such application. The timescales are ambiguous as there is no definition for an application being "made". In addition, the timescales are too short. We would suggest using "within 70 days of receiving an application for consent" in line with the wording used in Art 14(7).</p>	<p>for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 28 days <b><u>beginning with the date on which the application was made</u></b>, it is deemed to have granted consent". (emphasis added)</p> <p>Article 10(5) only applies where a need to undertake works on a street outside the order limits arises, ie something is required which the Applicant cannot reasonably foresee at this time and has not included in the order limits. The most likely circumstances would therefore be works being required in connection with works the Order Limits, but which need to extend beyond the red line. It is not reasonable in such circumstances for consent applications to take 70 days to be determined, especially where that would delay the completion of other works.</p> <p>The Applicant would strongly object to the period being changed to 70 days as being inappropriately long, and much longer than the period in other recently granted DCOs. The UK Government has set an ambitious target for the delivery of track 1</p>	<p>The Council is awaiting further details from the Applicant in this regard and reserves its position on appropriate timescales.</p>		<p>advance review of information and provision of appropriate notices.</p>	

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			decarbonisations projects, including this application. The Applicant considers that over two months to consider an application for street works in the context of the DCO project and the Government delivery targets is not reasonable.				
2.3.18	Article 11	<p>Power to alter layout etc of streets</p> <p><i>Issue</i></p> <p>Art 11 (2) allows the undertaker to temporarily or permanently alter the layout of any street whether or not within the Order limits. The street authority's consent is required for these works under Art 11(4). Art 11(5) requires the street authority to respond to any application for consent "before the end of the period of 42 days beginning with the date on which the application was made".</p> <p><i>Amendment Required/Comment</i></p> <p>Where works are being carried out permanently to the street and the street authority will be liable for those works in the future, there needs to be a mechanism for the street</p>	<p>The Applicant is willing to add an explicit provision stating that any consent may be issued subject to reasonable conditions.</p> <p>The Applicant refers to its response to the comments on wording and timescales under Article 10. The Applicant would strongly object to the period being changed to 70 days as being inappropriately long, and much longer than the period in other recently granted DCOs.</p>	<p>The Council welcomes the Applicant amending the draft DCO to include an explicit provision that consent may be issued subject to reasonable conditions and reserves its position on this issue until it has reviewed the next iteration of the draft DCO.</p> <p>The Council refers to 2.3.17 above in relation to timescales.</p>	<p>This change was made in revision E of the dDCO at Deadline 3 <b>[REP3-005]</b>.</p> <p>The Applicant understands from ISH2 that CWCC is not maintaining this objection on timescales.</p>	<p>The Council notes the amendment made in Article 11(4) of revision E of the dDCO <b>[REP4-007]</b> and is satisfied in respect the requirement for need for consent of the Highways authority. This matter is resolved.</p> <p>The Council refers to 2.3.17 above in relation to timescales.</p>	Please refer to the Applicant's response in row 2.3.17 above.

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		authority to inspect and authorise these works. The application for consent should allow for the street authority to make recommendations or amendments to the proposed works, as may be necessary, for the purposes of ensuring highway safety and the safe movement of traffic. The timescales are ambiguous as there is no definition for an application being "made". In addition, the timescales are too short. CWCC would suggest using "within 70 days of receiving an application for consent" in line with the wording used in Art 14(7).					
2.3.19	Article 13	<p>Temporary restriction of public rights of way</p> <p><i>Issue</i></p> <p>The local highway authority has to notify the undertaker whether any diversion "is satisfactory within 28 days of being requested in writing to do so".</p> <p><i>Amendment Required/Comment</i></p> <p>The timescales are ambiguous as it is not</p>	The Applicant refers to its response to the comments on wording and timescales under Article 10. The Applicant would strongly object to the period being changed to 70 days as being inappropriately long, and much longer than the period in other recently granted DCOs	The Council refers to 2.3.17 above in relation to timescales.	The Applicant understands from ISH2 that CWCC is not maintaining this objection on timescales.	The Council refers to 2.3.17 above in relation to timescales.	Please refer to the Applicant's response in row 2.3.17 above.



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		clear when the request is made or notified to the local highway authority. In addition the timescales are too short. CWCC would suggest using "within 70 days of receiving an application for consent" in line with the wording used in Art 14(7).					
2.3.20	Article 14	<p>Temporary restriction of use of streets</p> <p><i>Issue</i></p> <p>In Art 14(7) the street authority must notify the undertaker of its decision "within 42 days of receiving an application for consent".</p> <p><i>Amendment Required/Comment</i></p> <p>These timescales are too short. CWCC require 70 days.</p>	The Applicant refers to its response to the comments on wording and timescales under Article 10. The Applicant would strongly object to the period being changed to 70 days as being inappropriately long, and much longer than the period in other recently granted DCOs.	The Council refers to 2.3.17 above in relation to timescales.	The Applicant understands from ISH2 that CWCC is not maintaining this objection on timescales.	The Council refers to 2.3.17 above in relation to timescales.	Please refer to the Applicant's response in row 2.3.17 above.
2.3.21	Article 15	<p>Access to works</p> <p><i>Issue</i></p> <p>In Art 15(2) the street authority must notify the undertaker of its decision "before the end of the 42 day period beginning with the date on which the application was made".</p> <p><i>Amendment Required/Comment</i></p>	The Applicant refers to its response to the comments on wording and timescales under Article 10. The Applicant would strongly object to the period being changed to 70 days as being inappropriately long, and much longer than the period in other recently granted DCOs.	The Council refers to 2.3.17 above in relation to timescales.	The Applicant understands from ISH2 that CWCC is not maintaining this objection on timescales.	The Council refers to 2.3.17 above in relation to timescales.	Please refer to the Applicant's response in row 2.3.17 above.

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		The timescales are ambiguous as there is no definition for an application being "made". In addition, the timescales are too short. We would suggest using "within 70 days of receiving an application for consent" in line with the wording used in Art 14(7).					
2.3.23	Article 18(3) and 18(7)	<p>Traffic regulation <i>Issue</i></p> <p>The timescales for the notice of intention in Art 18(3)(a) are specified as being "not less than 42 days". Article 18(7) requires the traffic authority to notify the undertaker of its decision "within 42 days of receiving an application".</p> <p><i>Amendment Required/Comment</i></p> <p>These timescales are too short and CWCC requires 70 days for both Art 18(3)(a) and 18(7).</p>	The Applicant refers to its response to the comments on wording and timescales under Article 10. The Applicant would strongly object to the period being changed to 70 days as being inappropriately long, and much longer than the period in other recently granted DCOs.	The Council refers to 2.3.17 above in relation to timescales.	The Applicant is preparing a proposal to put to the Councils for consideration.	The Council refers to 2.3.17 above in relation to timescales.	Please refer to the Applicant's response in row 2.3.17 above.
2.3.25	Article 19 (Article 20 in Rev G)	<p>Discharge of Water <i>Issue</i></p> <p>Insufficient details of the proposed works have been provided in order for CWCC to confirm whether</p>	Article 19 is concerned with the rights to discharge, i.e. land rights, it does not infringe on the LLFA's remit as a regulator. The Applicant notes that permanent drainage design is subject to approval under requirement 8 and that	This Council welcomes clarification from the Applicant regarding the cross over between Article 19 and Article 8 with regard to the LLFA's remit as regulator when its controls are being	The Applicant agrees that Requirement 8 only refers to permanent drainage and would refer the Council to the sub-plans to the CEMP which would provide the detail	The Council has no further comment.	The Applicant notes that the Council has no further comments on this matter at this time.

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		<p>these provisions are agreed.</p> <p><i>Amendment Required/Comment</i></p> <p>CWCC need to ensure there is no flood risk in connection with the undertakers use of powers under Article 19. At present, LLFA do not have sufficient information to confirm whether the wording of Art 19 can be agreed.</p>	<p>the drainage strategy requires attenuation to the equivalent of greenfield run-off rate, which could not create new flood risk.</p>	<p>disapplied with no protective provisions currently being in place.</p> <p>The permanent drainage design in Requirement 8, as referred to in the Applicant's response, only relates to surface water drainage to permanent works.</p>	<p>for the construction phase.</p>		
		<p>Authority to survey and investigate the land Art</p> <p><i>Issue</i></p> <p>21(7) the timescale for notifying the undertaker of its decision is "within 28 days of receiving the application for consent".</p> <p><i>Amendment Required/Comment</i></p> <p>The timescale is too short and CWCC requires 70 days.</p>	<p>The Applicant notes that the article follows standard, well precedented drafting, including the time limit.</p> <p>The Applicant would strongly object to the period being changed to 70 days as being inappropriately long for the powers concerned which would authorise works of survey and investigation which would be necessary to inform other works, including for example preparing management plans which then need to be discharged, creating the risk of consequential delay. The Applicant considers that over two months to consider an application for access for surveys is not reasonable.</p>				

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Draft DCO Part 5							
Schedule 2: Part 1, Requirements							
2.3.30	Requirement 3	<p>Stages of authorised development</p> <p><i>Issue</i></p> <p>"The authorised development may not commence until a written scheme setting out all stages of the authorised development including a plan indicating when each stage will be constructed has been submitted to each relevant planning authority."</p> <p>The requirement does not require the submitted scheme to be approved or for the undertaker to undertake the development in accordance with the submitted approved stages.</p> <p><i>Amendment Required/Comment</i></p> <p>Suggested wording: No part of the authorised development may commence until a written scheme setting out all stages of the authorised development including a plan indicating when each</p>	<p>As set out in the Applicant's Response to ExA's ExQ1 Q1.19.44 [REP1-044], the submission of stages is proposed to give the LPAs visibility of the planned approach to the development. It is intended to assist the LPA in planning their workload by giving them warning of when applications would be made. It is not submitted for approval. The development will be carried out with multiple work fronts and with some elements, such as complex trenchless crossings carried out ahead of the main pipeline spread.</p>	<p>The Council requires a definition of 'Stage' to be included in this requirement. It is unclear what the parameters of each stage are and whether each Stage will include specific work numbers. The Council suggests the definition includes this level of detail and if the Stage needs to be amended throughout the Project then the relevant local planning authority is consulted on any change and its consultation response is taken into consideration.</p> <p>For the avoidance of doubt, this requirement should be amended to ensure that the Project is implemented in accordance with submitted (or amended) Stages to ensure that all parties are clear on what is required and by when.</p>	<p>The Applicant refers the Council to its responses to the actions from ISH2 on the dDCO (document reference: <b>D.7.31</b>) and the revisions made to the dDCO in revision G at Deadline 4.</p>	<p>The Council acknowledges the below amendment to Requirement 1 (Interpretation) of the Draft DCO Rev G [REP4-007] provides a definition of "stage" as to mean "<i>the works and ancillary works, or parts thereof, to be carried out together as a phase of, or in a defined order within, the construction of the authorised development</i>".</p> <p>The Council note that Requirement 3 has not been amended to require the project to be undertaken in accordance with the stages as submitted.</p> <p>To ensure any subsequent changes made to the stages is reflected in all other approved schemes (CEMP LEMP etc..) and for the purposes of clarity as to details submitted for approval under the requirements the Council request that Requirement 3 is amended to require</p>	<p>As set out in previous submissions, this plan is for information and to allow forward planning as to when applications for discharge will be made. It is not a control document.</p>

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		stage will be constructed has been submitted to and approved in writing by each relevant planning authority. The authorised development shall then be undertaken in accordance with the approved stages plan unless approved in writing by each relevant planning authority in accordance with Requirement 17.				the project to be undertaken in accordance with the stages as submitted or amended (and notified to the relevant planning authority).	
2.3.32	Requirement 4 (1)	<p>Scheme Design - Changes to above</p> <p><i>Issue</i></p> <p>It is not clear what the "environmental effects" include. No definition is provided in Requirement 2 (Interpretation).</p> <p>Importantly, it is not clear who determines whether any changes cause "materially new or materially different environmental effects". What mechanism is there for determining this?</p> <p><i>Amendment Required/Comment</i></p> <p>Recommend a definition for the term "environmental effects".</p>	<p>This is standard wording in DCOs and has been approved repeatedly by the Secretary of State, including in insertions made on their behalf at determination stage.</p> <p>The Applicant notes that for details to be approved, the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 apply and when details are submitted for approval the LPA is required to consider if they are within the scope of the ES or if further environmental information is required. For other elements, failure to comply with a DCO is a criminal offence and the undertaker will have to take a view on materiality in that context. Where the relevant LPA disagrees, its</p>	<p>The Council is concerned that there is a self-approval mechanism for determining whether or not any changes are material. This same issue has been discussed at length on the A66 Northern Trans-Pennine DCO which is currently in Examination which is due to close on 26 May 2023. If a change is proposed, this change needs to be assessed by the Secretary of State as to whether or not it is material and therefore needs his approval or otherwise.</p> <p>The Council would suggest a similar approach be taken in this Project.</p>	<p>The Applicant does not consider it appropriate that the Secretary of State (SoS) needs to screen every change for materiality no matter how minor that may be. The Applicant does not consider this to be appropriate or necessary. The Applicant notes it is normally for the applicant to determine what form of amendment a change is when determining the appropriate consenting route to make an application to and it is for the applicant to make the case for the chosen route.</p>	<p>Council refers to it below response to ISH2-AP9 <b>[REP4-276]</b> and would welcome a response from the Applicant.</p> <p><i>"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</i></p>	<p>The Applicant has nothing to add to its previous submissions on this point, please see Applicant's Comments on Submissions Received at Deadline 4 <b>[REP5-015]</b> which states:</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. 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</p>

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		The mechanism for determining whether any changes are "material" needs to be included otherwise this will be a self-approved process with no input from the relevant authority.	enforcement powers would be available to it.			<p><i>environmental effects from those assessed in the environmental statement'.</i></p> <p><i>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 'general accordance' with the 'general arrangements plan'.</i></p> <p><i>There does not appear to be any ability to refer the matter to the Secretary of State or otherwise"</i></p>	design which will not have, for example, operational visual impacts.
2.3.32 a	Requirement 4 (1)	<p>Changes to above ground development</p> <p><i>Issue</i></p> <p>The need for approval of detailed design is welcomed. However, it is unclear how this will tie in with the CEMP and LEMP.</p> <p><i>Amendment Required/Comment</i></p> <p>CWCC request that the wording be amended to include a requirement for the detailed design be based upon the mitigation outlined within the CEMP and LEMP.</p>	<p>Where relevant the detailed design will be based upon relevant mitigation measures that are identified within 2022 ES and subsequent ES Addendum Change Request 1 <b>[CR1-124]</b>. Where relevant these commitments are also included in the Outline LEMP <b>[APP-229]</b>, the Outline CEMP <b>[REP1-017]</b> and the Outline OMEMP <b>[REP1-051]</b>.</p> <p>The draft DCO <b>[REP1-004]</b> includes provisions to ensure the full versions of these management plans are in accordance with the outline versions including the working</p>	<p>The Council acknowledges that mitigation is to be provided for the project based upon the approval and compliance with the commitments of the various management plans of the ES which are to be approved by the relevant requirements of the DCO on a Stage by Stage basis.</p> <p>It is however noted that the scheme design is based on works numbers not 'Stages'.</p>	<p>The Applicant has proposed a definition of 'stage' in revision G of the dDCO at Deadline 4.</p>	See paragraph 2.3.30 above	Please see Applicant's response in row 2.3.30 above.

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			<p>methods and mitigation measures to be applied during design, construction and operation (dependent on plan). The draft DCO also includes provisions to ensure that no materially new or materially different environmental effects from those assessed in the ES arise as part of the Proposed DCO Development. This would mean that mitigation measures and their performance criteria, as assessed in the ES, have to be applied in order to ensure there are no material changes to the effects. It is therefore not considered necessary to include a requirement for the detailed design be based upon the mitigation outlined within the CEMP and LEMP as this is already provided for in the draft DCO.</p>	<p>For consistency and to tie the detailed design for above ground installations to that of the final CEMP and LEMP, both which are approved on a Stage basis the Council ask that reference to the submitted / approved 'Stages' is included in the approval of detailed works in this requirement. For this, and subject to wording of requirement 3 (Stages) as referred to above (2.3.30) it is asked that the following wording be used for requirements 4(4) and 4(5).</p> <p><i>"No Stage including works Nos ..... shall commence until details....."</i></p> <p>This would then effectively link the CEMP, LEMP mitigation requirements to the approved detailed design which are on a 'Stage' basis.</p>			
2.3.33	Requirement 5 (2) (a-m)	CEMP – Working Methods and Mitigation Measures <i>Issue</i> Specific measures for construction works are missing including plant and	The detailed CEMP, secured by Requirement 5 of the dDCO [REP1-004], will include the details of those measures raised by the IP including working methods and	As identified at 2.3.4 above, the Council is not clear how matters of mineral resource management are to be secured in the final	As above, the Applicant considers that this can be addressed in the Materials Management Plan and is provided as an Outline Materials Management Plan	See paragraph 2.3.4 above regarding the submitted Outline Materials Management Plan.	Please see Applicant's response in row 2.3.4 above.

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		<p>equipment detail; night-time noise levels; minerals safeguarding, and identified contamination.</p> <p><i>Amendment Required/Comment</i></p> <p>Include the following additional measures:</p> <ul style="list-style-type: none"> <li>• mineral safeguarding plan,</li> <li>• protection and replacement planting of all significant trees and hedgerows (not just ancient woodland),</li> <li>• specification of noise limits (day and night)</li> <li>• heritage mitigation measures</li> <li>• biodiversity survey reporting and monitoring strategies</li> <li>• contamination</li> <li>• mechanism for review</li> </ul>	<p>mitigation measures to ensure the reduction of potential adverse impacts as a result of construction works.</p>	<p>CEMP. At this stage, the Council ask that the consideration / inclusion of mineral management be explicit in the final CEMP.</p> <p>The Council also asks that the following are explicitly referred to in Requirement 5:</p> <ul style="list-style-type: none"> <li>• Contamination mitigation measures;</li> <li>• Heritage mitigation measures and;</li> <li>• The specification of noise limits (day and night)</li> </ul> <p>The Council has incorrectly inserted the below issues as relating to Requirement 5. The Council confirms that these issues relate to Requirement 11, and are further raised in 2.3.36 – 2.3.40 below:</p> <ul style="list-style-type: none"> <li>• protection and replacement planting of all significant trees and hedgerows (not just ancient woodland),</li> <li>• biodiversity survey reporting and monitoring strategies</li> <li>• mechanism for review</li> <li>•</li> </ul>	<p>(document reference: <b>D.7.32</b>) at Deadline 4 for review.</p> <p>The requested additions to Requirement 5 of the dDCO <b>[REP3-005]</b> are already covered in the outline plans where appropriate. A full suite of outline plans will be submitted at Deadline 5 for review and comment.</p>		



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2.3.34	Requirement 8 (3)	<p>Water Discharge <i>Issue</i></p> <p>Requires details to be submitted but not approved in writing.</p> <p><i>Amendment Required/Comment</i></p> <p>Rewording to: "No discharge of water under article 19 (discharge of water) must be made until details of the location and rate of discharge have been submitted and approved in writing by the relevant planning authority"</p>	<p>This was added to the requirement at Deadline 1, please see <b>[REP1-005]</b> for a tracked version of the dDCO.</p>	<p>The Council notes that Requirement 8(3) only requires the submission of details but not for the LLFA to be consulted nor its approval to those details. This needs to be included in the next iteration of the draft DCO.</p>	<p>The Applicant proposes to secure consultation under the strategy, not the requirement in the dDCO.</p>	<p>See paragraph 2.3.25 above and the Councils' response to ISH2-AP5 <b>[REP4-276]</b></p> <p><i>"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.</i></p> <p><i>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</i></p>	<p>Please see the Applicant's response to these matters at row 2.3.25 above.</p>

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						<p>areas of associated surface water flood risk.</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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"</i></p>	
2.3.35	Requirement 9	Contaminated land and Groundwater <i>Issue</i>	This was added to the requirement at Deadline 1, please see <b>REP1-005</b> for a tracked version of the dDCO.	The Council notes the inclusion of Requirement 9(5) for verification reporting to be submitted	The Applicant does not agree and would refer the Council to its responses to the action points from	See paragraph 2.3.7 above. The requirement for the approval of verification	Please see Applicant's response in line 2.3.7 above.

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		<p>This is missing a requirement for the submission and approval of a validation report.</p> <p><i>Amendment Required/Comment</i></p> <p>CWCC require the Requirement to be revised to include validation reporting and for the details to be approved by CWCC.</p>		<p>to the relevant planning authority, however it does not require approval.</p> <p>Amendment is required for the submission of a verification report to be submitted for approval.</p>	<p>ISH2 on the dDCO (document reference: <b>D.7.31</b>).</p>	<p>reports remains absent from Requirement 9. The Applicant's Response to actions raised at the Issue Specific Hearing (ISH2-AP10) <b>[REP4-265]</b> does not address this matter.</p>	
2.3.41	Requirement 13 (1)	<p>Construction Hours <i>Issue</i></p> <p>The requirement restricts hours of constructions "except in the event of emergency" and provides definition of "emergency" as "means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action". This definition of "emergency" is not considered acceptable as it would allow for</p>	<p>The exception for emergencies is necessary as where works are required to protect life, health safety, the environment or property it should not be a criminal offence to undertake those. That is not agreed to be a reasonable position for a DCO to create. The Applicant strongly objects to any deletion of this.</p>	<p>The Council would agree to the Applicant's definition of "emergencies" but subject to requirement provision 13(3)(c) being removed. Please see 2.3.42 below.</p>	<p>The Applicant notes that amendments have been made to this requirement at Deadline 3 <b>[REP3-005]</b> and further amendments are proposed in the Deadline 4 submissions.</p>	<p>The Council acknowledges the removal of provision 13(3)(c) from the original wording of the dDCO "works required to mitigate delays....." and can therefore can accept the definition of "emergency" as drafted in provision 13(5).</p> <p>As is further outlined below, paragraphs 2.3.42-2.3.44, so as to control any unacceptable impacts resulting from out of hours working the Council requests that either specific mitigation in the form of schemes to be approved for all out of hours working as part of the CEMP's noise and vibration management plans is provided or</p>	<p>The Applicant refers to its response at Deadline 5 in Applicant's Comments on Submissions Received at Deadline 4 <b>[REP5-015]</b>, Table 2.1, where this is addressed in detail.</p>

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		<p>uncontrolled out of hours construction works.</p> <p><i>Amendment Required/Comment</i></p> <p>CWCC would prefer a scheme for out of hours work to be submitted to the relevant authority for approval. The blanket exception for "emergency" needs to be removed or redefined.</p>				<p>tighter definitions of works exempt from the set construction hours are provided and specifically for uninterrupted trenchless crossing works and start-up and shut-down activities.</p>	
2.3.42	Requirement 13 (3)	<p>Construction Hours <i>Issue</i></p> <p>List of operations allowed outside approved working hours including trenchless construction techniques and works required to mitigate delays due to extreme weather conditions etc. this is too open and has the potential to result in unacceptable noise impacts.</p> <p><i>Amendment Required/Comment</i></p> <p>Revise wording of Requirements to require any working outside of agreed hours only as part of an approved scheme.</p>	<p>The Applicant does not agree that a scheme is required for the works (a), (b) and (d). It is known that some working outside standard hours is required, for example on trenchless crossings make no sense to require a scheme for works already known. Trenchless crossings once commenced cannot be halted except in an emergency. It is inappropriate for activities which are known to need continuous working not to be provided for on the face of the DCO. The drafting of this requirement follows precedent where such exceptions are routinely included.</p> <p>The Applicant will agree to amend the DCO so that working for what is currently (c) would require approval under a scheme but maintains that</p>	<p>The Council questions how a scheme for working under 13(3)(c) would be secured / undertaken.</p> <p>The Council therefore requires the removal of Requirement 13 (3) (c) and would only accept the retention of operations under 13(3) (a), (b) and (d), subject to the noise and vibration management plan, to be approved as part of the final CEMP, including detail of any additional mitigation for of all out of hours working including that for operations identified under these parts.</p>	<p>The Applicant notes that amendments have been made to this requirement at Deadline 3 <b>[REP3-005]</b> and further amendments are proposed in the Deadline 4 submissions.</p>	<p>In respect Requirement 13(3)(a) "<i>trenchless construction techniques which cannot be interrupted</i>" the Council refers the Applicant to its comments within its cover letter at Deadline 4 <b>[REP4-274]</b>, where it raises concerns where uninterrupted works occur next to more vulnerable residential uses (caravans).</p> <p>In the absence of any specific schemes /controls for out of hours working, the Council request that further clarification and a definition is provided in respect uninterruptable operations, and provision of a 'Special Cases' statement, attached to</p>	<p>The Applicant refers to its response at Deadline 5 in Applicant's Comments on Submissions Received at Deadline 4 <b>[REP5-015]</b>, Table 2.1, where this is addressed in detail.</p>

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			allowing 24 hour working for (a), (b) and (d) is necessary and appropriate.			the OCEMP with specific mitigation for residential uses which may not be adequately protected by the thresholds set out in Paragraph 15.5.30/15.5.56 of Chapter 15 of the Environmental Statement [APP-067].  The Council is happy to discuss the matter further with the Applicant.	
2.3.43	Requirement 13 (4) (a)	<p>Construction Hours <i>Issue</i></p> <p>The requirement provides that "nothing in subpara. (1) preclude the receipt of oversized deliveries to site and the undertaking on non-intrusive activities".</p> <p>Non-intrusive activities as defined in subpara. (5) would need further clarification and tighter links to prevailing noise limits and most importantly the character of the noise, duration, frequency, maximum levels.</p> <p><i>Amendment Required/Comment</i></p> <p>Revise wording of Requirements to require any working outside of</p>	<p>The Applicant does not agree and notes that all works will be subject to noise controls through the CEMP and where appropriate COPA prior approvals. A scheme is not necessary as noise controls are already provided for under other requirements.</p> <p>The requested deletion of 'outside the Order Limits' is not understood as that is not considered by the Applicant to make sense. The definition provides that non-intrusive activities are those which cause a discernible impact outside the Order Limits – there can be no activity which does not cause an impact inside as the person carrying out can clearly discern it, they will not be working in the dark for example. The definition is</p>	<p>As outlined in paragraph 15.8 of the Local Impact Report [REP1A-002] the Council accepts oversized deliveries for non-intrusive activities outside identified hours.</p> <p>The Council notes the Applicant's response in respect of noise controls to be contained in the CEMP however the specific additional mitigation for out of hours working is not currently specified in these documents. As is outlined in 2.3.42, above, the Council maintains that the control of any working outside the identified hours, including any additional mitigation, should form part of an approved scheme. The Council suggests that this</p>	<p>The Applicant notes that amendments have been made to this requirement at Deadline 3 <b>[REP3-005]</b> and further amendments are proposed in the Deadline 4 submissions.</p>	<p>The Council maintains its position that the wording "outside the Order limits" in the "non-intrusive activities" definition needs to be deleted.</p>	<p>The Applicant maintains that removing 'outside the order limits' in the definition of non-intrusive activities is non-sensical as impacts which are only discernible within the order limits cannot by their nature adversely impact persons outside of them. An activity will be discernible within as it will be carried out by human beings who need to be able to see what they are doing – indiscernible within the order limits would require works to be invisible and silent. There are no residential properties or other non-transitory human centred sensitive receptors within the order limits, Ecological receptors are protected by the CEMP and LEMP, as secured by Requirement 5 and 11 of the dDCO <b>[CR3-008]</b>. Works inside the order limits are therefore</p>

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		<p>agreed hours only as part of an approved scheme.</p> <p>The wording "outside the Order limits" in the "non-intrusive activities" definition needs to be deleted.</p>	<p>there to stop task lighting 'spilling' outside the order limits, not prevent a worker turning on lights inside a kiosk.</p>	<p>could be secured as part of the yet to be approved noise and vibration management plan, which will form part of the final CEMP.</p> <p>The Council's point regarding the definition of "non intrusive activities" and outside the Order Limits relates to the fact that there currently exists residential receptors (including The Spinney, Hallsgreen Lane, CH2 4JX) within the Order Limits and these would be missed within this definition.</p>			<p>appropriately controlled by the restriction preventing impacts outside of those limits.</p>
2.3.44	Requirement 13 (4) (b)	<p><b>Construction Hours Issue</b></p> <p>The requirement provides that "nothing in subpara. (1) preclude start-up and shut-down activities up to an hour either side of the core working hours and undertaken in compliance with the CEMP".</p> <p>CWCC also advise that start up and shut down activities should be very much part of the core hours of operation and is not separate.</p>	<p>The Applicant disagrees and notes that start up and shut down hours are routinely allowed outside the core hours as they are include activities such as staff arrival, briefings, tool box talks, health and safety checks and numerous other activities which do not have the impacts of the main construction. The Applicant is willing to discuss the wording of this to address any concerns regarding the scope of activity allowed but does not agree a scheme is required for the types of activities listed.</p>	<p>The Council maintains that uncontrolled start up and shut down operations, even with the controls under the CEMP, such as the use of external machinery including generators and start-up and maintenance of heavy machinery and plant have the potential for significant impacts to amenity especially given the Projects proximity to residential receptors.</p> <p>With suitable controls / restrictions the Council would however not be averse to certain out of hours start up and shut down activities.</p>	<p>The Applicant notes that amendments have been made to this requirement at Deadline 3 <b>[REP3-005]</b> and further amendments are proposed in the Deadline 4 submissions.</p>	<p>The Council would refer to its further comments made at Deadline 4 <b>[REP4-274]</b></p> <p>Revision G of the draft DCO submitted at Deadline 4 <b>[REP4-007]</b> has provided a definition of start-up and shut-down activities as:</p> <p><i>"includes personnel briefings, inspections, tool-box talks, inductions, health and safety works, deliveries, movement to place of work, unloading, maintenance and general preparation work; but does not include</i></p>	<p>The Applicant refers to its response at Deadline 5 in Applicant's Comments on Submissions Received at Deadline 4 <b>[REP5-015]</b>, Table 2.1, where this is addressed in detail.</p> <p>The Applicant also notes that it does not agree that specific schemes are needed as this implies that there are no specific controls, already in place. This statement is incorrect and not accepted by the Applicant. The CEMP and importantly the noise and vibration management plans, as secured by Requirement 5 of the dDCO</p>

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		<p><i>Amendment Required/Comment</i></p> <p>Revise wording of Requirement to require any working outside of agreed hours only as part of an approved scheme.</p>		<p>The Council would advise that this issue could be resolved by a further definition for "non-discernible activities" for start-up and shut-down operations and we would specifically say that these should not include certain activities including use /starting up of engines of any external plant or machinery including generators, heavy plant and the use of high level flood lighting.</p>		<p><i>operation of heavy machinery for construction, or operation of generators or flood lights at work-fronts".</i></p> <p>In the absence of specific out of hours working mitigation to be approved under schemes the Council highlights the importance for tight definitions of any works or operations allowed outside the construction hours and for this reason the provided definition of "start-up and shut-down activities" under provision 13(5) of the draft DCO [REP4-007] is not considered acceptable as it would allow activities including deliveries, unloading and unspecified general preparation work all which, if uncontrolled, have the potential to result in discernible impacts to sensitive receptors including residential properties and caravans.</p>	<p><b>[CR3-008]</b>, do have to be approved for all works.</p>
2.3.45	Requirement 16	<p>Restoration of Land Issue</p> <p>"Subject to article 34 (temporary use of land for</p>	<p>This requirement is a reserve power to allow the LPA to require restoration in default or where there is an issue. The primary mechanism for</p>	<p>The Council maintains that the restoration of land and suitable aftercare is a planning matter, land ownership is</p>	<p>The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO</p>	<p>The Council note the Applicants position presented within in Paragraphs 2.21 and 2.23 of the Applicants</p>	<p>The Applicant refers to its response at Deadline 5 in Applicant's Comments on Submissions Received at Deadline 4 <b>[REP5-015]</b>, Table</p>

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		<p>carrying out the authorised project)], any land within the Order limits which is used temporarily for or in connection with construction must be reinstated to a condition fit for its former use, or such other condition as the relevant planning authority may approve, within 12 months of completion of the authorised project.”</p> <p>“fit for its former use” is not precise or enforceable and would not secure return the higher grades of agricultural land back to their former grading / condition including drainage etc.</p> <p>Requirement 16 as a whole is not precise or enforceable and does not require the approval of a scheme of restoration and aftercare.</p> <p><i>Amendment Required/Comment</i></p> <p>The requirement to reinstate should be on a section or phase basis, not the whole project, as that will increase the time to restoration of habitats (and alter the biodiversity net gain result).</p>	<p>controlling restoration is the land agreements which will include for example schedules of condition before possession is taken, the details of restoration, which will in the main be to the former use. Drainage would be reinstated in its former location. Deterioration in land would be a compensatable issue not a planning one. Aftercare of agricultural land once returned to the landowners use is not appropriate or reasonable as it would not only interfere with the land agreements between the landowner and Applicant but would require the Applicant to control land for longer than necessary, to interfere with the landowners use, to take rights for longer than necessary and it is accordingly disproportionate to move from the control of the landowner to the LPA.</p>	<p>not. The draft DCO should be re worded to require full details of a restoration scheme, combined within Requirement 16 or include more detail within the soil management plan.</p>	<p>(document reference: <b>D.7.31</b>).</p>	<p>Written Summaries of Oral submissions made at the Issues specific Hearings - Part 3 <b>[REP4-264]</b>.</p> <p>The Council retains its position on this issue.</p>	<p>2.1 where this is addressed in detail.</p>



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2.3.46	Requirement 17	<p>Post construction environmental management plans</p> <p><i>Issue</i></p> <p>“Operational and maintenance management” and “decommissioning” are distinctly separate stages of the project. These should be covered in separate requirements.</p> <p>Furthermore, the scheme does not provide or require details of restoration aftercare.</p> <p><i>Amendment Required/Comment</i></p> <p>CWCC advise that the requirement be split into two requirements for the approval of schemes for restoration and aftercare and one for decommissioning.</p> <p>CWCC require details of restoration and aftercare to be provided to the relevant planning authority for approval. This could be incorporated under Requirement 17 or alternatively a detailed scheme could be included Requirement 16.</p>	<p>The Applicant has no objection to splitting this into two requirements.</p> <p>Restoration aftercare from construction is addressed above. Restoration of decommissioning would be covered by the DEMP under Requirement 17(3) of the dDCO <b>[REP1-004]</b>.</p>	<p>The Council welcomes splitting this requirement into operational and maintenance environment management (OMEMP) and decommissioning environmental management plan (DEMP). However as is noted above, in 2.3.45 above, these plans need to include detail of full restoration and aftercare schemes.</p>	<p>The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference: <b>D.7.31</b>).</p>	<p>The Council note the Applicants position presented within in Paragraphs 2.21 and 2.23 of the Applicants Written Summaries of Oral submissions made at the Issues specific Hearings - Part 3 <b>[REP4-264]</b>. The Council retains its position on this issue.</p>	<p>The Applicant acknowledges the response from CWCC.</p>

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Schedule 2: Part 2: Applications made under requirements (pp. 70-72)							
2.3.51	Article 23	<p>Multiple relevant authorities</p> <p><i>Issue</i></p> <p>The requirement provides 20 days for discharging authorities to comment on applications relating to multiple authorities within "20 days".</p> <p>Timescale is short and doesn't allow any agreed extensions of time.</p> <p>This is in effect a pre-app to and between the two authorities – the need for timescales at all is questioned. If a timescale is accepted there should at very least be the ability to agree an extension of time.</p> <p><i>Amendment Required/Comment</i></p> <p>Advise the removal of this Requirement or provide a reasonable extended period of time [e.g. within 40 days and ability to agree an extension of time i.e. "within such longer period as may be agreed by the undertaker and the host authorities in writing"]</p>	<p>The Applicant would be willing to add the flexibility requested to agree a longer timescale but will not agree to extend the period.</p>	<p>The Council would welcome the inclusion of flexibility to agree longer timescales, however, a 20 day response time would be an unreasonably short period of time for the Council to be able provide any substantive response.</p>	<p>The Applicant notes that the 20 days period is only to provide comments on the form of proposed applications. The Applicant does not agree that is insufficient.</p>	<p>The Council notes the inclusion in draft DCO revision E [REP3-005] for the ability to agree longer timescales, and on further review the Council is happy to accept the wording of Article 23 as drafted.</p>	<p>The Applicant notes CWCC accepts the revised wording of paragraph 23 of the dDCO <b>[CR3-008]</b>.</p>

Previous Ref	WR Ref	The Council's Written Representation (WR) Deadline 1	Applicant's Deadline 2 Comments	Council's Response at Deadline 3	Applicant's Deadline 4 Comments	Council's Response at Deadline 5	Applicant's Response
2.3.52	Article 24(2)	<p>Further Information <i>Issue</i></p> <p>“(2) If the relevant authority considers further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant authority must, within 5 business days of receipt of the application, notify the undertaker in writing specifying the further information required. Notification required in 5 business days to specify further information required.”</p> <p>Even for internal consultees it is not considered reasonable to only allow 5 working days for notification for further information.</p> <p>Notwithstanding the admin time, consultees will need time to fully review the provided material to be able to advise if further information will be required. This is not considered reasonable and significant concern is raised by CWCC.</p>	<p>Where consultation is needed on a requirement that would be stated in the requirement and known upfront. That is stated in sub-paragraph (3).</p> <p>The Applicant will not agree to remove this wording but would be willing to amend the period to 10 days.</p>	<p>The Council would still consider 10 days to be an unreasonably short period of time, especially where detailed responses are required from internal consultees. The Council maintain that this either be amended to a more reasonable length of time (e.g. 21 days) or removed in its entirety.</p>	<p>The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference: <b>D.7.31</b>).</p>	<p>The Council maintains that it does not support the inclusion of controls in respect to the requests for further Information under Requirement 24 (2-4) of draft DCO revision G <b>[REP4-007]</b>.</p> <p>In response to the Applicant's response at Deadline 4 to ISH2-AP12 <b>[REP4-265]</b> and written oral submissions made following the hearings <b>[REP4-264]</b> the Council refers to its response made under ISH2-AP12 <b>[REP4-276]</b> where, acknowledging the Applicant's concerns regarding timescales, a suggestion has been made to resolve the Councils ongoing concerns regarding this requirement:</p> <p><i>“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].</i></p> <p><i>This issue was further raised by the Council</i></p>	<p>The Applicant is happy to engage with CWCC. However, it notes that it has had no response to repeated requests to arrange a call on this point from CWCC.</p>

Previous Ref	WR Ref	The Council's Written Representation (WR) Deadline 1	Applicant's Deadline 2 Comments	Council's Response at Deadline 3	Applicant's Deadline 4 Comments	Council's Response at Deadline 5	Applicant's Response
		<p><i>Amendment Required/Comment</i></p> <p>CWCC may not know whether they need to consult a requirement consultee within the first 5 days. CWCC recommend that this be amended to a more reasonable length of time (e.g. 21 days) or removed in its entirety.</p>				<p><i>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.</i></p> <p><i>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 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</i></p>	

Previous Ref	WR Ref	The Council's Written Representation (WR) Deadline 1	Applicant's Deadline 2 Comments	Council's Response at Deadline 3	Applicant's Deadline 4 Comments	Council's Response at Deadline 5	Applicant's Response
						<p><i>be unnecessary and overly restrictive controls over the request for further information."</i></p> <p>The Council would welcome further engagement with the Applicant on this matter.</p>	
2.3.53	Article 24(3)	<p>Further Information Issue</p> <p>"(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within five business days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within 21 days of receipt of the application."</p> <p>The 5 day timescales for issuing the consultation and reverting to the undertaker as to whether further information is required is not appropriate</p>	<p>Where consultation is needed on a requirement that would be stated in the requirement and known upfront. That is stated in sub-paragraph (3).</p> <p>The Applicant will not agree to remove this wording.</p>	<p>In view of the provisions / time scales and ability to agree extension of time afforded for under Article 21 (8 weeks) the Council questions the need for any restriction on consultation times and requests for additional information.</p> <p>Notwithstanding this point, should the ExA accept the retention of consultation restrictions under this article, in view of the standard 21-day response time for external consultees, it is considered unreasonable to only allow 21 days for the Council to respond to the undertaker for additional information, especially where there is the potential for delays in external consultee responses or where responses are received on day 21. In this respect</p>	<p>The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference <b>D.7.31</b>).</p>	<p>Please refer to comments under paragraph 2.3.52 above</p>	<p>Please see the Applicant's response in row 2.3.52 above.</p>

Previous Ref	WR Ref	The Council's Written Representation (WR) Deadline 1	Applicant's Deadline 2 Comments	Council's Response at Deadline 3	Applicant's Deadline 4 Comments	Council's Response at Deadline 5	Applicant's Response
		<p>where external consultation is needed.</p> <p>Requiring a specified timescale for consultation of external bodies is not considered reasonable or necessary. This can be adequately dealt with under an agreed extension of time under Schedule 2 Part 2 (19(1)).</p> <p><i>Amendment Required/Comment</i></p> <p>CWCC advise this be amended to a more reasonable length of time (35 days).</p>		<p>the Council do not consider it unreasonable to amend this timescale to 35 days to allow sufficient time for adequate and meaningful consultation.</p>			
2.3.54	Article 24(4)	<p>Further Information <i>Issue</i></p> <p>"(4) If the relevant authority does not give the notification mentioned in sub paragraphs (2) or (3) or otherwise fails to request any further information within the timescales provided for in this paragraph, it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior</p>	<p>The discharging authority has the ability to ask for further information, within the timescales stated, not at any time thereby delaying determination unpredictably and with an impact on delivery of the NSIP. The Applicant does not agree that this standard wording should be deleted.</p>	<p>The LPA maintains that this provision should be removed, it could be more likely to result in a decision being made with insufficient information which could result in a refusal, particularly given the tight time scale, delaying the delivery of the Project further rather than allowing the local planning authority to work pro-actively with the Applicant.</p>	<p>The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference: <b>D.7.31</b>).</p>	<p>Please see comments under paragraph 2.3.52 above</p>	<p>Please see the Applicant's response in row 2.3.52 above.</p>

Previous Ref	WR Ref	The Council's Written Representation (WR) Deadline 1	Applicant's Deadline 2 Comments	Council's Response at Deadline 3	Applicant's Deadline 4 Comments	Council's Response at Deadline 5	Applicant's Response
		<p>agreement of the undertaker.”</p> <p>This is not considered reasonable – If insufficient info has been provided the host authority should have the right to ask for further information as deemed necessary. If this was to remain in place the Host Authority, if missing its 5-day notice period, would have no choice but to refuse the requirement application – this would be counterproductive.</p> <p><i>Amendment Required/Comment</i></p> <p>Advise this requirement is removed.</p>					
Schedule 10 – Protective Provisions							
2.3.56	Part 7	<p>Protective Provisions – Local highway authorities</p> <p><i>Issue</i></p> <p>The details of the protective provisions were not negotiated with CWCC prior to being included within the DCO. These are being discussed with the applicant.</p> <p><i>Amendment Required/Comment</i></p>	<p>The Applicant had anticipated that the local highway authority would seek protections on street works points and included a first draft of the PPs to demonstrate it had considered that, was happy in principle to progress such PPs and provide a starting point for discussion, however it has had no comments on these from the authority.</p>	<p>The Council would welcome constructive dialogue with the Applicant on the Protective Provisions included in Part 7 of Schedule 10 to the draft DCO and the Council will be providing comments on the Protective Provisions and negotiating with the Applicant throughout the Examination.</p>	<p>The Applicant is engaging with the Council on these points.</p>	<p>The Council can confirm ongoing engagement between the Applicant and the Council on this matter.</p>	<p>The latest position on this matter is set out in the SoCG with CWCC <b>[REP2-027]</b> the latest version of which is submitted at Deadline 6.</p>

Previous Ref	WR Ref	The Council's Witten Representation (WR) Deadline 1	Applicant's Deadline 2 Comments	Council's Response at Deadline 3	Applicant's Deadline 4 Comments	Council's Response at Deadline 5	Applicant's Response
		CWCC reserve the right to comment on the protective provisions.					

**Table 2.3 – Applicant's Comments on Submission Received from the Environment Agency at Deadline 5 [REP5-033]**

Reference	IP Submission	Applicant's Response
2.3.1	Under the EA's Deadline 3 submission [REP3-045], 'Applicant's responses [REP2-038] [REP2-041] to EA's Comments on Water Framework Directive and Biodiversity Related Matters', we highlighted to the ExA that we wish to provide representation on certain matters at part of a later Deadline submission. Please see below additional comments from the EA relating to the WFD Assessment [APP-165], subsequently superseded as part of the applicant's Deadline 4 submission, and impacts of the proposed scheme on fish species.	The Applicant has provided comments on these matters below.
2.3.2	<u>Water Framework Directive (WFD) Assessment</u> The EA has recently engaged with the applicant's project team on the matters raised in the EA's Deadline 1 submission [REP1-062] from a WFD perspective and the applicant's subsequent responses under Deadline 2 [REP2-038] [REP2-041]. Discussions are currently ongoing where we are aware an updated Statement of Common Ground (SoCG) with the EA on this matter and revised WFD Assessment will be submitted to the ExA from the applicant as part of a future deadline submission.	The Applicant confirms that discussions with the Environment Agency are ongoing and that the WFD assessment is being updated in line with representations made by the Environment Agency. The revised WFD assessment [REP4-174] will be submitted at Deadline 7.
2.3.3	<u>Fish</u> We welcome the applicant's Deadline 2 [REP2-042] responses to the matters raised on the consideration of fish species within the EA's Deadline 1 submission [REP1-062]. We are satisfied with the assessment that has been undertaken with regards to the impacts of noise and vibration from the proposed scheme on fish species. However, under REAC ES ref. D-BD-058 we note that seasonal timings of works will avoid sensitive life cycle stages (migration and spawning), where possible, and 'exemptions' will be sought from the EA and Natural Resources Wales where necessary.  We would advise impacts to salmonid migration cannot be legally obliged by the EA and therefore, would request clarification on where ES ref. D-BD-058 states '...exemptions will be sought from the Environment Agency...'. Construction works must be carefully planned to avoid such sensitive life cycle stages for fish species and therefore, advise this action / commitment is reworded as such.	The Applicant clarifies that seeking 'exemptions' from Environment Agency and Natural Resources Wales (as applicable in Wales) in relation to avoidance of works within the sensitive life cycle stages (migration and spawning) under item D-BD-058 (of the Outline Construction Environmental Management Plan (OCEMP) [REP4-237]) refers to seeking of agreement where it might be practical to plan and deliver works within the sensitive salmonid period without incurring unreasonable risk to fish populations, not an exemption to exclude the full sensitive period. Life cycle stages covered under the sensitive salmonid period are habitat dependent, and include; migration, spawning, embryo / yolk-sac fry development, and vulnerable fry stages. Construction works will be carefully planned to avoid risks to these sensitive life cycle stages for fish species. OCEMP item D-BD-058 [REP4-237] infers further consultation with Environment Agency and Natural Resources Wales on a case-by-case basis, following confirmation of the detailed design of the pipeline, to seek agreement for exemption of part of the sensitive salmonid period based on the presence/absence of specific life-cycle dependent habitat, for example gravel spawning habitat, such that works might proceed where the impact to specific life-cycles stages would not be a concern.  The exemption referred to under OCEMP ref. D-BD-058 [REP4-237] does not refer to seeking agreement from Environment Agency and Natural Resources Wales for the removal of the sensitive salmonid period.



Table 2.4 – Applicant's Comments on Submission Received from Flintshire County Council (FCC) at Deadline 5 [REP5-039] Table 2-2

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
<b>4. Biodiversity, Ecology and Natural Environment</b>								
Q1.4.2	Monitoring  FCC	<p><b>IPs</b></p> <p>Confirm whether you are satisfied with the monitoring measures during construction and post construction described within Section 9.13 of ES - Chapter 9 - Biodiversity [APP-061].</p> <p>In particular, your comments are invited on the monitoring requirements anticipated during construction detailed within Table 9.13 and within Appendices 9.1 - 9.10 (Volume III), in relation to protected species licencing and the Outline Landscape</p>	<p><b>Construction monitoring measures:</b></p> <p>Table 9.13 of the ES Chapter 9 - Biodiversity [APP-061] with REAC references and OCEMP-Table 6.6: Construction Management and Mitigation summarises REAC references which comprise:</p> <p>Biodiversity BD-001 references the appointment of a Team of Ecological Clerk of Works to support oversee and monitor the Construction Contractor</p> <p>D-BD-002 relates to Permits and EPS licences - Protected species licencing is likely to include additional monitoring in relation to any required mitigation as well as an external auditor.</p> <p>D -BD-003 the appointment of a third party to undertake Environmental compliance audits and</p>	<p><b>Construction Monitoring Measures</b></p> <p>The Applicant understands FCC's statement to mean that an External Auditor is key during the construction phase, but it is not clear from the comment whether FCC is seeking such provision during the operation and maintenance phase.</p> <p>The Applicant acknowledges the response of FCC in respect of construction monitoring measures.</p> <p>With regards the appointment of an External Auditor during construction, this is captured via item D-BD-003 of the Outline Construction Environmental Management Plan (OCEMP) [REP1-017].</p>	<p>To clarify in reference to D-BD-002 in particular GCN EPS licence – this will need to include monitoring and auditing both for construction and the operation and maintenance phase.</p> <p>The details may be specific to the licence but the information needs to be included within the final REAC.</p> <p>It is understood that mitigation and BNG are two separate concepts.</p> <p>The point was that management timescales should be the same ie 30years.</p> <p>It is noted that <i>Paragraph 6.1.2 of the Outline Landscape and Ecological Management Plan [APP-229] notes that, where appropriate, a review will be</i></p>	<p>The Applicant can confirm that details of monitoring and auditing will be included within the GCN EPS licence.</p> <p>Habitat planting for mitigation (including reinstatement of habitats) 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.</p> <p>The Applicant considers that the question needs to differentiate between forms of <b>mitigation</b> planting. Landscape mitigation around surface sites and woodland mitigation planting will be managed by the Applicant as part of the development.</p> <p>Hedgerow reinstatement planting would revert to the landowner post</p>	Clarification noted	The Applicant notes the response and has no further comment.

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		<p>Ecology Management Plan [APP-229]. As well as the post-construction monitoring proposed to be undertaken in accordance with a Landscape Ecology Management Plan (LEMP) [APP-230] developed at Detailed Design. The LEMP is proposed to be included within the Operations and Maintenance Environment Management Plan (OMEMP), provided post-construction. The ExA acknowledges that this may be covered by a SoCG. If the answer to these questions are being covered by a SoCG</p>	<p>regularly report on all parties.</p> <p>FCC is satisfied with the above monitoring measures proposed during construction.</p> <p>An External Auditor is key to ensuring construction works, mitigation and licences adhere to the agreed plans but are only proposed for the duration of construction, and not in the long term during the maintenance and management period for landscape planting.</p> <p><b>LEMP:</b> It is considered that the LEMP need to include a description of what success looks like. For example, provide the number of species planted successfully grown to a certain height, or at what point establishment can be signed off.</p> <p><b>OLEMP:</b> includes 5-year timescales for individual tree and hedgerow establishment and 10 years for native tree and woodland planting. To ensure proper establishment,</p>	<p><b>LEMP</b></p> <p>The Applicant refers to its response to Q1.4.2 (page 23) within the Applicant's Response to ExA's ExQ1 <b>[REP1-044]</b> regarding the OLEMP/LEMP and its current and future content. FCC's comments are acknowledged.</p> <p><b>OLEMP</b></p> <p>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.</p>	<p><i>undertaken of the needs for future maintenance and management of created habitats beyond the establishment/maintenance period.</i></p> <p>What is the incentive for the landowner to maintain the mitigation planting beyond the handover period?</p> <p>And who will enforce this?</p> <p>Will the DCO be able to transfer mitigation land to a third party eg Nature Conservation Body if the landowner does not wish to manage it?</p>	<p>establishment. That is appropriate as these hedgerows as replacement not new and should revert to the existing landowner.</p> <p>Transfer to a body is only likely to be applicable for woodland mitigation planting and would depend on the form of land agreement reached. Where the Applicant acquires the freehold (as is proposed) it would be an option however that is not yet determined.</p>		

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		<p>please indicate that accordingly.</p> <p><b>Applicant</b></p> <p>The ExA notes the LEMP is to be developed at what is described as 'Detailed Design', yet a LEMP has been provided [APP-230]. At what design stage is the document currently? Can the Applicant clarify its inclusion? For example, is its present inclusion to allow consultee responses to feed into the detailed design version?</p> <p>Paragraph 9.13.4 of [APP-061] refers to a 'HEMP' being developed from the detailed Construction Environmental Management Plan (CEMP)</p>	<p>longer timescales for establishment of woodland planting are needed e.g. 15 years with monitoring after this to ensure it remains in good condition. Timescales should be in line with that proposed for the BNG of circa 30 years.</p> <p>What isn't clear within the documentation is if HyNet would retain ownership of the mitigation woodlands. Furthermore, the documentation does not include details with regards to how the long-term management would be monitored.</p> <p>It is considered that there is a need for the external auditor to be retained or a separate organisation (e.g. Woodland Trust, North Wales Wildlife Trust etc) commissioned to ensure the security of the long-term management.</p> <p>There is concern that the LPA will not have time to negotiate a detailed LEMP or the resources to ensure</p>	<p>Paragraph 6.1.2 of the Outline Landscape and Ecological Management Plan [APP-229] 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.</p> <p>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.</p>				

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		<p>and the LEMP. Confirm what is the HEMP and its role.</p> <p>Sensitive land uses are identified within, or within 250m, of Sections 4, 5 and 6 include; Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and designated ancient woodland. In the event of a pipeline leakage or groundwater impacts arising from the Proposed DCO Development how would watercourses/ groundwater/ ecology be safeguarded in the monitoring controls available? Can potential pollution or acidification of inland water be</p>	<p>compliance/enforcement . There needs to be liaison between the external auditor and the LPA regarding the compliance with the approved documents and similarly with NRW regarding licences.</p>	<p>The Applicant has been in contact with the Woodlands Trust, the North Wales Wildlife Trust and Groundworks as evidenced in the BNG Strategy Update (document reference: <b>D.7.23</b>) submitted at Deadline 2, to discuss maintenance provision of BNG habitats.</p>				

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		adequately avoided/ safeguarded? If so, how?						
Q1.4.3	BNG/ Biodiversity Enhancement  FCC	Paragraph's 9.2.33-36 of ES Chapter 9 states that Biodiversity Net Gain (BNG) will be a statutory requirement for most planning applications, as per the new Environment Act (previously Environment Bill), which achieved Royal Assent through Parliament on 9 November 2021. Whilst there is currently a transition period before mandatory requirements come into force (expected to be winter 2023), it will require development to deliver a 10% net gain in	<p>With regards to the Biodiversity Metric details, FCC respectfully defers the Examining Authority to Cheshire West and Chester Council.</p> <p>With regards to the principles, I understand that the current BNG has been modelled to achieve 1% Net Gain of Priority habitats since 10% is not yet mandatory but if 10% gain is to become mandatory within the construction timescales there is a moral/best practice obligation to demonstrate more than 1% gain.</p> <p>Further mitigation is likely to be required for to be provided by the applicant as part of the European Protected Species Great Crested Newt licence and Water Framework Directive</p>	<p>The current BNG target for the DCO Proposed Development, set by The Applicant, is a minimum of 1% net gain in priority habitats.</p> <p>The Applicant notes that there is no statutory obligation under the Environment Act 2021 on this Application to provide BNG. Therefore, while delivery of BNG is agreed to be desirable, the 10% provision threshold does not apply and any positive gain is a benefit and accords with policy.</p> <p>It is the Applicant's understanding, based upon most recent guidance published by DEFRA, that the statutory requirement</p>	Noted			An updated version of the BNG Strategy <b>[REP5-012]</b> has been submitted at Deadline 6. Further updates of the BNG Strategy <b>[REP5-012]</b> and BNG Assessment <b>[REP3-023]</b> will be submitted prior to the end of the Examination.

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		<p>biodiversity units (area habitat, hedge and river units where applicable), as determined through the use of a biodiversity metric. Moreover, it is anticipated by the Applicant that the BNG requirement will apply across all terrestrial infrastructure projects, or terrestrial components of projects, accepted for examination by the Planning Inspectorate through the NSIP regime by November 2025 (subject to the provisions of the applicable National Policy Statements or Biodiversity Gain Statement). Projects</p>	<p>riverine habitats which could contribute to these enhancements but as yet are unmeasured.</p> <p><u>Facilitating BNG</u></p> <p>Discussions have taken place with Flintshire Countryside Service regarding enhancements that could be undertaken on Flintshire owned land. However, these proposals have not yet been quantified.</p> <p>Whether off-site BGG is undertaken on Public or Privately owned land, it is considered that, in order to secure establishment, appropriate long-term management and monitoring, the applicant should enter into a legal agreement that includes provision for a commuted sum to ensure compliance and to confirm that the BMG was being establish to a good standard.</p> <p>Should consent be granted, future proofing woodlands could be</p>	<p>of 10% net gain will not become an obligation, in any terms, until 2025 for NSIPs, and even then it will only apply to DCO applications submitted after a date to be specified. The potential legal requirement for 10% net gain will be associated with the date of the start of the planning decision-making processes rather than the onset of construction. Therefore, the Applicant considers that the Environment Act legislation in respect of the 10% BNG requirement will not apply, under any circumstances, to the DCO Proposed Development.</p> <p>Facilitating BNG</p> <p>Discussions around facilitating the necessary habitat offsetting to achieve biodiversity net gain (BNG) (evidencing this through the biodiversity metric</p>				

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		<p>accepted for examination before the specified commencement date would not be required to deliver mandatory BNG under the terms of the Environment Act.</p> <p><b>Applicant</b></p> <p>i) Nevertheless, biodiversity interests and the wider policy/statutory context those interests sit within, both in England and Wales, remain important and relevant considerations whereby significant enhancement could still potentially be secured irrespective of the BNG statutory provision anticipated. Does the Applicant agree? If not say why.</p>	<p>secured to some extent by reference to elements of the United Kingdom Woodland Assurance Scheme (UKWAS) which is a comprehensive certification standard for woodland management. The standard includes chapters covering Natural, Historical and the Cultural Environment, and Management Planning including woodland creation. UKWAS certification would mean that the woodlands are being managed in accordance with the best practice.</p> <p>There is concern that the level of BNG will be dependent on landowners' and stakeholders' willingness to offer land for this purpose. Where land is made available there is concern with regards to how long term BNG (30 years) will be secured. There will be a need to adequately incentivise landowners to take part. This should also be secured by legal</p>	<p>wherever possible) are on-going with Flintshire Countryside Service. The Applicant considers that specific habitat interventions or schemes to facilitate such interventions will be identified, quantified as far as practicable, and outlined within an updated BNG assessment report to be submitted at Deadline 5, however, an update on progress with offset site identification is provided at Deadline 2. This documents the Applicant's interaction with Flintshire Countryside Service as highlighted by FCC (see BNG Strategy Update (document reference: <b>D.7.23</b>) submitted at Deadline 2).</p> <p>As part of these off-site interventions, BNG Good Practice Principles will be</p>	<p>As 1.4.2 - It is accepted that the applicant will seek to avoid hedgerow loss as reasonably practical.</p>	<p>The Applicant notes FCC's comment regarding avoiding hedgerow loss.</p>	<p>Noted, FCC will await detailed design and final BNG proposals and reserve the right to comment at a later stage.</p>	

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		<p>ii) Can the Applicant clarify and set out/signpost how it intends to secure BNG significantly above the 1% currently detailed in the examination documentation? Confirm the level of BNG the Applicant is committed to providing as the overall aim. Outside of BNG measurement, can the Applicant set out how it could further boost and achieve meaningful overall biodiversity enhancements?</p> <p>iii) Does the Applicant agree that s106 agreement use involving a commuted sum mechanism to facilitate biodiversity enhancements may be a feasible/suitable option available?</p>	<p>agreement in the form of a commuted sum to ensure off-site BNG is provided.</p> <p>The OLEMP [APP-229] (paragraph 3.2.9.) specifies UK seed sourced and grown for native tree/shrub/hedge planting, which is welcomed.</p> <p>The successful reinstatement of removed hedgerows is considered to be a key element in minimising post construction landscape impacts along the sections of underground pipe where AGIs and BVSs are not present.</p> <p>Post construction, as a result of the pipeline construction, if consented, there will be sections of missing hedgerows along the line of the route but no other evidence of the construction as the land would be restored. It is possible that, from certain viewpoints, a number of hedgerow gaps would be visible which would indicate</p>	<p>adhered to, and underpinned by legal agreements. This includes the requirement of long-term management by suitably qualified or experienced bodies, adhering to a prescribed habitat management plan which will be drafted and agreed during detailed design. Discussions are ongoing around who will manage these habitats in the long-term and suitable payment structures will be agreed to ensure this ongoing dedicated management is fully costed to ensure compliance. The Applicant considers this a vital and fundamental principle associated with evidencing BNG.</p> <p>As detailed within the response at row 2.12.9 in the Applicant's Response to the Relevant Representations [REP1-043], the</p>	<p>The comment regarding the replacement of the whole hedge was not to remove more hedgerow but to replant the full length of a gappy/poor hedgerow adjoining the DCO rather than just the pipeline location.</p> <p>This would depend on landowner agreement but could contribute to the BNG requirement for new hedgerow.</p> <p>Disappointing that hedgerow translocation considered too onerous especially for those hedgerows important for bats.</p> <p>Management of the soil and the associated seed bank (relevant to established ancient hedgerows) needs to be included within the LEMP if not already.</p>	<p>The Applicant acknowledges FCC's comments regarding planting up of gaps in hedgerows. However, the Applicant, would be required to seek additional agreements with landowners to affect hedgerows beyond those areas directly impacted by construction (i.e. those that fall within the construction working corridor), which would be disproportionate in the context of the localised impacts of construction. Any additional planting of gaps would also require consideration of management over the establishment period, as a minimum. To qualify for consideration as part of any BNG strategy any agreement would require the Applicant to secure access to land for management of hedgerows over a 30-year period. This would place an unnecessary inconvenience on the landowner, as well as the Applicant who would require access to be agreed to larger areas of</p>		



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		<p>iv) To what extent has peatland, wetland or salt marsh creation/restoration (or similar) been considered as an enhancement that links to shared interests of climate change risk resilience from flooding and enabling nature based forms of carbon capture. If not, why has it not been considered?</p> <p><b>IPs</b></p> <p>v) Submit your views on seeking biodiversity enhancement/facilitating BNG, inclusive of any future proofing.</p>	<p>where the line of the pipeline is below ground and it is considered that this will feature as a scar across the countryside. To ensure that this does not take place, once the hedgerows have been replanted and grown there should be no evidence of the pipe at all.</p> <p>Rather than replacing the gap, where the hedgerow is particularly poor, it would be preferable to replace the whole length of the hedge. These longer sections of replanted hedge would make replacing just the gaps less of a repeating pattern in the countryside and mask the pipe's route, reducing visual sensitivity.</p> <p>In addition to hedge planting, the option for Hedgerow translocation especially for established ancient hedgerows and those identified as having good bat activity needs</p>	<p>Applicant will continue to seek to avoid hedgerow loss as much as reasonably practical during the detailed design stage of the DCO Proposed Development. Additionally, measures have been included within the Outline CEMP <b>[REP1-017 and CR1-119]</b>, for the planting of any areas of hedgerow removed to facilitate construction. The Applicant considers it disproportionate to remove extended lengths of established hedgerow, including poor hedgerows, as this would increase impacts on established linear habitats unnecessarily and could have implications on their use by protected and/or notable species (for example bats). The Applicant has provisioned micro-siting of the</p>		<p>land than would otherwise be necessary. Given the number of hedgerows located within the Order Limits and adjoining the DCO Proposed Development (beyond those included within the construction working width) this would likely result in a not insignificant financial outlay. The Applicant therefore feels it is disproportionate to seek to plant up gaps in hedgerows outwith those impacted within the construction working width by construction.</p> <p>In respect of hedgerow translocation, the Applicant refers FCC to its response to Q1.4.3 within Applicant's Comments on Responses to ExA's First Written Questions <b>[REP2-038]</b>. In addition, it should be recognised that the Order Limits are not representative of the final construction working width. The Applicant will develop a detailed design and route and apply a construction working width of 32m within the</p>		

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			<p>to be explored. This has been successfully achieved on other gas pipeline and road schemes within Wales, particularly in Carmarthenshire in South Wales.</p> <p>The maintenance for replacement hedgerows of the OLEMP [APP-229] (para 4.3.17) requires more detailed consideration as the height of new hedges should not be cut in the first five years if it is intended lay them. Hedge laying should be undertaken in accordance with the 'Midland Style' which is best suited to newly planted hedgerows. This detail can be agreed with the LPA during the consideration of the detailed LEMP as part of the approval of the requirements as required.</p>	<p>pipeline through existing gaps in hedgerows, as captured within item D-BD-009 of the OCEMP [REP1-017 and CR1-119]. The metric incentivises adherence to the mitigation hierarchy. Only those sections of hedgerow needing to be removed to facilitate construction are being considered, as per the mitigation hierarchy, which aligns with the BNG Good Practice Principles. Removal of additional lengths of hedgerow would also require extending management, monitoring and maintenance, placing additional burden and obstacles upon the Applicant unnecessarily. With regards hedgerow translocation, given the constraints of the Order Limits and the landscape through which the DCO Proposed</p>		<p>Order Limits. Through this, the Applicant will further reduce its impact upon land and landowners accordingly. To effect hedgerow translocation would likely require the Applicant to increase the size of the construction working width, which the Applicant considers inappropriate and disproportionate given appropriate mitigation and reinstatement of hedgerows has been provisioned within the mitigation measures and principles as presented within the Outline Construction Environmental Management Plan [REP2-021].</p> <p>The Applicant can confirm that the LEMP [APP-229], secured by Requirement 11 of the dDCO [REP3-005 and CR2-008], will include details of the management of the soil and seed bank where appropriate.</p>		

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				Development covers, the Applicant considers that it is not proportionate or appropriate to employ translocation of hedgerows for the small sections of hedgerow that will be removed.				
Q1.4.5	BNG/ Biodiversity Enhancement  FCC	Section 6 under Part 1 of the Environment (Wales) Act 2016 introduced an enhanced biodiversity and resilience of ecosystems duty (the S6 duty) for public authorities in the exercise of functions in relation to Wales. It requires that public authorities must seek to maintain and enhance biodiversity so far as consistent with the proper exercise of their functions and in so doing	Please refer to response at Q1.4.3 above and with regards to Biodiversity and resilience of ecosystems there is a cross reference and links to Wildlife corridor as per response at Q1.4.17 and Q1.11.7. <u>Offsite compensation scenarios</u> These should be agreed with public and private landowners prior to consent, or at the very least prior to commencement of development. BNG should be undertaken prior to commencement of development or integrated with DCO mitigation. For example, BNG could be provided in	The Applicant refers FCC to the responses provided for Q1.4.3 (page 24), Q1.4.17 (page 41) and Q1.4.7 (page 32) in the Applicant's Response to ExA's ExQ1 <b>[REP1-044]</b> submitted at Deadline 1. <u>Offsite compensation scenarios</u> The Applicant intends to agree habitat compensation to achieve a net gain in biodiversity. This will involve specific habitat interventions or schemes to facilitate such interventions which will be identified, quantified as far as practicable, and	Consideration should be given to Replanting/restoring the full length of a poor/'gappy' hedgerow adjoining the DCO rather than just the pipeline location.  This would depend on landowner agreement but could contribute to the BNG requirement for new hedgerow and complement Flintshire Countryside Service proposals.	The Applicant refers FCC to its response to Q1.4.3 above.	Noted, FCC will await detailed design and final BNG proposals and reserve the right to comment at a later stage.	An updated version of the BNG Strategy <b>[REP5-012]</b> has been submitted at Deadline 6. Further updates of the BNG Strategy <b>[REP5-012]</b> and BNG Assessment <b>[REP3-023]</b> will be submitted prior to the end of the Examination.

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		<p>promote the resilience of ecosystems. Section 7 of the Act entails biodiversity lists and duty to take steps to maintain and enhance biodiversity. It is noted by the ExA that the Welsh Ministers must also take all reasonable steps to maintain and enhance the living organisms and types of habitat(s) included in any list published under Section 42 and encourage others to take such steps.</p> <p><b>Applicant</b></p> <p>i) Signpost in the examination documentation how the above duty would be complied with? ii) The BNG Assessment submitted</p>	<p>part by hedgerow restoration and replacement for the full length of hedge rather, than just the DCO development width as raised above within Q1.4.3.</p> <p>Other linear schemes within Wales have required legal agreements to be entered into that include the provision for appropriate funding administered as grants to landowners.</p> <p>Funding can be costed for agreed BNG but will need to include mechanisms for instigating the grants.</p> <p>Grant schemes are successful where there is a project officer who can undertake the landowner liaison and subsequent monitoring of the schemes. Such schemes can be delivered via the local authority or another body such as the local Wildlife Trust, (North Wales Wildlife Trust in Flintshire) the Woodland Trust, Farming and</p>	<p>outlined within an updated BNG assessment report to be submitted at Deadline 5, with an updated assessment associated with impacts occurring within the Order Limits to be provided at Deadline 3 and an update to the BNG Strategy Update Document submitted at Deadline 2 (document reference: <b>D.7.23</b>).</p> <p>The Applicant considers that any habitat interventions to achieve a BNG will be secured through a suitable agreement(s) to ensure successful compliance.</p> <p><u>Cross cutting options available to boost BNG/ biodiversity enhancement</u></p> <p>The Applicant refers to its response to Q1.4.5 (iii) (page 30) in the Applicant's Response to ExA's ExQ1 <b>[REP1-044]</b> in respect of cross-cutting options.</p>				

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		<p>indicates compliance with the above statutory provision is being pursued during the Examination, in part, through engagement using the off-site compensation scenarios. However, if such an approach is to be utilised how will this be delivered to ensure both legal compliance and robust long-term management?</p> <p>iii) Has the Applicant scoped cross-cutting options available to boost BNG/ biodiversity enhancement with respect to its own scheme in combination with the strategic ecological challenges facing statutory consultees in both England and Wales?</p>	<p>Wildlife Advisory Group or related farm advisory group.</p> <p>Potentially, if the projects fit in with the proposed Sustainable Farming Scheme in Wales then there will be long term commitment to their success.</p> <p>Hedgerows are likely to be protected from grazing for the life of the associated fences.</p> <p>As for the LEMP proposals, there is a need for the External Auditor to be retained or a separate organisation (eg Woodland Trust, North Wales Wildlife Trust etc) commissioned to ensure the security of the long term management. At present, it is understood that the External Auditor would only be present during the construction phase of the project.</p> <p>Other mitigation/compensation schemes in Flintshire tend to be associated with the Great Crested Newt. The most successful schemes are</p>	<p>In respect of hedgerows, the Applicant refers to the response provided within Q1.4.3 above in respect of hedgerow translocation and restoration of full lengths of hedgerow.</p>				

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		<p>iv) The ExA considers that off-site BNG proposals should be more thoroughly explored and encourages early endeavours to achieve off-site BNG and a significantly greater overall value. The ExA requests the Applicant's views of realistically achieving meaningful off-site BNG (for a minimum of 30 years and formally registered) and the net level anticipated after development.</p> <p>v) The Applicant is advised to take a flexible approach to BNG/ meaningful biodiversity enhancement delivery options. This extends to delivery of net gain on both publicly and privately owned land covering</p>	<p>those where the site is handed over or are leased long term to a "Nature Conservation Body" with adequate funding.</p> <p><u>Cross cutting options available to boost BNG/ biodiversity enhancement</u></p> <p>Enhancing connectivity and Ecosystem resilience by hedgerow translocation to retain hedgerow soils and seed banks and local plants; where translocation not appropriate, the restoration of full lengths of hedgerow should be provided rather than just the DCO width. Link to other mitigation requirements relating to WFD and GCN as stated in previous questions.</p> <p>Proposed tree and hedgerow planting will provide additional benefits such as carbon capture.</p>					

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		<p>green or blue infrastructure features (including new: woodland, wetland creation, seagrass meadow establishment/restoration, and saltmarsh establishment/restoration). vii) The ExA invites such options to be further explored with relevant consultees and landowners as a means to boost overall BNG levels. In that regard the ExA seeks a timetable to be submitted setting out the discussions taking place with relevant landowners/strategic bodies having regard to local ecological initiatives (either in place or which could be developed) in the vicinity which may be able to be boosted.</p>						

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		viii) It is noted by the ExA that the Joint Nature Conservation Committee (JNCC) is the public body that advises the UK Government and devolved administrations on UK-wide and international nature conservation. It includes members from the nature conservation bodies for England, Scotland, Wales and Northern Ireland and independent members appointed by the Secretary of State (SoS) for the Environment, Food and Rural Affairs. JNCC provide a shared scientific nature conservation service for the UK - the mechanism for the UK Government and devolved administrations						



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		<p>to pool their resources to obtain evidence and advice on nature conservation and natural capital. Has the advice of JNCC been considered? If not, state why and indicate whether the Applicant is able to procure such advice during the Examination.</p> <p><b>IPs</b></p> <p>Any comments, responding to questions i) to vii) above are welcome.</p>						
Q1.4.8	Great Crested Newts  FCC	<p>The ExA notes the content of Appendix 9.2 Great Crested Newt Survey Report – Part's 1-4 [APP094]; [APP-095]; [APP-096]; and [APP-097].</p> <p><b>Applicant</b></p> <p>i) Clarify and detail whether you believe there is</p>	<p>Flintshire is a recognised "hotspot" for Great Crested Newts (GCN) with Supplementary Planning Guidance 8a for GCN Mitigation Requirements.</p> <p><a href="https://www.flintshire.gov.uk/en/PDFFiles/Planning/SPG8a-Great-Crested-Newt-Mitigation-Requirements.pdf">https://www.flintshire.gov.uk/en/PDFFiles/Planning/SPG8a-Great-Crested-Newt-Mitigation-Requirements.pdf</a></p>	<p>The Applicant acknowledges FCC's comments regarding the adequacy of baseline survey information accrued.</p> <p>The Applicant can confirm that it is preparing a draft European Protected Species (EPS) licence to be provided to NRW for their review and comment with a view to</p>	<p>Noted</p> <p>FCC are aware that "shadow licences" will be produced. It would be useful to have sight of them when available.</p>	<p>The Applicant can confirm that shadow licences for Wales will be submitted to NRW, these include shadow licences for GCN, bats, and badger. The Applicant can provide sight of the shadow licenses to FCC.</p>	<p>Noted FCC will await submission of shadow licences and reserve the right to comment at a later stage.</p>	<p>The Applicant can confirm that shadow licences for great crested newts and badgers were submitted to NRW and FCC on 04 July 2023.</p>

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		<p>adequate baseline survey information to confirm or discount the potential presence of Great Crested Newts (GCN) as a relevant consideration in all parts of the pipeline route.</p> <p>ii) Confirm/signpost the details of migration where the GCN would be traveling to/from?</p> <p>iii) Can the Applicant provide further details as to what mitigation measures would be included if GCNs not already anticipated by relevant survey are subsequently found?</p> <p>iv) Can the Applicant also clarify if there is a need for a separate GCN mitigation plan?</p> <p>• <b>IPs:</b> Are there any comments/concerns you</p>	<p>The GCN surveys undertaken provide an adequate baseline; GCN have been previously recorded in a number of the ponds surveyed, so presence is assumed.</p> <p>As stated in the REAC all species-specific mitigation and predicted impacts would be captured under an European Protected Species mitigation licence subject to agreement with NRW but to date it is understood that no discussions have been undertaken.</p> <p>Since, GCN have been recorded in close proximity to the DCO boundary from Ewloe to Flint including the Deeside and Buckley Newt Sites SAC, the majority of the pipeline within Flintshire has the potential to impact GCN terrestrial habitats.</p> <p>As a result, it is anticipated that additional mitigation measures would be required as part of the</p>	<p>securing a Letter of No Impediment from NRW (LoNI). The Applicant can additionally confirm that it has already held discussions with NRW regarding appropriate mitigation and licensing requirements and that NRW have provided further guidance and thoughts on the matter, as evidenced within Table 2-1 Record of Engagement in Relation to the DCO Proposed Development, in particular meetings 02/02/2023 and 09/03/2023 of the SoCG with Natural Resources Wales <b>[REP1-023]</b>. As detailed within Table 3-3 – Issues Related to the Proposed Development – Ecology - NRW 3.3.11 of the SoCG <b>[REP1-023]</b>, the Applicant and NRW have discussed the need and means of capturing a</p>				

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		wish to raise with respect to the above matters?	<p>NRW licence application. These might include restoration or creation of ponds and terrestrial habitat enhancement, additional tree and shrub planting.</p> <p>A separate GCN mitigation plan would assist the licensing process.</p>	<p>conservation/mitigation plan for GCN. The approach to this has been agreed within NRW, particularly acknowledging that in the absence of a detailed design for the DCO Proposed Development, there is a requirement for a degree of generality about the licence at this time.</p> <p>The Applicant will continue to engage with NRW in respect of the draft EPS licence for GCN with a view to agreeing its content and approach, acknowledging the final application at the detailed design stage will require further refinements. Future discussions and agreements will be captured within updates to the SoCG with NRW <b>[REP1-023]</b>.</p>				
Q1.4.17	Wildlife Corridors	<b>Applicant</b> At the ExA's Unaccompanied	FCC would agree the integration of the construction of the proposed DCO	The Applicant refers FCC to its response to Q1.4.17 (ii) (pages 41 & 42) within the	Please refer to response at Q1.4.3	Refer to the Applicant's response within Q1.4.3.	Noted, FCC will await detailed design and final BNG proposals and	An updated version of the BNG Strategy <b>[REP5-012]</b> has been submitted at Deadline 6. Further

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
	FCC	<p>Site Inspections [EV-003] and [EV-004] the probable existence of 'informal' wildlife corridors within nearby surrounding areas was observed which could be potentially used by a wide variety of species.</p> <p>i) Clarify how the effect of the proposed development on potential informal wildlife corridors has been considered.</p> <p>ii) Explain the extent of integration of any ecological enhancements/mitigation with existing informal wildlife corridors and how those elements are to be secured through the DCO.</p> <p>iii) Explain what scope is available within</p>	<p>development with the adjacent habitats and wildlife corridors is important.</p> <p>This point is also relevant to the Council's response to Q1.4.5 'Biodiversity enhancement and Ecosystem Resilience'</p> <p>The option for hedgerow translocation especially for established ancient hedgerows and those identified as having good bat activity needs to be explored. This has been successfully achieved on other gas pipeline and road schemes within Wales and avoids the need for replanting as referred to above.</p> <p>It is understood that details are to be provided regarding maintaining hedgerow connectivity for bats such as lesser horseshoes at the design stage. This would be provided in the detailed LEMP a the discharge of requirements stage.</p>	<p>Applicant's Response to ExA's ExQ1 <b>[REP1-044]</b> in respect of the interactions of the DCO Proposed Development, mitigation, and wider landscape/habitats.</p> <p>In respect of hedgerow translocation, the Applicant refers FCC to its responses to Q1.4.3 and Q1.4.4 above.</p> <p>The Applicant refers FCC to its responses to Q1.4.1 (iii) (page 41) and Q1.4.19 (iii) (page 45) within the Applicant's Response to ExA's ExQ1 <b>[REP1-044]</b> and can confirm that the means/design of faux hedgerow sections for maintaining connectivity during construction will be confirmed at the detailed design stage.</p>			reserve the right to comment at a later stage	updates of the BNG Strategy <b>[REP5-012]</b> and BNG Assessment <b>[REP3-023]</b> will be submitted prior to the end of the Examination.

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		<p>the overall engineering and new landscaping works proposed by the DCO to enable ecological corridors the earliest chance of re-establishment prior to completion of all works. Also explain how such potential provision could be secured formally. Have novel and innovative nature based approaches been sufficiently explored?</p> <p>iv) What mitigation is proposed to ensure protected species and other species are protected from noise and vibration?</p> <p><b>IPs</b></p> <p>Are there any comments/ concerns you wish to raise with respect to</p>	<p>FCC's Ecologist is aware that "trees on trolleys" have been used on other schemes which can be wheeled into place at the end of the working day to maintain connectivity. This could be explored for this project.</p>					

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		the above matters?						
<b>10. Flood Risk, Hydrology, Water Resources and Contamination</b>								
Q1.10.4	Flood Risk <b>LLFA</b> <b>SDSAB</b>	Applicant: i) There is limited information on the groundwater levels at each of the proposed BVS and AGI sites. What groundwater survey information/ monitoring is proposed to understand any potential risk of groundwater flooding to inform the detailed drainage design? ii) The statutory consultation phase highlighted Chester Road, Pentre and Leaches Lane Mancot where both internal and external sewer flood risks due to hydraulic incapacity. In addition, the postcode area CH5 3HJ	It is understood that the water Table in the Sandycroft and Pentre areas is generally found at a depth of circa 1.20 – 1.50 Metres and is widespread.	The Applicant notes that, where any dewatering activities are proposed to support construction, then a Dewatering Management Plan (DMP) and Groundwater Management and Monitoring Plan (GWMMP) will be prepared by the Construction Contractor. The GWMMP will consider collection of pre-construction groundwater level data which can be used to inform the risk of groundwater flooding. An Outline Dewatering Management Plan and Outline Groundwater Management and Monitoring Plan will be submitted prior to the end of Examination.  The Applicant notes that, whilst there are	It is noted that a Dewatering Management Plan and a Groundwater Management and Monitoring Plan will be prepared by the Construction Contractor for appropriate locations. I consider this to be a positive proposal and welcome receipt of the Outline Plans for both activities.	The Applicant acknowledges the response and can confirm that an Outline Dewatering Management Plan and an Outline Groundwater Management and Monitoring Plan will be submitted at Deadline 5.	FCC will consider both the Outline Dewatering and Management Plan the Outline Ground Water Management and Monitoring Plan when submitted at Deadline 5.	The Applicant notes the response and has no further comment at this time.

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		<p>(Blackbrook Avenue, Hawarden) is an identified risk of external flooding. How have those specific risks been factored/mitigated by the scheme?</p> <p>iii) Can the Applicant confirm if a Dewatering Management Plan and a Groundwater Management and Monitoring Plan is able to be submitted to inform the Examination?</p> <p>Applicant and IPs</p> <p>i) Significant dewatering is expected adjacent to the River Gowy and the West Central Drain. These are in the Gowy and Ince Marshes WFD surface water bodies. Do IPs have any comments to make on that aspect or any other aspect of</p>		<p>noted areas of historical flooding, these are above ground and as the proposed pipeline is buried at those locations, it is unlikely that the proposed pipeline will exacerbate any of the existing flood risk. The proposed pipeline alignment will take into account the alignment and the location of the existing drainage assets, and the design will avoid clashes with these assets.</p>				

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		the proposal? Can any related ecological benefits be secured in tandem with dealing with flood risk management issues arising?						
<b>14. Noise and Vibration</b>								
Q1.14.6	<b>FCC</b>	<ul style="list-style-type: none"> <li>Having reviewed the methodology and calculations set out in ES Chapter 15 (Noise and Vibration) [APP-067], it would appear that very noisy equipment will be in use at certain locations for approximately 80% of the time. Indeed Paragraph 15.9.4 notes "...some receptors in all sections are likely to experience either a medium or a high adverse noise</li> </ul>	<p>Given the predicted noise output for certain locations during the construction phase, there is a high probability and severe likelihood of the FCC receiving complaints from residents. FCC do not agree with the defence to statutory nuisance methodologies that the applicant has proposed. Mitigation is not a defence if any proceedings are brought under the Environmental Protection Act. Clarification is required in respect the defence to proceedings and arbitration in respect of statutory nuisance for noise and its interplay with existing statute. Furthermore, FCC are not clear on construction/operational /decommissioning time frames</p>	<p>The Applicant acknowledges that noise complaints from individual receptors are possible when construction works are in proximity. However, due to the linear nature of the construction works, any impacts would be of relatively short duration. Under D-NV-003 of the REAC [REP1-015 and CR1-109], and as secured by the CEMP in Requirement 5 of the dDCO [REP1-004], the Contractor is obliged to nominate a community liaison representative, who would be responsible for managing and responding to complaints in accordance with the Noise and Vibration Management Plan, which will be approved by the</p>	<p>FCC are in agreement that the applicant 'may' have a defence to any statutory nuisance complaints by use of Best Practical Means, however the detail of any mitigation to meeting Best Practical Means has not been provided at this time and it will be under discussion when completed final Management Plans are submitted and assessed as part of the Requirements.</p>	<p>The Applicant agrees that the detail of any mitigation to meeting Best Practicable Means will be provided in the Noise and Vibration Management Plan under D-NV-003 of the REAC [REP2-017 and CR1-109], and as secured by the CEMP under Requirement 5 of the dDCO [REP3-005 and CR2-008]. The Applicant can confirm that an Outline Noise and Vibration Management Plan will be submitted at Deadline 5.</p>	<p>Noted. FCC reserve the right to comment on the Outline Noise and Vibration Management Plan after DL5 – FCC will respond at DL6 if necessary</p>	<p>The Applicant notes the response and has no further comment at this time.</p>



WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
		<p>impact at some point during the construction phase." It also records the magnitude of impact as being considered to be a "significant effect (significant)".</p> <ul style="list-style-type: none"> <li>• Bearing this in mind the ExA would ask the Relevant Local Authorities (CWCC and FCC) whether they:</li> </ul> <p>i) consider there to be a potential for complaint resulting from the use of such equipment and/ or the duration of such use of equipment; and</p> <p>ii) have any concerns in regard to Article 9 (Defence to Proceedings in respect of statutory nuisance) as set out in the draft DCO [APP-024].</p>		<p>Local Authority in the CEMP as committed in D-NV-002 of the REAC [REP1-015 and CR1-109]. Temporary re-housing will also be considered through consultation with the Local Authority, if necessary, in accordance with D-NV-010 of the REAC [REP1-015 and CR1-109].</p> <p>Allegations of statutory nuisance from construction works would typically be dealt with using the Control of Pollution Act. Under those circumstances, mitigation (Best Practicable Means (BPM)) is a statutory defence. It is recognised that proceedings can also be brought under the Environmental Protection Act (EPA); however, Article 9 of the draft DCO would also similarly protect the Applicant from proceedings under the EPA based on use of BPM or compliance with the</p>				

WQ Ref	Question to	Question	Interested Party Comment	Applicant's response to Interested Party Comment	FCC Response for DL3	Applicant's Response	FCC Response for DL5	Applicant's Comments
				approved CEMP as committed in D-NV-002 of the REAC [REP1-015 and CR1-109]. FCC are required to approve the CEMP secured in Requirement 5 of the dDCO [REP1-004], and so will ultimately have control of the mitigation measure therein.				

Table 2.5 - Applicant's Comments on Submission Received from Flintshire County Council (FCC) at Deadline 5 [REP5-039] Table 2-3

Previous Ref	LPA Ref	Local Impact Report Statement (Deadline 1A)	Applicant's Response (Deadline 2)	Council's Response/Comments (Deadline 3)	Applicant's Response	Council's Response Deadline 5	Applicant Response	
	<b>Part C</b>	<b>Assessment Of Impacts</b>						
	<b>12.</b>	<b>ARCHAEOLOGY AND BUILT AND CULTURAL HERITAGE</b>						
2.1.62	12.10.	It is understood that CPAT and the applicant are in agreement with the mitigation suggested in the Environmental Statement, and the agreed outline Archaeological Written Scheme of Investigation [APP-223]. CPAT have confirmed that the outline Written Scheme of Investigation is largely robust and appropriate. This gives the Council and CPAT confidence that the evaluation work already recommended by CPAT, together with additional evaluation and	While the principles of the mitigation strategy are agreed, the specifics are not yet available and will require further discussion. CPAT has requested an archaeological watching brief on all works during construction, but the Applicant does not believe this is proportionate. Further information can be found in the Applicant's Response to Examining Authority's First Written Questions to Q1.7.1 (page 65) [REP1-044]. Ongoing discussions in relation to this matter are being captured in the FCC Statement of Common Ground (SoCG) [REP1-020].	For clarity, CPAT and FCC are not asking for a watching brief over the whole works area, but targeted at those ground reduction locations where no trenching evaluation or subsequent mitigation has been agreed.  A watching brief should be maintained and targeted on ground reduction work and not over the whole works areas (easement strip, new access tracks, works	The Applicant is not clear whether CPAT and FCC are asking for an archaeological watching brief in areas where evaluation trenching has negative results (i.e. no archaeology is located), and is seeking confirmation. As previously discussed in the Applicant's	For the avoidance of any doubt, and for clarification of both the applicant and the ExA, FCC and CPAT are definitely not requiring a watching brief where evaluation trenching provides negative results and has never taken this position. This is a misunderstanding	Following a meeting between the Applicant and Clwyd Powys Archaeological Trust held on 28th June 2023, it is agreed that an archaeological watching brief is not required on all works during construction. It is agreed that areas not subject to evaluation during the Phase 2	

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		mitigation options suggested by the applicant's consultants, would be adequately address any archaeological impacts arising from the proposals for the proposed DCO development.		compounds, pipe trench) to formation level for areas of the scheme beyond the locations for agreed mitigation arising from evaluation trenching completed at the pre and post consent stages or outside agreed areas of strip/map/excavate (SME) coverage. This is required to identify and mitigate impacts to archaeology which will not have been detected by the geophysics or the limited evaluation trenching of geophysical anomalies. The watching brief should be completed by a suitably qualified archaeological contractor in accordance with an approved WSI.	Response to the ExAs First Written Questions [REP1-044], watching briefs will be considered in some areas where required, such as locations where there is a higher potential for earlier prehistoric remains or where evaluation is not possible. However, if areas have been subject to evaluation trenching and the results are negative, it is not proportionate to undertake an archaeological watching brief in these areas.	on the applicant's part.  FCC and CPAT are requesting a watching brief in areas where there has been no prior archaeological trenching evaluation previously.  To confirm, there should be a watching brief, within the parameters already set out by FCC and CPAT. This is considered to be a standard requirement on a linear pipeline corridor proposal.	trenching will require a watching brief or strip, map and sample, within the working construction width.
<b>Deeside and Buckley Newt Sites SAC</b>							
2.1.93	13.30.	The GCN licence is likely to require specific mitigation to benefit the Flintshire GCN population which would be over and above that agreed within the LEMP. The licence requirements would need to be included in details submitted to the LPA as part of the approval of the LEMP.	It is recognised by the Applicant that protected species licensing for GCN is the primary means to safeguard the species during construction. The contents and mitigation of any agreed protected species licence would be reflected within the LEMP [APP-229].	Noted  FCC are aware that "shadow licences" will be produced. It would be useful to have sight of them when available.	The Applicant can confirm that shadow licences for Wales will be submitted to NRW, these include shadow licences for GCN, bats, and badger. The Applicant can provide sight of the shadow licenses to FCC.	Noted FCC will await submission of shadow licences and reserve the right to comment at a later stage	The Applicant can confirm that the GCN shadow licence was submitted to NRW and FCC on 04 July 2023.

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		<b>Sessile Oak Woods</b>						
		<b>Habitats</b>						
		Protected Species identified within/adjacent to DCO corridor						
2.1.104	13.41.	<b>Bats; Bat roosts.</b> With regards to the impact of the development on bats and bat roosts there are a limited number of buildings or structures along the pipeline and DCO corridor within Flintshire. One barn; ref B133 is a confirmed day roost which is used by 4 Common pipistrelles and 3 Soprano pipistrelles occurs within the DCO boundary at Aston. Where practicable a 10m buffer will be retained around the confirmed roost, otherwise an NRW license and mitigation will be required.	The Applicant can confirm that applications for necessary protected species licenses will be made, with construction only commencing upon receipt of required licenses as detailed within item D-BD-002 of the OCEMP <b>[REP1-017 and CR1-119]</b> .	Noted FCC are aware that "shadow licences" will be produced. It would be useful to have sight of them when available	Refer to the Applicant's response within row 2.1.93 above.	Noted FCC will await submission of shadow licences and reserve the right to comment at a later stage	The Applicant can confirm that the shadow bat licence will be submitted to NRW and FCC.	
	<b>16.</b>	<b>NOISE AND AIR QUALITY – RESIDENTIAL/PUBLIC AMENITY</b>						
2.1.151	16.8.	Whilst the mitigation measures stated within the outline Construction Environmental Management Plan (OCEMP) and Register of Environmental Actions and Commitments (REAC) are noted, the operational and construction hours are unclear. Concerns are raised with regards to out of hours reasonable working time parameters and if there is potential requirement for consent under the Control of Pollution Act.	As provided in Section 2.2 of the Outline CEMP <b>[REP1-017 and CR1-119]</b> , construction core working hours will be 08.00 to 18.00 Monday to Friday (excluding bank holidays) and from 08.00 to 13.00 on Saturdays. To maximise productivity within core working hours, the Construction Contractor(s) will require a period of up to one hour before and up to one hour after core working hours for the start-up and close-down of activities.  As stated within Chapter 3 – Description of the DCO Proposed Development <b>[APP-055]</b> , the DCO Proposed Development will operate without the need for any permanent on-site	The Council maintains that uncontrolled start up and shut down operations, even with the controls under the CEMP, such as the use of external machinery including generators and start-up and maintenance of heavy machinery and plant have the potential for significant impacts to amenity especially given the Projects proximity to residential receptors.  With suitable controls / restrictions the Council would however not be averse to	The Applicant notes that start up and shut down hours are routinely allowed outside the core hours as they include activities such as staff arrival, briefings, toolbox talks, health and safety checks etc.  The Applicant is willing to discuss the wording of this to address any	FCC would accept further discussion on this matter to amend any wording without the need for a scheme	The Applicant will continue to engage with FCC on this matter.	

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				<p>staff. The AGIs and BVSs will generally be operated remotely.</p> <p>As stated in the Other Consents and Licences Document <b>[REP1-011]</b>, the Applicant has included a potential consent under the Control of Pollution Act 1974 (section 61) for any works that could cause noise nuisance. If required, this would be applied for prior to the start of construction (or prior to specific construction activities).</p>		<p>certain out of hours start up and shut down activities.</p> <p>The Council would advise that this issue could be resolved by a further definition for "non-discernible activities" for start-up and shut-down operations and we would specifically say that these should not include certain activities including use /starting up of engines of any external plant or machinery including generators, heavy plant and the use of high level flood lighting.</p>	<p>concerns regarding the scope of activity allowed but does not agree a scheme is required for the types of activities listed.</p> <p>The OCEMP Section 2.2 Paragraph 2.2.1 <b>[REP2-021]</b> contains the following wording pertaining to start up and close down activities:</p> <p><i>"This will include, but not be limited to, deliveries, movement to place of work, unloading, maintenance and general preparation works. It will not include the operation of any plant or machinery likely to cause disturbance to local residents or businesses."</i></p>		
		Work No.	Proposal	PROW comments					
		Work No. 30E	Creation and use of a temporary construction access from the A548, within the location shown on Sheets 13 and 14	The proposed construction access track is along Public Bridleway No.8 (309/8/10) from its junction with Sealand Road in a	The Outline PRowMP <b>[REP1-043]</b> , the latest revision of which was submitted at Deadline 1 will be further developed during later stages by the	Noted	The Applicant does not agree or accept that surfacing of the bridleway is necessary or appropriate. The Applicant submits	The comments are noted but FCC does not agree with the applicants stance and maintains its comments as	The Applicant's response to FCC comments at Deadline 3, in the Response to the Applicant's comments to the

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		<p>of the Work Plans, including—</p> <p>(a) improvement of an existing junction with the public highway;</p> <p>(b) improvement of road surfacing and provision of new hard surfacing; and</p> <p>(c) creation of visibility splays.</p>	<p>southerly direction to the junction with Deeside Lane (309/10/30). The construction access track then continues along Deeside Lane to the proposed pipeline construction.</p> <p>Bridleway No. 8 is an unmade track which is not part of the adopted highway network. The Local Authority (LA) is under a duty to maintain it only to a standard for users on foot and on horseback. Deeside Lane has highway status as a public footpath only and the LA is only required to maintain the route up to a footpath standard. Both tracks are currently unsuitable for the proposed usage that would come with this proposal.</p> <p>The LA do not argue with the route being used as a temporary construction access</p>	<p>Construction Contractor(s) to form a final PRowMP which will contain the following information to be approved by the relevant authority for each PRow:</p> <ul style="list-style-type: none"> <li>Plans (showing the relevant control measures)</li> <li>Length (distance) of the closure</li> <li>Route, length and any surfacing proposals for diversions</li> <li>Details of any gates, stiles, or similar features to be removed and reinstated on any PRow</li> <li>Details of signage to be provided for diversions and</li> <li>The appropriate standards for reinstatement of the PRow</li> </ul>	<p>Noted</p> <p>The Council notes the comments. However, while some heavy agricultural vehicles do use Bridleway No. 8, the usage is not considered to be consistent nor regular/frequent. The siting of the compound at this location would subject the Bridleway to usage by larger vehicles (such as HGV's) on a more regular, prolonged, and repetitive basis during the construction of the pipeline at this location. Reinstating the condition of the route on completion of the construction phase of the DCO Proposed Development is not considered satisfactory in light of scale and duration</p>	<p>that this is already appropriately surfaced and will only need minor repairs and improvements pre and post occupation of the compound.</p> <p>The Applicant is satisfied that the bridleway is suitable for the proposed use and would highlight that it is currently frequently used by HGVs to access the various agricultural and light industrial properties accessed. The Applicant does not agree that their proposed use would be a material intensification of that use, particularly given the temporary nature of the use, which would require surfacing of this route.</p> <p>The Applicant notes that it has not assessed the drainage or</p>	<p>stated at Deadline 3 in <b>[REP3-046]</b> regarding the resurfacing of Bridleway No. 8 and also Deeside Lane (309/10/30).</p> <p>Deeside Lane may be considered to be in a rural area, however the lane serves as main access to a mix of residential, commercial and agricultural premises along the lane (approximately +20 properties/premises served by 309/10/30). The frequent current use of HGV's (recognised in the applicant's comments) and the current day-to-day traffic from commercial, private and agricultural premises is therefore considered quite significant.</p> <p>FCC consider that this should be secured in the</p>	<p>Flintshire County Council's Final Local Impact Report <b>[REP3-046]</b>, still apply and make no further comment at this time.</p>

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			<p>on the basis that it is suitably upgraded to serve the construction traffic that would be using it. We do not feel that it would be suitable to use any type of crushed stone/aggregate for the track as this would generate dust pollution that would be detrimental to anybody walking the rights of way and also to the neighbouring properties and businesses. The use of the bridleway and Deeside Lane would also increase potential conflict between walkers and vehicles.</p> <p>To support the proposal of Bridleway No. 9 and Deeside Lane being utilised as the temporary construction access track we are requesting that the entire route under <b>'Work No. 30E'</b> be upgraded to a tarmac surface. This</p>	<p>The management for each PRoW will be secured in the final PRoWMP to be signed off by each relevant authority prior to the commencement of the relevant stage of works, as required by Requirement 5 of the draft DCO <b>[REP1-004]</b>.</p> <p>The Applicant notes that Public Bridleway No.8 (309/8/10) is currently used by heavy agricultural vehicles. The Applicant commits to reviewing the condition of the route and its suitability for construction traffic, but does not currently consider that it is appropriate/necessary to upgrade the condition prior to use. The Applicant commits to reinstating the condition of the route to its original condition (or better) on completion of the construction phase of the DCO Proposed Development.</p> <p>The Applicant does not believe a legal agreement is appropriate in this</p>	<p>of the proposal, and the length of time that this construction compound would be used for. Therefore, FCC consider that the route should be surface with an appropriate material prior to the commencement of the development of the construction compound in this location at Works no 30E, and prior to the use of the Bridleway for construction vehicles.</p> <p>With specific regard to the construction access track which incorporates Public Bridleway No. 8 &amp; Footpath 309/10/30 (along Deeside Lane), the LPA is still seeking improvements prior to the work commencing. It is considered that the proposal would have a negative impact for both the commercial entities and residential properties on Deeside Lane, such as noise and dust pollution. Addressing the issue of surfacing these routes would alleviate these issues prior to work commencing and would also provide a legacy community benefit for those affected on Deeside Lane.</p> <p>FCC accept this could be delivered through</p>	<p>landscape or visual impacts of surfacing this track. The Applicant notes that it has adopted an approach of not providing new tarmac surfacing on tracks in agricultural areas elsewhere so that these are sympathetic with the rural nature of the landscape.</p>	<p>outline PROWMP and delivered through requirement no. 5 now that point (n) has been included as part of the CEMP, rather than a legal agreement.</p>	

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				<p>would be suitable for the construction traffic, limit the dust pollution to walkers and the community and be an improvement for users as part of the legacy of the Hynet project. The details of the specification of this should be agreed as part of the approval of details at that stage in the development. This would mitigate against any negative effect of the development during the use of this track during construction.</p> <p>The Council would welcome the applicant entering into a legal agreement to ensure this section of the right of way network is upgraded to a standard suitable to sustain heavy traffic</p>	<p>instance and would instead secure the standard of the PRoW through final PRoWMP, which will be submitted to and requires approval by the relevant planning authority, as secured in Requirement 5 of the dDCO <b>[REP1-004]</b>.</p>	<p>Requirements No.5 now that point (n) has been included as part of the CEMP, rather than a legal agreement.</p> <p>However, the Outline Construction Environmental Management Plan (OCEMP) Appendix 3 – Outline Public Rights of Way Management <b>[REP1-043]</b> plan needs to be amended to include this point. At present, this document does not refer to this and therefore FCC considers this point should be specifically referenced for the avoidance of any doubt, and to ensure that the specification details can be approved prior to the works in that stage of the proposed development.</p> <p>This would provide certainty that the bridleway would be surfaced in the appropriate materials prior construction traffic using this route.</p>			
		Work No. 42	Construction of an underground CO2 pipeline approximately 1.8km in length and with an	The PROW affected by the pipeline in this section are adequately protected with temporary	This PROW (Ref: 303/143) is intended to be diverted within the Order Limits, if required, during the construction of the	The Council would welcome the chance to view this at Deadline 3.	The Outline Public Rights of Way Management Plan was submitted at Deadline 3 <b>[REP3-028]</b> and has been	Noted. FCC have reviewed the Outline PROWMP and are satisfied with the comments	The Applicant has responded to FCC regarding the surfacing of Deeside Lane and



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		external diameter of 36 inches (914.4 mm) between Work No. 41 and Work No. 43.	diversions during works. PROW 303/143 runs through the site and no temporary diversion has been shown which suggests it won't be affected during construction clarification is required.	DCO Proposed Development. Figure 17.6 and the dDCO will be updated at Deadline 3 to reflect this.  The management for each PROW will be secured in the final PROWMP to be signed off by the relevant authority prior to the commencement of the relevant stage of works, as required by Requirement 5 of the draft DCO [REP1-004].		updated at Deadline 4 The Applicant awaits FCC's response to that document.	concerning the topics within it (NB: FCC are in disagreement regarding the surfacing of Deeside Lane & Bridleway No. 8 and if this was secured via the requirements, the Outline PROWMP would need to be updated accordingly).	Bridleway No. 8 above.
	<b>20.</b>	<b>WATER ENVIRONMENT AND FLOOD RISK</b>						
		<u>Land drainage</u>						
2.1.180	20.5.	The Council has additional duties and powers associated with the management of flood risk under the Land Drainage Act. As Land Drainage Authorities, Ordinary Watercourse consent would be required for any permanent or temporary works that could affect the flow within an ordinary watercourse under their jurisdiction in order to ensure that local flood risk is not increased.	As set out in the Other Consents and Licences document [REP1-011], the Applicant will submit an appropriate application after the DCO is made.	FCC notes that the approval of the surface water drainage systems by the SuDS Approving Body (SAB) is not listed within [REP1-011]		The Applicant can confirm that this has been added into the Other Consents and Licences document [REP3-017], as submitted at Deadline 4.	During the course of this application, FCC has asked whether the Applicant would fully adhere with the Welsh Governments requirements for SAB Approval which is in compliance with the Flood and Water Management Act 2010, Schedule 3.  The Council would expect all fees	The Applicant can confirm that it was agreed with FCC that SAB applications are not required for the DCO Proposed Development.

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						<p>associated with SAB Approval to be met by the applicant. SAB Approval is undertaken by FCCs specialist Engineering Consultancy and this service is not provided in house. FCC have been unable to find any reference to SAB compliance in Table 2.2 or anywhere else.</p> <p>For the avoidance of doubt, SAB Approval would be required for any permanent hardstanding / impermeable areas in excess of 100 M2 in area.</p>	
2.1.182	20.7.	It is noted that the REAC [APP-222] states that consents would be sought from LLFA for works affecting for Ordinary Watercourses.	As set out in Article 8 of the draft DCO <b>[REP1-004]</b> , the requirement for ordinary watercourse consents is disapplied. In line with the ethos and objective of the DCO regime, a separate consent should not be required where this can be addressed through the DCO.	This is noted however, FCC would like to ensure that all documentation that would be required for Ordinary Water Course Consent is provided as part of the Requirements as it does not appear to be detailed in the draft DCO or specified in the requirements specifically.	The Applicant has requested that FCC reviews the outline plans and the strategy secured under the detailed requirements where this detail would be placed and advise what changes it is seeking.	Please refer to FCCs response to ISH1-AP4 <b>[REP4-285]</b> pertinent to Ordinary Watercourse Consent submitted at Deadline 4.  FCC still maintains this position with regards to Ordinary	The Applicant has requested and awaits FCC's comments on the outline plans submitted at Deadline 5. The Applicant considers that these outline plans address this issue.

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						Water Course Consent.	
		Surface Water Drainage:					
2.1.184	20.9.	Schedule 3 of the Flood and Water Management Act 2010 makes sustainable drainage systems (SuDS) a mandatory requirement on all new developments involving more than a single dwelling or a construction area more than 100m <sup>2</sup> .	The Applicant acknowledges the position of FCC and has no further comments at this time.	FCC notes that the approval of the surface water drainage systems by the SuDS Approving Body (SAB) is not listed within <b>[REP1-011]</b>	Refer to row 2.1.180 above.		Refer to row 2.1.180 above.
2.1.187	20.12.	The DCO application also includes for the provision of temporary hardstanding areas for temporary construction compounds and access routes. It is not clear from the application documents how the Applicant will mitigate any impacts to watercourses, highways, or property as a consequence of any runoff from these temporary hardstanding areas. It is understood that temporary hard standing areas are not usually considered as part of an application for SAB approval. However, on the basis that these temporary hardstanding areas are likely to be in excess of 100 M <sup>2</sup> , the length of time that these 'temporary' hardstanding areas maybe considerable, consent via the SAB may be a practical means for consideration and the applicant would be invited to include these areas that are proposed to be 'temporary' as part of the SAB application process. Early contact could also be made with the SAB		FCC would be interested to learn from the applicant how surface water runoff will be managed from areas of temporary hardstanding as this is not usually considered as part of the SAB approval. The applicant has not yet provided a response to this point raised.	This will be set out in the details provided in the CEMP, secured by Requirement 5 of the dDCO <b>[REP3-005]</b> , for each stage which will include a surface water drainage strategy for the construction works.	Requirement 5 of the CEMP indicates that both Groundwater and Surface Water Management and Maintenance Plans will have to be submitted to and approved by the LPA which will allow temporary hardstanding areas to be considered.	The Applicant notes the response and has no further comments.

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		via a request for pre-application advice.					
	<b>21.</b>	<b>MINERALS SAFEGUARDING</b>					
2.1.195	21.6.	Chapter 14 of the applicant's Environmental Statement [APP-066] refers to the requirement of producing a Material Management Plan (MMP). It confirms that a MMP would be produced by the Construction Contractor(s) as a Requirement of the DCO (as part of requirement 5 of the draft DCO with regards to the production of a CEMP) [APP-024]. This is welcomed to ensure that limited incidental extraction of mineral resource can be managed.	The requirement for a Materials Management Plan is included as a commitment in D-MW-006 of the REAC <b>[REP1-015]</b> , as secured by the CEMP within Requirement 5 of the dDCO <b>[REP1-004]</b> .	The applicant's response is noted. However, FCC still have concerns with regards to ensuring incidental extraction of mineral resource can be managed. The Minerals Resource Assessment (MRA) <b>[APP-131 /132]</b> or the need for any subsequent management plan for the management of minerals does not appear to be not specified / referred to in the draft DCO (Requirement 5), OCEMP <b>[REP1-17]</b> or REAC <b>[REP1-015]</b> .  REAC Commitment D-MW-006 <b>[REP1-015]</b> states " <i>The Construction Contractor will implement, and follow guidance within, the Materials Management Plan (MMP) in accordance with the CL:AIRE Definition of Waste: Code of Practice</i> ". The Applicant states that this commitment in the MMP would include re-use of 'suitable mineral resources'  The Council notes the above REAC commitment D-MW-006 <b>[REP1-015]</b> appears to principally relate to the	The Applicant has discussed this point with FCC and understands that the Council accepts in principle that this can be addressed in the Materials Management Plan (MMP). An Outline MMP will be submitted at Deadline 4 for the Council's review (document reference <b>D.7.32</b> ).  The Applicant has had regard to the comments from FCC in production of the Outline MMP.	FCC has reviewed document reference <b>D.7.32</b> 'Outline Materials Management Plan' submitted by the applicant at Deadline 4 <b>[REP4-266]</b> . However, FCC notes that the Outline Construction Environmental Management Plan (OCEMP) document reference D.6.5.4 revised and submitted at Deadline 4 <b>[REP4-237]</b> which this outline Material Management Plan is an appendix of and relates to, does not specifically refer to minerals that may be excavated along the proposed DCO order route.  The Outline MMP however appears to cover the issues raised at DL3.	The Applicant can confirm that the Outline Materials Management Plan <b>[REP4-266]</b> considers minerals that may be excavated along the proposed DCO order route.  The Applicant has no further comments at this time.

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				<p>handling of waste and does not specify the use of incidentally extracted minerals. The use of the word 'mineral' is absent and there is no reference to the recommendations of the MRA in and commitments of the REAC or OCEMP. It is not currently explicit if and how the use of incidentally extracted mineral resources should be undertaken.</p> <p>The Council also notes that the MRA [APP-131&amp; APP132] is currently only desk based and as such, the Council requests that when ground investigations are undertaken as part of the Project the impacts on the existing MRA should be considered and potential for prior extraction or incidental extraction and re-use of minerals should be considered further in order to safeguard / re-use minerals.</p> <p>To address this, the inclusion of detail of minerals safeguarding in the MMP is supported, the Council would however ask the following clarifications / inclusions are provided in any submitted plan:</p> <ul style="list-style-type: none"> <li>• Clear reference to the findings of the MRA</li> </ul>			

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				<p>with commitments for any further necessary ground investigations.</p> <ul style="list-style-type: none"> <li>• A definition of what a 'suitable mineral resources' would represent?</li> <li>• Detail of process should the extracted material not be suitable as it was, but could be screened or sorted then used - clarification of is and how that would that be done?</li> <li>• Where extracted mineral can be re-used, on the site or elsewhere?</li> </ul> <p>It is noted that the Applicant states that an outline MMP will be submitted before the end of Examination.</p> <p>Therefore the Council reserve the right to make further comments relating to minerals safeguarding after reviewing the draft MMP.</p>			
	<b>22.</b>	<b>GENERAL COMMENTS ON THE DRAFT DCO</b>					
		<i>Part 4</i>					
2.1.21	22.5.	Part 4; Supplemental powers, article 19; Discharge of water. It is considered that Article 19 (5) should also include reference to seeking Ordinary Watercourse consent. The Council suggest that the following wording should be	This addition would directly conflict with the provisions of article 8 where the requirement for ordinary watercourse consents is disapplied. In line with the ethos and objective of the DCO regime, a separate consent should not be required where this can be addressed through the DCO.	This is noted however, FCC would like to ensure that all documentation that would be required for Ordinary Water Course Consent is provided as part of the Requirements as it does not appear to be	Please see response to line 2.1.182 above	Please see FCC response to line 2.1.182 above.	Refer to row 2.1.182 above.

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		considered: <i>"The undertaker must not, in carrying out or maintaining the works pursuant to this article, damage or interfere with the bed or banks or construct any works within any Ordinary Watercourse without obtaining Ordinary Watercourse Consent from Flintshire County Council."</i>		detailed in the draft DCO or specified in the requirements specifically.			
	<b>23.</b>	<b>OBLIGATIONS</b>					
2.1.29	23.3.	Furthermore, as set out in Section 19 above, should Development Consent be granted, to support the proposal of Bridleway 9 and Deeside Lane being utilised as the temporary construction access track, the Council considers it necessary for the entire route under 'Work No. 30E' be upgraded to a tarmac surface.	Please see Applicant's response above in row 2.1.174 in response to FCC's LIR response in paragraph 19.2 <b>[REP1A-005]</b> .	The Council notes the comments. However, while some heavy agricultural vehicles do use Bridleway No. 8, the usage is not considered to be consistent nor regular/frequent. The siting of the compound at this location would subject the Bridleway to usage by larger vehicles (such as HGV's) on a more regular, prolonged, and repetitive basis during the construction of the pipeline at this location. Reinstating the condition of the route on completion of the construction phase of the DCO Proposed Development is not considered satisfactory in light of scale and duration of the proposal, and the length of time that this construction compound would be used for. Therefore, FCC consider that the route should be surface	The Applicant does not agree or accept that surfacing of the bridleway is necessary or appropriate. The Applicant submits that this is already appropriately surfaced and will only need minor repairs and improvements pre and post occupation of the compound.  The Applicant is satisfied that the bridleway is suitable for the proposed use and would highlight that it is currently frequently used by HGVs to access the various agricultural and light industrial	The comments are noted however, FCC does not agree with the applicant's stance and maintains its comments at Deadline 3 <b>[REP3-046]</b> regarding the resurfacing of Bridleway No. 8 and also Deeside Lane (309/10/30). Deeside Lane may be considered to be in a rural area, however the lane serves as main access to a mix of residential, commercial and agricultural premises along the lane (approximately +20 properties/premises served by	The Applicant's response to FCC comments at Deadline 3, in the Response to the Applicant's comments to the Flintshire County Council's Final Local Impact Report <b>[REP3-046]</b> , still apply and make no further comment at this time.

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				<p>with an appropriate material prior to the commencement of the development of the construction compound in this location at Works no 30E, and prior to the use of the Bridleway for construction vehicles.</p> <p>With specific regard to the construction access track which incorporates Public Bridleway No. 8 &amp; Footpath 309/10/30 (along Deeside Lane), the LPA is still seeking improvements prior to the work commencing. It is considered that the proposal would have a negative impact for both the commercial entities and residential properties on Deeside Lane, such as noise and dust pollution. Addressing the issue of surfacing these routes would alleviate these issues prior to work commencing and would also provide a legacy community benefit for those affected on Deeside Lane.</p> <p>FCC accept this could be delivered through Requirements No.5 now that point (n) has been included as part of the CEMP, rather than a legal agreement.</p> <p>However, the Outline Construction Environmental</p>	<p>properties accessed. The Applicant does not agree that their proposed use would be a material intensification of that use, particularly given the temporary nature of the use, which would require surfacing of this route.</p> <p>The Applicant notes that it has not assessed the drainage or landscape or visual impacts of surfacing this track. The Applicant notes that it has adopted an approach of not providing new tarmac surfacing on tracks in agricultural areas elsewhere so that these are sympathetic with the rural nature of the landscape.</p>	<p>309/10/30). The frequent current use of HGV's (recognised in the applicant's comments) and the current day-to-day traffic from commercial, private and agricultural premises is therefore considered quite significant.</p> <p>It is considered that this should be secured in the outline PROWMP and delivered through requirement no. 5 now that point (n) has been included as part of the CEMP, rather than a legal agreement.</p>	



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				<p>Management Plan (OCEMP) Appendix 3 – Outline Public Rights of Way Management <b>[REP1-043]</b> plan needs to be amended to include this point. At present, this document does not refer to this and therefore FCC considers this point should be specifically referenced for the avoidance of any doubt, and to ensure that the specification details can be approved prior to the works in that stage of the proposed development.</p> <p>This would provide certainty that the bridleway would be surfaced in the appropriate materials prior construction traffic using this route.</p>					
	<b>24.</b>	<b>COMMENTARY ON APPLICANT'S DRAFT DCO REQUIREMENTS</b>							
2.1.210		<b>Part/Schedule</b>	<b>Observation</b>	<b>Recommendation</b>					
		3: Stages	<i>"The authorised development may not commence until a written scheme setting out all stages of the authorised development including a plan indicating when each stage will be constructed has been submitted to</i>	<p>Suggested wording:</p> <p>No part of the authorised development may commence until a written scheme setting out all stages of the authorised development including a plan indicating when each stage will be constructed has</p>	As set out in the Applicant's response to Q1.19.44 (page 138 to 143) in the Applicant's response to ExA's Frist Written Question <b>[REP1-044]</b> , the submission of stages is proposed to give the LPAs visibility of the planned approach to the development. It is intended to assist the	The Council requires a definition of 'Stage' to be included in this requirement on in the 'interpretation' section of the DCO. It is unclear what the parameters of each stage are and whether each Stage will include specific work numbers. The Council suggests the definition includes this level of detail and if the Stage needs to be	The Applicant has proposed a definition of 'stage' in revision G of the dDCO at Deadline 4.	FCC acknowledges the below amendment to Requirement 1 (Interpretation) of the Draft DCO Rev G <b>[REP4-007]</b> provides a definition of "stage" as to mean " <i>the works and ancillary works, or parts thereof, to be</i>	As set out in previous submissions, this plan is for information and to allow forward planning as to when applications for discharge will be made. It is not a control document.

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		<p><i>each relevant planning authority.</i>"</p> <p>The requirement does not require the stages scheme to be approved or for the undertaker to undertake the development in accordance with the submitted approved stages.</p>	<p>been submitted to and approved in writing by each relevant planning authority. The authorised development shall then be undertaken in accordance with the approved stages plan unless approved in writing by each relevant planning authority in accordance with Requirement 17.</p>	<p>LPA in planning their work load by giving them warning of when applications would be made. It is not submitted for approval. The development will be carried out with multiple work fronts and with some elements, such as complex trenchless crossings carried out ahead of the main pipeline spread.</p>	<p>amended throughout the Project then the relevant local planning authority is consulted on any change and its consultation response is taken into consideration.</p> <p>For the avoidance of doubt, this requirement should be amended to ensure that the Project is implemented in accordance with submitted (or amended) Stages to ensure that all parties are clear on what is required and by when.</p>		<p><i>carried out together as a phase of, or in a defined order within, the construction of the authorised development".</i></p> <p>FCC note that Requirement 3 has not been amended to require the project to be undertaken in accordance with the stages as submitted.</p> <p>To ensure any subsequent changes made to the stages is reflected in all other approved schemes (CEMP, LEMP etc..) and for the purposes of clarity as to details submitted for approval under the requirements FCC request that Requirement 3 is amended to require the project to be undertaken in accordance with the stages as submitted or amended (and</p>	

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								notified to the relevant planning authority).	
		4.(2) Scheme Design - Changes to above ground development	<p>Question over what the "environmental effects" actually include?</p> <p>There is no definition is provided in Requirement 1 within the interpretation.</p> <p>Importantly clarity is required with regards to who determines if the changes cause materially new environmental effects?</p> <p>And what are the mechanisms for approval?</p>	Suggested that a definition is included or wording amended to provide clarity	<p>This is standard wording in DCOs and has been approved repeatedly by the Secretary of State, including in insertions made on their behalf at determination stage. The Applicant notes that for details to be approved, the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 apply and when details are submitted for approval the LPA is required to consider if they are within the scope of the ES or if further environmental information is required. For other elements, failure to comply with a DCO is a criminal offence and the undertaker will have to take a view on materiality in that context. Where the relevant LPA disagrees, its enforcement powers would be available to it.</p>	<p>The Council is concerned that this would effectively allow a self-approval mechanism for determining whether or not any changes are material. This same issue has been discussed at length on the A66 Northern Trans-Pennine DCO which is currently in Examination which is due to close on 26 May 2023. If a change is proposed, this change needs to be assessed by the Secretary of State as to whether or not it is material and therefore needs his approval or otherwise.</p> <p>The Council would suggest a similar approach be taken in this Project.</p>	<p>The Applicant does not consider it appropriate that the SoS needs to screen every change for materiality no matter how minor that may be. The Applicant does not consider this to be necessary. The Applicant notes it is normally for the Applicant to determine what form of amendment a change is when determining the appropriate consenting route to make an application, and it is for the Applicant to make the case for the chosen route.</p>	<p>FCC consider that the Local Planning Authority should determine if a change is or is not material.</p>	<p>The Applicant has nothing to add to its previous submissions on this point, please see Applicant's Comments on Submissions Received at Deadline 4 <b>[REP5-015]</b> which states:</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. 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</p>

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									placed to make as engineering and safety considerations will drive that design which will not have, for example, operational visual impacts.
		5. (2) (a-m) CEMP – Management plans, Working Methods and Mitigation Measures	Specific measures for construction works are missing including plant and equipment detail; night-time noise levels; minerals safeguarding is not specifically referenced in the MMP	<p>Include the following additional measures:</p> <ul style="list-style-type: none"> <li>Detail of all construction plant and equipment.</li> <li>Specify noise limits and mitigation (day and night-time).</li> <li>The Material Management Plans should be renamed to Material and Minerals Management Plan to ensure Minerals Safeguarding (in accordance with outline minerals safeguarding assessment).</li> <li>Address / mitigate identified risks from contamination.</li> <li>A mechanism for review should also be included.</li> </ul>	<p>These details are secured in the plans as set out in the outline and do not need to be repeated in the requirement itself.</p> <p>A review mechanism is not required as the CEMP will only apply during construction and each plan to the stage/s it is for.</p> <p>A Materials Management Plan is governed by the Definition of Waste Code of Practice and is used to assess if earthworks can be reused. A Materials Management Plan is not associated with the extraction or use of minerals – this is considered in the Mineral Resource</p>	<p>Noted</p> <p>As identified at 2.1.195 above, the Council is not clear how matters of mineral resource management are to be secured in the final CEMP. At this stage, the Council ask that the consideration / inclusion of mineral management be explicit in the final CEMP.</p>	As above, the Applicant considers that this can be addressed in the MMP and is providing an Outline at Deadline 4 (document reference <b>D.7.32</b> ) for review.	<p>FCC consider that a mechanism for review would be useful as a CEMP and accompanying Mineral Management Plans would be submitted for each stage of the development, therefore it is considered that there would be an opportunity for review throughout the implementation of the consent, should it be granted.</p> <p>FCC has reviewed document reference <b>D.7.32</b> 'Outline Materials Management Plan' submitted by the applicant at Deadline 4 [<b>REP4-266</b>] and notes that the management of</p>	<p>A review mechanism is not required as the CEMP will only apply during construction and each plan to the stage/s it is for.</p> <p>The Applicant notes that the discussion</p>

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					Assessment. As such, the Applicant does not agree that the Materials Management Plan should be renamed.			<p>minerals is now considered in the OMMP which contradicts the applicant's views and response at DL2 where it states that</p> <p><i>"A Materials Management Plan is not associated the the extraction or use of minerals - this is considered in the Minerals Resource Assessment".</i></p> <p>The OMMP references the Minerals Resource Assessment (MRA), however, it does not specifically require its findings to be taken into account or undertaken. In this respect the Council ask that the OMMP is amended to directly reference the MRA and should include the requirement to provide copy to Construction Contractors.</p>	<p>on the scope of this plan with FCC occurred after Deadline 2 and this change demonstrates that the Applicant has been seeking to accept reasonable requests made by the Council. The Applicant accordingly objects to this criticised as an inconsistency.</p>

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		13. Construction Hours (1-5)	<p>The current wording of requirement 13 (3) (c) would appear to allow works outside of the stated construction hours in any eventuality – this is quite open-ended.</p> <p>The proposed exceptions and definitions in relation to the proposed construction working hours are not considered acceptable.</p>	Consider more precise wording	The Applicant will agree to amend the DCO so that working for what is currently (c) would require approval under a scheme but maintains that allowing 24 hours working for (a), (b) and (d) is necessary and appropriate.	<p>The amendment is noted however, the Council questions how a scheme for working under 13(3)(c) would be secured / undertaken.</p> <p>The Council therefore requires the removal of Requirement 13 (3) (c) and would only accept the retention of operations under 13(3) (a), (b) and (d), subject to the noise and vibration management plan, to be approved as part of the final CEMP, including detail of any additional mitigation for of all out of hours working including that for operations identified under these parts.</p>	The Applicant notes that amendments have been made to this requirement at Deadline 3 and further amendments are proposed in the Deadline 4 submissions.	<p>FCC notes that revision G of the draft DCO has removed reference to out of hours working in the event of extreme weather conditions and welcomes the updates in this requirement.</p> <p>FCC has no further comments at this stage but reserves the right to further comment should this be subsequently changed in future revisions.</p>	The Applicant notes that FCC reserves the right to comment on this matter further.
		16. Restoration of Land	<p><i>"Subject to article 34 (temporary use of land for carrying out the authorised project)], any land within the Order limits which is used temporarily for or in connection with construction must be reinstated to a condition fit for its former use, or such other</i></p>	<p>Re-word to require full detail of restoration scheme or remove and combine into Requirement 16</p> <p>Or include more detail in the soil management plan</p>	<p>This requirement is a reserve power to allow the LPA to require restoration in default or where there is an issue. The primary mechanism for controlling restoration is the land agreements which will include for example schedules of condition before possession is taken, the details of restoration, which will in</p>	<p>The Council maintains that the restoration of land and suitable aftercare is a planning matter, land ownership is not. The draft DCO should be re worded to require full details of a restoration scheme, combined within Requirement 16 or include more detail within the soil management plan.</p>	The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference <b>D.7.31</b> ).	<p>FCC note the Applicants position presented within in Paragraphs 2.21 and 2.23 of the Applicants Written Summaries of Oral submissions made at the Issues specific Hearings - Part 3 <b>[REP4-264]</b>.</p> <p>FCC does not agree and maintains the view that provision to</p>	The Applicant does not agree and has nothing further to add to its previous submission.

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			<p><i>condition as the relevant planning authority may approve, within 12 months of completion of the authorised project.</i></p> <p><i>"fit for its former use"</i> - not precise or enforceable and would not secure return the higher grades of agricultural land back to their former grading / condition including drainage etc...</p> <p>Requirement 15 as a whole is not precise or enforceable and does not require the approval of a scheme of restoration and aftercare if required.</p>		<p>the main be to the former use. Drainage would be reinstated in its former location. Deterioration in land would be a compensatable issue not a planning one. Aftercare of agricultural land once returned to the landowners' use is not appropriate or reasonable as it would not only interfere with the land agreements between the landowner and Applicant but would require the Applicant to control land for longer than necessary, to interfere with the landowners use, to take rights for longer than necessary and it is accordingly disproportionate to move from the control of the landowner to the LPA.</p>			<p>secure appropriate aftercare for the appropriate amount of time should be secured through the requirements.</p> <p>It is noted that the revised Outline Soil Management Plan doc ref D.6.5.4.1 <b>[REP4-240]</b> acknowledges in paragraph 6.1.1 that it can take between one to three years for their [soils] structures to stabilise. FCC argues that the applicant's own admission provides further justification for a five-year aftercare period.</p> <p>Furthermore, it is considered that the Local Planning Authority should also verify the successful restoration of the site an successful subsequent aftercare as opposed the applicant's own 'competent soil scientist' which is</p>	

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								stated at paragraph 6.1.2 of the revised Outline Soil Management Plan doc ref D.6.5.4.1 <b>[REP4-240]</b> .	
		17: Post construction environmental management plans	Operational Maintenance and management and decommissioning are distinctly separate stages of the project and cannot be easily dealt with together in one scheme?  Does not detail restoration aftercare?	Split into two requirements for the approval of schemes for restoration/aftercare, if necessary, on agricultural land and one for decommissioning.  Include a Decommissioning Environmental Management Plan (DEMP).  As above - Detail of restoration and aftercare needs to be provided for approval can be incorporated here or a detailed scheme approved under Requirement 15.  Need to include wording for scheme to be completed / undertaken in accordance with approved details.	The Applicant has no objection to splitting this into two requirements.  Restoration aftercare from construction is addressed above.  Restoration of decommissioning would be covered by the DEMP secured by Requirement 17 of the dDCO <b>[REP1-004]</b> .	The Council welcomes splitting this requirement into operational and maintenance environment management (OMEMP) and decommissioning environmental management plan (DEMP). However as is noted above, above, these plans need to include detail of full restoration and aftercare schemes.	The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference <b>D.7.31</b> ).	FCC note the Applicants position presented within in Paragraphs 2.21 and 2.23 of the Applicants Written Summaries of Oral submissions made at the Issues specific Hearings - Part 3 <b>[REP4-264]</b> .  FCC does not agree and maintains the view that provision to secure appropriate aftercare for the appropriate amount of time should be secured through the requirements.  See response above with regards to Requirement 16.	The Applicant does not agree and has nothing further to add to its previous submission.



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		<b>Schedule 2: Part 2: Applications made under requirements</b>						
		<p>23. Multiple relevant authorities</p> <p>Any request for comments on multiple authorities – “21 days”</p> <p>Timescale is short and doesn't allow any agreed extensions of time.</p> <p>This is in effect a pre-app to and between the two authorities – the need for timescales at all is questioned?</p> <p>If a timescale is accepted there should at very least be the ability to agree an extension of time. The current wording is not acceptable.</p>	<p>Remove provision or provide a reasonable extended period of time and ability to agree an extension of time i.e. “within such longer period as may be agreed by the undertaker and the host authorities in writing</p>	<p>The Applicant is willing to add the flexibility requested to allow agreement of a different period.</p>	<p>The Council would welcome the inclusion of flexibility to agree longer timescales, however, a 20 day response time would be an unreasonably short period of time for the Council to be able provide any substantive response.</p>	<p>The Applicant notes that the 20 days period is only to provide comments on the form of proposed applications. The Applicant does not agree that is insufficient.</p>	<p>The Council notes the inclusion in draft DCO revision E [REP3-005] for the ability to agree longer timescales, and on further review the Council is happy to accept the wording of Article 23 as drafted.</p>	<p>The Applicant considers that this matter is now resolved.</p>
		<p>24. (2) Further Information</p> <p><i>“(2) If the relevant authority considers further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant authority</i></p>	<p>Amend to longer and reasonable time scale, include the provision for allowing an extension of time for an agreement.</p>	<p>The Applicant would be willing to add the flexibility requested to agree a longer timescale, and will agree to change 5 days to 10, but will not agree to extend the 21-day period.</p>	<p>This amendment is noted, however the Council would still consider 10 days to be an unreasonably short period of time, especially where detailed responses are required from internal and external consultees. The Council maintain that this either be amended to a more reasonable length of time</p>	<p>The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference <b>D.7.31</b>).</p>	<p>FCC maintains their position as per Deadline 3 response that it does not support the inclusion of controls in respect to the requests for further Information under Requirement 24 (2-4) of draft</p>	<p>The Applicant does not agree and has nothing further to add to its previous submission.</p>

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		<p><i>must, within 5 business days of receipt of the application, notify the undertaker in writing specifying the further information required. Notification required in 5 business days to specify further information required."</i></p> <p>Even for internal consultees it is not considered reasonable to only allow 5 working days for notification for further information.</p> <p>Notwithstanding the admin time, consultees will need time to fully review the provided material to be able to advise if further information will be required. This is not considered reasonable or acceptable.</p>			(e.g. 21 days) or removed in its entirety		DCO revision G [REP4-007].	

Previous Ref	LPA Ref	Local Impact Report Statement (Deadline 1A)		Applicant's Response (Deadline 2)		Council's Response/Comments (Deadline 3)	Applicant's Response	Council's Response Deadline 5	Applicant Response
		Article 24 (3) Further Information	<p><i>“(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within five business days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within 21 days of receipt of the application.”</i></p> <p>The timescales stated are unreasonable.</p> <p>Requiring a specified timescale for consultation of external bodies is not considered</p>	Amend to longer and reasonable time scale, include the provision for allowing an extension of time for an agreement.	<p>Where consultation is needed on a requirement that would be stated in the requirement and known upfront.</p> <p>The Applicant will not agree to remove this wording but would be willing to amend the period to 10 days.</p>	<p>In view of the provisions / time scales and ability to agree extension of time afforded for under Article 21 (8 weeks) the Council questions the need for any restriction on consultation times and requests for additional information.</p> <p>Notwithstanding this point, should the ExA accept the retention of consultation restrictions under this article, in view of the standard 21-day response time for external consultees, it is considered unreasonable to only allow 21 days for the Council to respond to the undertaker for additional information, especially where there is the potential for delays in external consultee responses or where responses are received on day 21. In this respect the Council do not consider it unreasonable to amend this timescale to 35 days to allow sufficient time for adequate and meaningful consultation.</p>	The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference <b>D.7.31</b> ).	Please refer to comments under Article 24(2)	Please refer to the Applicant's comments above.

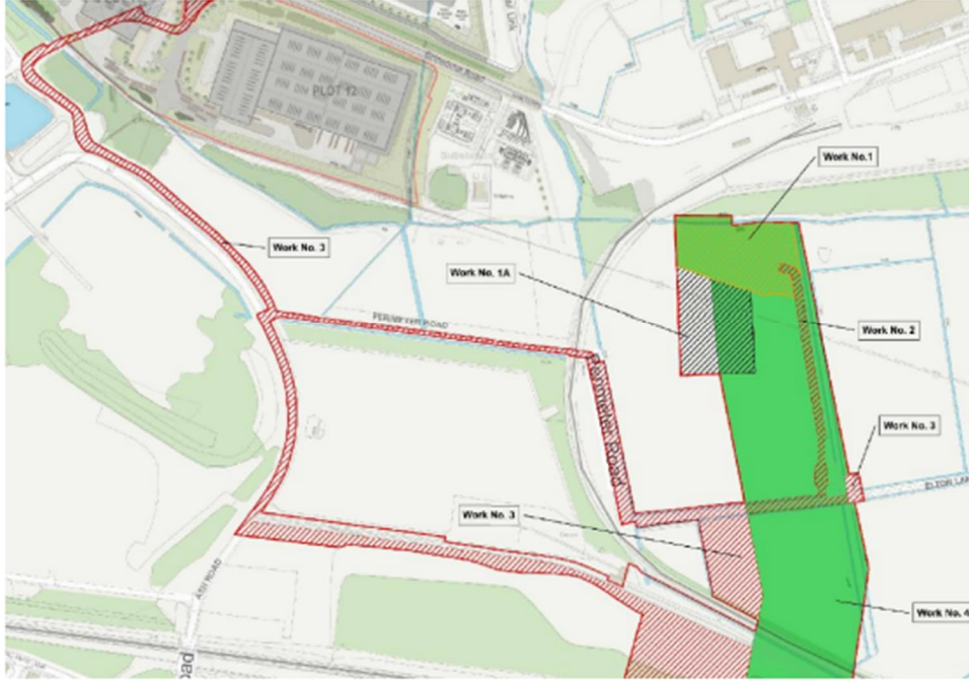
Previous Ref	LPA Ref	Local Impact Report Statement (Deadline 1A)		Applicant's Response (Deadline 2)		Council's Response/Comments (Deadline 3)	Applicant's Response	Council's Response Deadline 5	Applicant Response
			reasonable or necessary. This can be adequately dealt with under an agreed extension of time under Schedule 2 Part 2 (19(1)).						
		Article 24(4) Further Information	<p>“(4) If the relevant authority does not give the notification mentioned in sub paragraphs (2) or (3) or otherwise fails to request any further information within the timescales provided for in this paragraph, it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.”</p> <p>This provision effectively removes the LPA entitlement to request further information if the 5</p>	Remove provision.	The discharging authority has the ability to ask for further information, within the timescales stated, not at any time thereby delaying determination unpredictably and with an impact on delivery of the NSIP project. The Applicant does not agree that this standard wording should be deleted. The Applicant will not agree to remove this wording but would be willing to amend the period to 10 days.	The Council maintains that this provision should be removed, it could be more likely to result in a decision being made with insufficient information which could result in a refusal, particularly given the tight time scale, delaying the delivery of the Project further rather than allowing the local planning authority to work pro-actively with the Applicant	The Applicant does not agree and would refer the Council to its responses to the action points from ISH2 on the dDCO (document reference <b>D.7.31</b> ).	Please refer to comments under Article 24(2)	Please refer to the Applicant's comments above.

Previous Ref	LPA Ref	Local Impact Report Statement (Deadline 1A)	Applicant's Response (Deadline 2)	Council's Response/Comments (Deadline 3)	Applicant's Response	Council's Response Deadline 5	Applicant Response
		<p>day timescales are missed.</p> <p>This is unreasonable.</p> <p>If insufficient info has been provided the host authority should have the right to ask for further information as deemed necessary. If this was to remain in place the Host Authority, if missing it's 5 day notice period, would have no choice but to refuse the requirement application – this would be counterproductive.</p>					

**Table 2.6 – Applicant's Comments on Submission Received from Turley on Behalf of Peel NRE at Deadline 5 [REP5-048]**

Reference	Turley on behalf of Peel NRE Reference	Written Response Statement on behalf of Peel NRE	Applicant's Response
Layout of the Ince Above Ground Installation			
2.6.1	2.3	There are no concerns with the principle of the Ince AGI element or its general location, however Peel NRE objects to the proposed layout of the Ince AGI.	The Applicant notes this and is planning to discuss the details of this point between the parties' technical teams after Deadline 6.
2.6.2	2.4	The Ince AGI Landscape Layout (ref. D.2.14-LAY-Sheet 2 Rev B) identifies the location for landscaping/ecological mitigation and a drainage detention pond. The current location of such features has the possibility to constrain future planned	Based on the feedback received on this topic, from Peel NRE and CF Fertilisers, the Applicant has updated its drainage strategy as part of Change Request 3 (accepted by the ExA on 12 July 2023) as set out in the Outline Surface Water Drainage Strategy

Reference	Turley on behalf of Peel NRE Reference	Written Response Statement on behalf of Peel NRE	Applicant's Response
		development across the Affected Land. Peel NRE accordingly objects to the current proposed layout of the Ince AGI.	<b>[CR3-017]</b> . The Applicant has highlighted this to Peel NRE and is hopeful this addresses their concerns. The Applicant notes that the ExA accepted this change as part of Change Request 3 on 12 July 2023.
2.6.3	2.5	Through conversations between Peel NRE and the Applicant, it is understood the layout of the Ince AGI will be updated to addresses Peel NRE's concerns. This is a welcomed proposal. However, until the updated layout plan is formally submitted, and the Applicant obliged to carry out its proposal in accordance with any amended agreed layout, Peel NRE maintains its objection on this basis, although Peel NRE is confident this objection will be resolved with the Applicant.	Please refer to the responses 2.5.1 and 2.5.2 in this document above.
Access			
2.6.4	2.6	The proposed access continues to conflict with the delivery of the approved Protos Plastics Park (CWACC Planning application ref. 21/04076/FUL), and the delivery of the railway line consented as part of the overarching planning permission for Protos (ref. 14/02277/S73), which would constrain the delivery of the developments. In the absence of agreement by the Applicant to an alternative access, Peel NRE objects to the proposed access (as shown on Works Plan ref. EN070007-D.2.4-WP-Sheet 1).	The Applicant and Peel NRE are in active discussions regarding the complex access requirements. The Parties have been working together to ensure the developments can co-exist and as such the Parties are agreeing terms in the Protective Provisions to allow this.
2.6.5	2.7	A plan of the approved Plastics Park masterplan (ref. 20039-FRA-XX-00-DR-A-90-0005 P2) is provided with an overlay of the proposed access route to the Ince AGI and pipeline (shown on plan ref. EN070007-D.2.4-WP-Sheet 1). This is provided at Figure 1 (and at Appendix 16 to the Written Representations (17 April 2023)). This overlay plan clearly shows the conflict of the Applicant's proposed access with the planned development of the Plastics Park at Protos.	Please refer to the response to row 2.5.4 in this document above.

Reference	Turley on behalf of Peel NRE Reference	Written Response Statement on behalf of Peel NRE	Applicant's Response
		<p><b>Figure 1: Proposed Access Conflict</b></p> 	
2.6.6	2.8	<p>Protos is identified in CWACCs adopted Local Plan as a key strategic site for economic growth and safeguards the land for a multi-modal resource recovery park and energy from waste facility for use in connection with the recycling, recovery and reprocessing of waste materials (Local Plan Part One Policies STRAT 4 and ENV 8; and Local Plan Part Two Policy EP6). As noted in the Written Representations (17 April 2023), the access to the Ince AGI as proposed in the Application would constrain the delivery of a key strategic site in CWACCs Local Plan.</p>	<p>The Applicant has no further comments on this matter and refers Peel NRE to Table 2-1 in the Applicant's Response to Deadline 4 Submissions <b>[REP4-263]</b>.</p>
2.6.7	2.9	<p>The delivery of the Plastics Park is integral to Protos. It is a unique proposal which would deliver a cluster of recycling and recovery technologies that would enable mixed recyclables and pre-sorted plastics to be sorted, processed and recycled into products which can be re-used in plastics manufacturing all on a single site. Plastics which could not be recycled would be used as feedstock for the plastics to hydrogen facility, providing a circular economy solution to waste plastic in the region.</p>	
2.6.8	2.10	<p>As set out in Our Waste, Our Resources: A Strategy for England, there is an urgent need for new thinking to tackle avoidable plastic waste. In order to try and help address the issue of plastic waste a Policy Paper was published by the Government in March 2020 for a plastic packaging tax, which took effect from April 2022. This tax will result in a significant demand for recycled plastic feedstock and as such the UK needs to develop significantly more plastics recycling and recovery capacity if it is to try meet the Government's aspirations on recycling and the circular economy. The</p>	

Reference	Turley on behalf of Peel NRE Reference	Written Response Statement on behalf of Peel NRE	Applicant's Response
		Protos Plastics Park will help to meet the required plastics recycling and recovery requirements.	
2.6.9	2.11	<p>Additionally, the proposals will create 147 full time equivalent jobs from a range of different employment opportunities with a mix of skilled operatives, technical engineers, administrative staff, and manual works. The construction of the proposal also has the potential to generate c.265 construction phase jobs, and indirect jobs through supply chains<sup>2</sup>.</p> <p><sup>2</sup> Source: Planning Statement for application 21/04076/FUL.</p>	
2.6.10	2.12	As such, the proposed Protos Plastics Park is a unique proposal set to contribute to the ambitions of the Government, strategic proposals of CWACC, and provide local direct and indirect jobs.	
2.6.11	2.13	An alternative means of access should be identified by the Applicant to avoid conflicting with planned development at Protos, and avoid conflicting with the strategic ambitions established by CWACC in their adopted Local Plan; or negotiations should continue with Peel NRE as part of the property terms to reach agreement on the access arrangement, as set out in the SoCG.	Please refer to the response to 2.5.4 in this document above.
2.6.12	2.14	It is also noted that construction traffic routes to the Ince AGI would include Ash Road and Grinsome Road via Pool Road, with measures to mitigate effects comprising advanced hazard warning signage along Ash Road is proposed (as set out in the Outline Construction Traffic Management Plan, Annex A, Rev C). Based on revisions to programme (with the inclusion of Saturday morning working), it is anticipated that there will be less than 110 Light Good Vehicles (LGVs) and 30 Heavy Good Vehicles (HGVs) on the road network over a day (Environmental Statement Addendum Change Request 1, Appendix A). Further engagement with Peel NRE should be undertaken on the interaction with vehicles (including HGVs and Abnormal Loads) along these routes with measures to reduce delays / restrictions and engagement with Peel NRE and operators to minimise disruption from these vehicle movements.	<p>By way of clarification, Annex G of Appendix 17.13 Transport Assessment <b>[REP4-167]</b> presents the two-way Average Annual Daily Traffic (AADT) for the project peak month. This forecasts 38 LGVs and 9 HGVs on Ash Road and 38 LGVs and 9 HGVs on Pool Lane North in a reasonable worst-case scenario.</p> <p>The Applicant welcomes the opportunity to attend working forums during construction for traffic de-confliction in the Ince AGI area.</p>
2.6.13	2.15	At this stage Peel NRE objects in principle to the proposed means of access. An alternative means of access should be identified by the Applicant to avoid conflicting with planned development at Protos. Peel NRE is in discussions with the Applicant regarding an alternative means of access and the parties are also close to reaching agreement via Protective Provisions within the draft DCO which, if agreed, would go some way towards alleviating Peel NRE's concerns.	Please refer to the response to row 2.5.4 in this document above.
Environmental Considerations			



Reference	Turley on behalf of Peel NRE Reference	Written Response Statement on behalf of Peel NRE	Applicant's Response
2.6.15	2.17	As part of continuing discussions / agreements, Peel NRE is seeking agreement with the Applicant for ongoing dialogue and approval of details in respect of management plans for landscaping, construction, traffic etc. as part of any implementation of the DCO in order to ensure there is no conflict with Peel's own development proposals at Protos.	The Applicant is in regular dialogue with Peel NRE with the aim to resolve all remaining environmental considerations in a timely manner.
Location and Extents of Ecological Mitigation			
2.6.16	2.18	With relevance to the Ince AGI, no Environmental Mitigation Areas are defined on the Works Plans (D.2.4-WP-Sheet 1 Rev B). However, ecological mitigation measures are proposed include an area of riparian habitat enhancement along the southern bank of East Central Drain as well as the planting of native triple staggered hedgerow, hedgerow, trees, native shrub planting and species rich grassland around the Ince AGI (D.2.14-LAY-Sheet 2 Rev B). Whilst the need to maintain flexibility at this stage is understood, the location and extent of these works should be discussed with Peel NRE to ensure that these do not prejudice future development ambitions.	The Applicant has proposed riparian planting at East Central Drain due to the opportunity to utilise this corner of the field that would not be viable for returning to productive land use during operation. Therefore, this area of land that would be segregated from the rest of the field has been proposed for riparian enhancements to offset potential impacts elsewhere within the Order Limits. The Applicant welcomes a discussion with Peel NRW should further clarification or discussion be required.
2.6.17	2.19	It is recognised that additional opportunities for biodiversity enhancement are being considered by the Applicant to achieve at least 1% gain in Priority Habitats, including refining / reducing the extent of proposed temporary impacts and delivery of further habitats. This remains the position outlined in the Draft Biodiversity Net Gain (BNG) Strategy Update (Rev A).	The Applicant, through extensive engagement with CWCC, has identified several locations for biodiversity offsets outwith the landholding of Peel NRE. All land currently considered for offset enhancements is owned by CWCC. The Applicant can confirm it requires neither land nor maintenance support from Peel NRE to deliver its BNG offsets within England. An updated BNG Strategy Update <b>[REP5-012]</b> submitted at Deadline 6 provides further information about the locations of proposed offset sites.
2.6.18	2.20	Any further mitigation land requirements identified should be clearly defined and discussed and agreed with Peel NRE if located at Ince AGI to ensure that these do not prejudice development aspirations.	See response provided within the Applicant's Comments on Submissions Received at Deadline 3 <b>[REP4-263]</b> , reference 2.33. No further mitigation land requirements at Ince AGI are anticipated beyond that required for landscape planting associated within the Ince AGI.
2.6.19	2.21	Whilst conversations are continuing between Peel NRE and the Applicant, this matter is not yet fully resolved, and Peel NRE therefore objects on the basis that the currently proposed mitigation measures are not fully fixed and agreed and further mitigation requirements are unknown at this stage.	
Impacts on Development Land and Businesses			
2.6.20	2.22	Further discussions in respect to access and land acquisition are being progressed with the Applicant.	The Applicant acknowledges this and is appreciative of Peel NRE's ongoing dialogue with the Applicant.
2.6.21	2.23	Within the Written Representations (17 April and 23 May 2023), Peel NRE has sought clarity on whether the Pipeline would be classified as a Major Accident Hazard Pipeline by the Pipeline Safety Regulations 1996 and therefore 'generate' a Consultation Zone with associated land use restrictions. There are a number of other pieces of legislation noted within Chapter 13: Major Accidents and Disasters (e.g. The Planning (Hazardous Substances) Regulations 2015 and The Dangerous Substances	The Applicant is undertaking ongoing direct engagement with the UK HSE to maintain a common understanding of applicability of Major Hazard regulations and to monitor the regulator's position and potential future changes. The Applicant is not in a position to influence or predict regulatory changes in relation to pipeline transportation of CO <sub>2</sub> .

Reference	Turley on behalf of Peel NRE Reference	Written Response Statement on behalf of Peel NRE	Applicant's Response
		and Explosive Atmospheres Regulations 2002). The Applicant has subsequently confirmed that currently the HSE have not classified the proposal under the legislation noted above. However, there remains a potential for this to be case – dependent on forthcoming HSE advice - and therefore Consultation Zone separation or 'stand-off' distances may be applied. Such additional land use restrictions also have the potential to prejudice currently consented and future development ambitions at Protos.	Other applicable UK Safety Regulations will be complied with, although it is not expected that these will result in any formal requirements for separation zones.
2.6.22	2.24	Given this, Peel NRE maintains this objection on the basis that there remain potential impacts and mitigation requirements that are not understood at this stage.	The Applicant cannot control future changes in legislation. Any changes made would be within the remit of Parliament as with all other legislation. It is not reasonable to object to the Applicant's proposals on the basis that the law may change given that is outside of all parties' control.
Assessment of Cumulative Effects			
2.6.23	2.25	It is recognised that a number of Other Developments within Protos have been considered as part of the 'inter-project' assessment reported in Chapter 19: Combined and Cumulative Effects. However, there are a number of other extant permissions which have not yet been implemented or are under construction as of Summer 2023 which lie within the land owned by Peel at Protos. These remain as outlined within the Written Representations (17 April 2023). Whilst an update has been provided at Deadline 4 (D.6.2.19), these additional projects are not yet captured.	Chapter 19 Combined and Cumulative Effects <b>[REP4-062]</b> will be updated and submitted prior to the end of the Examination.
2.6.24	2.26	Due to the proximity and scale of these developments and potential for intra-project effects due to the presence of common sensitive environmental receptors (specifically in respect to landscape and visual, air quality, traffic and transport and biodiversity), Peel NRE objects to the current scope and contents of the cumulative assessment. It is understood that a fully updated cumulative assessment will be prepared as part of an update ES during the examination.	
Easement of the CO <sub>2</sub> Pipeline Corridor			
2.6.25	2.27	The pipeline corridor is proposed to travel north/south along the eastern boundary of the Order limit. The location of the pipeline corridor in the current proposal is an improvement on the location of the pipeline previously proposed in the Section 42 Consultation. However, despite this improvement, the current proposals are still not acceptable to Peel NRE on the basis that the proposed 24.4m corridor around the pipeline for the permanent acquisition of sub-soil (at plots 1-11, 1-12, 1-13, 1-15, 1-18 and 1-19) would cause an unacceptable quantum of land to be restricted from development by way of the proposed restrictive covenants.	The Applicant is currently in technical and commercial discussions with Peel NRE, to resolve this objection.

Reference	Turley on behalf of Peel NRE Reference	Written Response Statement on behalf of Peel NRE	Applicant's Response
2.6.26	2.28	Notwithstanding Peel NRE's objection on this matter, the Applicant has confirmed that the 24.4m easement corridor and associated restrictive covenants proposed to be involved are necessary for the protection of the pipeline. The Parties are currently in discussions to reach an agreed position on this matter but the position has yet to be agreed and so Peel NRE must maintain its objection in principle to the current proposal on the basis that the restrictive covenants to be imposed on this land will unacceptably constrain the development of the Protos Plastics Park.	
Negotiating Land Agreements			
2.6.27	2.29	The parties have yet to agree a position on the land agreements however progress has been made in regard to the Heads of Terms. However, at this stage, Peel NRE must maintain its objection to the proposed acquisition of land, interests and rights identified within the Land Plans (drawing ref. EN070007-D.2.2-LP-Sheet 1).	The Applicant is appreciative of Peel NRE's ongoing dialogue with the Applicant. The Applicant is hopeful that Peel's remaining concerns can be addressed through continued dialogue.
Protective Provisions			
2.6.28	3.1	Peel NRE requests that its protective provisions (a copy of which is appended) (Protective Provisions) are included in the Order to ensure that its land interests and the planned development of the Protos Plastics Park are sufficiently protected in the carrying out of the authorised development and to ensure that Peel NRE is appropriately consulted at the detailed design stage in respect of the elements of the proposed Order which interface with the Protos Plastics Park.	The Applicant is continuing to engage with Peel NRE on the subject of Protective Provisions.
2.6.29	3.2	Peel NRE is in discussions with the Applicant and hopes to seek the agreement of the content of the Protective Provisions with the Applicant prior to the close of the Examination Period. In the event that agreement on the form of Protective Provisions cannot be reached between Peel NRE and the Applicant, Peel NRE would request that the Protective Provisions in the form appended are included in Schedule 10 of the Order in order to afford Peel NRE the appropriate protection in light of the impacts of the proposed Order on its land interests in the Protos Plastics Park.	
Withdrawal of Objections			
2.6.30	4.1	<p>In order for Peel NRE to be in a position to withdraw its objection to the proposed Order, Peel NRE requires confirmation from the Applicant that:</p> <ul style="list-style-type: none"> <li>• the access to the Ince AGI is relocated or renegotiated to avoid conflicting with planned development at Protos;</li> <li>• the acquisition of land and rights over the Affected Land (including the extinguishment of any rights) is on terms agreed with Peel NRE;</li> <li>• sufficient protection for the Protos expansion is afforded by the Pipeline scheme to enable the Protos expansion to come forward unhindered;</li> </ul>	The Applicant notes Peel NRE's concerns and is continuing to engage with them on these matters. These comments are the subject of the SoCG <b>[REP4-248]</b> discussion. Some of the confirmation points requested by Peel NRE are not acceptable in their current form. The Applicant and Peel NRE are working to address these differences and to mutually agree a way ahead that resolves Peel NRE's concerns.

Reference	Turley on behalf of Peel NRE Reference	Written Response Statement on behalf of Peel NRE	Applicant's Response
		<ul style="list-style-type: none"> <li>• no works pertinent to the Affected Land shall be carried out without Peel NRE's prior approval of the plans, specification, method statement and programme of works;</li> <li>• full access rights, during both the construction and operation phases, are retained to the Affected Land for the benefit of Peel NRE;</li> <li>• reconsideration of the location of drainage infrastructure to avoid conflicting with planned development at Protos;</li> <li>• clarification on any additional further ecological mitigation requirements at Ince AGI due to BNG;</li> <li>• clarification on hazards posed by the Pipeline (noting that this is subject to HSE advice);</li> <li>• updated cumulative assessment, fully considering intra-project effects with consented development within Protos; and</li> <li>• the proposed Protective Provisions are agreed.</li> </ul>	

# HyNet North West

## **Appendix A: Applicant's response to National Highways' submissions**

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

#### **Revision A (Deadline 6)**

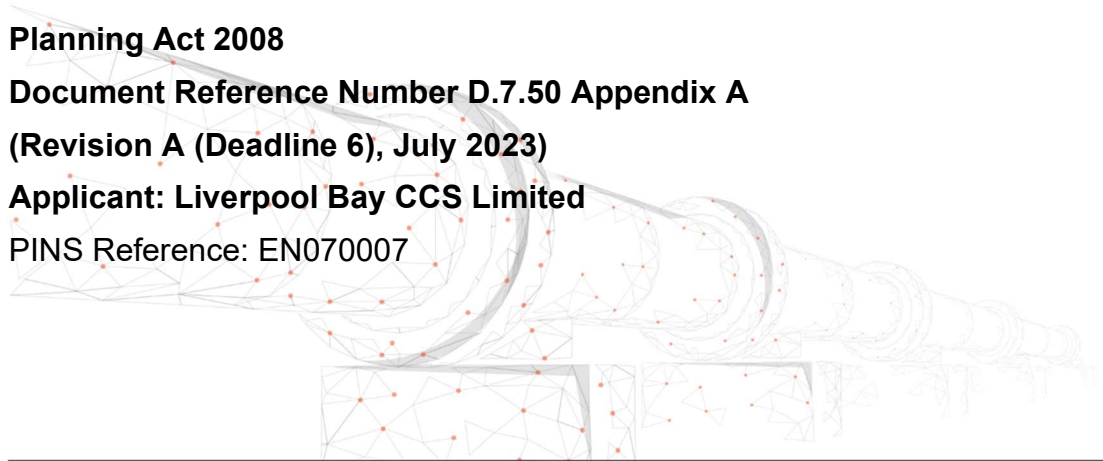
Planning Act 2008

Document Reference Number D.7.50 Appendix A

(Revision A (Deadline 6), July 2023)

Applicant: Liverpool Bay CCS Limited

PINS Reference: EN070007



## QUALITY CONTROL

<b>Issue/Revision</b>	<b>First Issue</b>				
Document Reference	D.7.50 Appendix A				
Revision	A				
Author Name and Sign	Burges Salmon				
Approver Name and Sign	Burges Salmon				
Document Owner	Burges Salmon				

## 1 INTRODUCTION

- 1.1 This submission responds to the points raised by National Highways in its written submission to the Examination. In order to present a consolidated response to National Highways' submissions, this submission covers points already made in previous submissions. The Applicant has however sought to keep repetition to a minimum and has noted in this document where submissions have been made previously on a particular point.

### **Status of works in the sub-soil under the highway and street works**

- 1.2 The Applicant notes the legal submission at Deadline 5 by National Highways<sup>1</sup> to support their position that trenchless installation is a street work under the New Roads and Street Works Act and must be listed as such in the DCO. The Applicant does not accept that position and sets out its response in section 2.
- 1.3 The Applicant notes that the National Highways submission, if correct (which is not accepted), would also affect the status of works in highway managed by other highway authorities who are not taking the same position. The position now taken by National Highways is also contrary to that taken in made DCOs, and some excerpts from the Southampton to London Pipeline DCO demonstrating that are included in Appendix 1 as an example. It is noted that the installation of that pipeline under the M25 motorway was not shown as street works within the plans for the Southampton to London Pipeline DCO.
- 1.4 It is noted that National Highways' position in this case is inconsistent not only with made energy DCOs, but also with its own recent highways DCOs.

### **Compulsory acquisition**

- 1.5 The Applicant does not accept that the New Roads and Street Works Act can be relied upon to grant the land rights necessary to place and maintain the pipeline in the subsoil. The Applicant submits that this position is contrary to a considerable body of long-established case law which sets out that street status does not confer the right to interfere with the underlying ownership of the subsoil. This point is considered in Section 3 along with the wider objection to Compulsory Acquisition (CA).

### **Serious detriment**

- 1.6 National Highways has submitted that it objects to the CA powers sought by the Applicant on the basis that they would result in serious detriment to its statutory undertaking<sup>2</sup>. The Applicant does not accept that there will be any serious detriment to the statutory undertaking of National Highways should the powers sought be granted. The Applicant submits that National Highways has not set out any substantive case as to how serious detriment could or would arise. The Applicant has set out the high test for serious detriment and why it does not consider that National Highways has demonstrated that this test is met in section 4.

### **Protective provisions summary**

- 1.7 The Applicant agrees, and has always agreed, that Protective Provisions in favour of National Highways are appropriate for this development. The Applicant does not however agree that the form of such provisions put forward by National Highways is proportionate, necessary or reasonable to secure the required protections for the works which would be consented by this DCO. The National Highways' draft of these provisions is not agreed, and the points of disagreement are addressed in section 5 of this submission.
- 1.8 The Applicant notes that National Highways have advised that they are not prepared to accept any amendments to their preferred drafting of the protective provisions<sup>3</sup>. The

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<sup>1</sup> REP5-051

<sup>2</sup> Written Representation [REP1-069] at paragraph 4.2, Deadline 2 submission [REP2-049] at paragraph 3.1

<sup>3</sup> As confirmed by National Highways' legal representative by email on 11 July 2023

Applicant has accordingly attached its preferred drafting of those provisions to this submission and respectfully requests the Examining Authority to prefer that drafting as being appropriate to the circumstances of this application.

## **2 STATUS OF WORKS IN THE SUBSOIL UNDER THE HIGHWAY AND NEW ROADS AND STREET WORKS ACT 1991 (NRSWA)**

- 2.1 The Applicant agrees with National Highways' statement that "*the depth of the highway is not defined and as demonstrated in recent case law as set out below, can vary from highway to highway*"<sup>4</sup>. That was clearly stated in the Applicant's submission on the depth of a street in Applicant's Comments on Submission Received at Deadline 2<sup>5</sup>. It does not follow from that however, that National Highways is entitled to take the view that they can, as highway authority, determine the depth to be effectively whatever they wish. It also does not follow that because the depth is uncertain, CA of subsoil rights is inappropriate.
- 2.2 The Applicant accepts, and has always accepted, that National Highways has a legitimate interest in the trenchless works to be undertaken under the SRN, including in having a right of approval of the details and methodology of those works. The Applicant has also always accepted that some Protective Provisions are appropriate. That does not mean that the works are legally street works within the meaning of NRSWA.
- 2.3 The Applicant does not accept National Highways' submissions made at Deadline 5. With respect to the KC, the Applicant considers that the interpretation of the Act set out does not have proper regard to the considerable body of land law case law that street status has a vertical limit. To determine that any works under a street are still within the street for the purposes of NRSWA contravenes that long established principle.
- 2.4 The Applicant has set out below section 48(3) of NRSWA:

*Section 48 (3):*

*In this Part "street works" means works of any of the following kinds (other than works for road purposes) **executed in a street** in pursuance of a statutory right or a street works licence—*

*(a) **placing apparatus**, or*

*(b) **inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it,***

*or works **required for or incidental to any such works** (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street). (emphasis added)*

- 2.5 It is, as set out in section 48(3), in a case where new apparatus is proposed, the placing of apparatus 'in' a street which the street work. Tunnelling or boring under that street is 'required for' such work but does not override the definition and cannot negate the need for these works to be 'in' a street. In this case the Applicant maintains that the pipe will not be placed in the street, but under it. A minimum depth of 4m under the SRN has been agreed<sup>6</sup> and is included in the Applicant's draft Protective Provisions set out in Appendix 2 to this submission.
- 2.6 The Applicant maintains its position that case law is entirely clear that extent of a street (or highway, the distinction is not important to the current consideration) does not go deeper than is required to support the street. The Applicant submits that it cannot be case that the powers of a street authority allow that authority to interfere with legal interests outside the street, including under it. The legal basis for this was summarised in line 2.2.2

<sup>4</sup> National Highways late Deadline 5 submission [REP5-050] at paragraph 2.3

<sup>5</sup> REP3-033, line 2.2.2 included the statement "There is no requirement in law to specify a depth for a highway right. The precise depth of a highway will depend on the ground conditions at each location."

<sup>6</sup> Applicant's Comments on Submissions Received at Deadline 4 [REP5-015] at line 2.20.15



of the Applicant's Comments on Submission Received at Deadline 2<sup>7</sup>. Street status does not allow the authority to interfere with the rights of owners deeper than the street status; to do so would be an infringement on the rights of the owner of the subsoil and contrary to the 'zone of ordinary use' limitation set out by the Supreme Court in 2018.

- 2.7 The Applicant notes that the D5 submission provides that “3.4 *National Highways is concerned that no works ‘under’ the SRN are currently listed as street works within the DCO. This is at odds with the Book of Reference which clearly includes plots within the SRN. National Highways contends therefore that either the draft Development Consent Order is updated to include those works proposed under the SRN (and if that is the case National Highways requires that none of the provisions are disapplied as set out in the Deadline 4 response) or that the Applicant will need to secure a 1991 Act licence before any works are commenced*”.
- 2.8 The Applicant considers the reference to the Book of Reference to be erroneous as inclusion in that relates to the interests held in land, it does not determine or affect whether or not a work is a street work.
- 2.9 The Applicant notes that no other affected street authority (Welsh Ministers, FCC and CWCC) have taken the position that tunnelling in the sub-soil is a street work which falls within NRSWA. The Applicant also notes that, as shown in the extracts set out in Appendix 1, the Southampton to London Pipeline DCO did not include installing the pipeline under the M25 motorway as a street work. National Highways (under its previous name Highways England) withdrew its objection to that order despite these works not being included in the street works schedule.
- 2.10 The Applicant has already agreed that the section 61 process under NRSWA will be followed regardless of the status of works. The Applicant is unclear as to what advantage National Highways considers flows from classifying the works under their highway as street works, and can only consider that this is being proposed to support their case that NRSWA provides an alternative to CA. That point is addressed in section 3 below.
- 2.11 Where tunnelling works are determined to be street works, then the AROW plans and DCO schedules would require to be updated. That change could not logically be applied only to National Highways as similar works are required on other streets managed by other authorities. The classification would have further drafting consequences, including on the protective provisions for the local highway authorities and potentially, the Welsh Ministers, as these would require to have sections struck out to prevent conflict with NRSWA being created.
- 2.12 The Planning Act 2008 (PA2008) was intended by Parliament to provide a streamlined consenting and compulsory purchase process for Nationally Significant Infrastructure Projects. It was Parliament’s express intent that DCOs be able to include as many other consents as possible for such developments and to disapply other legislation where the DCO can provide for the matter. It is contrary to that fundamental objective for works under a DCO to then also be controlled under NRSWA in a manner which conflicts with the DCO approach. NRSWA was designed to control and co-ordinate the exercise of statutory undertakers’ works in the surface of streets where planning consent is not normally required, co-ordination is necessary to ensure that traffic is not inappropriately disrupted, and control of works is required to ensure that the highway is not left in an unacceptable or dangerous state. Those considerations do not apply to the facts in this case where there will be no closure to traffic of any part of National Highways’ network, and the protection of the SRN is assured through the Protective Provisions.
- 2.13 Where the tunnelling works are determined to be street works then for the purposes of section 50 of NRSWA, the DCO would provide statutory authority to carry out such works. A section 50 licence would therefore not require to be obtained. This is set out in section 48(3) which provides “*In this Part “street works” means works of any of the following kinds*

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<sup>7</sup> REP3-033

*(other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence” (emphasis added).*

2.14 The Applicant will therefore not agree to amend the drafting of the article restricting the application of NRSWA. The submission that “*National Highways requires that none of the provisions [of NRSWA] are disapplied*” is entirely rejected by the Applicant as being unreasonable and inapplicable in the DCO context. As set out in the Explanatory Memorandum, “*the disapplied powers would be inappropriate to a project authorised by a DCO. For example, one of the powers is to direct undertakers to locate their works in a different street than that proposed (s56A). Where works are being carried out under permitted development rights that is not commonly problematic, however works under the Order are constrained by the Order limits and ES assessment, and no consent would be in place to move the works outside of that envelope*”<sup>8</sup>.

2.15 The Applicant notes that when promoting its own DCOs National Highways routinely includes the same or substantially similar provisions as the Applicant in its own DCOs relating to streets and the application of NRSWA. The Applicant refers to, amongst many recent examples, the A47 North Tuddenham to Easton Development Consent Order 2022 article 14, the A47 Wansford to Sutton Development Consent Order 2023, article 11, A417 Missing Link Development Consent Order 2022 article 12, and A428 Black Cat to Caxton Gibbet Development Consent Order 2022 article 11.

**3 COMPULSORY ACQUISITION**

3.1 The draft DCO includes powers to acquire a series of land rights and interests in land which will be required, on a permanent and temporary basis. In the event it has not been possible to acquire the land rights and interests by agreement, it will be necessary to compulsorily acquire these for the purposes of developing the pipeline and as such, the DCO includes powers to compulsorily acquire land.

3.2 Compulsory acquisition powers are sought within the DCO in relation to land forming part of the Strategic Road Network (SRN). National Highways is the highway authority for SRN highways within England.

3.3 The table below lists the plots to which objection has been made by National Highways in the Deadline 5 submission<sup>9</sup>;

Plot and acquisition sought	NH Interest	Applicant comments
2-03 Permanent acquisition of subsurface of 44195 square metres of agricultural land and hedgerow lying to the north east of Ince Lane, Elton	Rights granted by a Deed dated 10 October 1978.	The Applicant understands National Highways’ interest to be for access and notes the CA sought is subsurface only and compatible with the access right being retained.  The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with this right. Covered in Protective Provisions
2-05 Permanent acquisition of subsurface of 12293 square metres of grassland, woodland and overhead electricity cables lying to the east Ince Lane, Elton	Rights granted by a Deed dated 16 December 1997	This right is a rentcharge right. This right does not relate to the operation of the SRN and is purely financial.  The Applicant would not extinguish the right from other parties but would not accept payment liability should nay accrue to the subsurface interest. This would then be a matter for

<sup>8</sup> REP4-010, at paragraph 4.57

<sup>9</sup> REP5-050

		compensation which is expected to be minimal given the form of acquisition proposed. The effect would be the same as buying out any relevant portion of the rentchange.
2-09 Permanent acquisition of subsurface of 2530 square metres of public road, footways and verges (Hill View Way (A5117), Elton) and overhead electricity cables	Owner of half width of subsoil	In the absence of a suitable land agreement the Applicant maintains that CA of this plot is necessary and should be granted. The Applicant notes that these plots are in now in the local road network following de-trunking of the highway.
2-10 Permanent acquisition of subsurface of 1314 square metres of public road, footways and verges (Hill View Way (A5117), Elton) and overhead electricity cables	Owner	National Highways holds an interest as an owner of the subsoil <u>not</u> as the Highway Authority. This plot is not accordingly not part of National Highway's statutory undertaking and serious detriment cannot apply to CA of these plots.
4-20 Permanent acquisition of subsurface of 18798 square metres of agricultural land, hedgerows, copse and drain lying to the north of Thornton Green Lane, Thornton-le-Moors	Rights reserved by a Conveyance dated 21 May 1980	It is understood that the National Highways use of this plot is for highway drainage, and the Applicant has already committed not to interfere with that drainage as set out in the draft SoCG [REP5-009] at line 3.4.1. The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with this right or National Highway's apparatus in this location. A commitment has been included within the Outline Construction Environmental Management Plan (OCEMP) [REP2-021] and Register of Environmental Actions and Commitments (REAC) [REP2-017] to satisfy National Highways that their ability to drain their highway will not be impacted by the Applicant's works. Covered in Protective Provisions
5-01 Permanent acquisition of land of 4297 square metres of agricultural land lying to the north east of Thornton Green Lane, Thornton-le-Moors	Rights reserved by a Conveyance dated 21 May 1980	It is understood that the rights are for highway drainage. The Applicant has already committed not to interfere with that drainage as set out in the draft SoCG [REP5-009] at line 3.4.1. The Applicant further notes that these plots are to be crossed trenchlessly.
5-02 Permanent acquisition of subsurface of 138 square metres of woodland lying to the north of Thornton Green Lane, Thornton-le-Moors	Rights reserved by a Conveyance dated 21 May 1980	The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with National Highway's apparatus in this location. A commitment has been included within the Outline Construction Environmental Management Plan (OCEMP) [REP2-021] and Register of Environmental Actions and Commitments (REAC)

		[REP2-017] to satisfy National Highways that their ability to drain their highway will not be impacted by the Applicant's works. Covered in Protective Provisions.
5-05 Permanent acquisition of subsurface of 224 square metres of woodland lying to the north of Thornton Green Lane, Thornton-le-Moors	For apparatus	<i>National Highways advise that they object to object to loss of woodland mitigation land.</i>  The Applicant does not understand the objection as the recorded advised use by National Highways of this plot as set out in the draft SoCG [REP5-009] at line 3.4.1 is for buried drainage assets. National Highways are not listed as the owners or occupiers of the woodland. The Applicant further notes that this plot is to be crossed trenchlessly so there would be no loss of woodland. The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with National Highway's apparatus in this location. Covered in Protective Provisions.
5-06 Permanent acquisition of subsurface of 9818 square metres of motorway and verges (M56), and woodland lying to the north of Thornton Green Lane, Thornton-le-Moors	Owner	In the absence of a suitable land agreement the Applicant maintains that CA of this plot is necessary and should be granted. The Applicant notes that only subsurface acquisition is sought. The Applicant further notes that no interference with the highway use of the surface is proposed. The protection of the SRN is covered in Protective Provisions.
5-09 Permanent acquisition of subsurface of 1375 square metres of public road and verges (Thornton Green Lane), Thornton-le-Moors	Part Owner	In the absence of a suitable land agreement the Applicant maintains that CA of this plot is necessary and should be granted.
5-10 Permanent acquisition of subsurface of 28211 square metres of agricultural land, pond, hedgerow and copse lying to the south of Thornton Green Lane, Thornton-le-Moors	Rights reserved by a Conveyance dated 21 May 1980	It is understood that the National Highways use of these plots is for highway drainage and the Applicant has already committed not to interfere with that drainage as set out in the draft SoCG [REP5-009] at line 3.4.1. The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with these rights or National Highway's apparatus in this location.
5-12 Permanent acquisition of subsurface of 739 square metres of agricultural land and hedgerows lying to the north of Hallsgreen Lane, Thornton-le-Moors	Rights granted by a Conveyance dated 22 January 1993	A commitment has been included within the Outline Construction Environmental Management Plan (OCEMP) [REP2-

		021] and Register of Environmental Actions and Commitments (REAC) [REP2-017] to satisfy National Highways that their ability to drain their highway will not be impacted by the Applicant's works. Covered in Protective Provisions
5-15 Permanent acquisition of subsurface of 6515 square metres of agricultural land, outbuildings and hedgerow (The Spinney, Hallsgreen Lane, Wimbolds Trafford, Chester CH2 4JX)	For apparatus	National Highways have stated at deadline 5: "objection to interference". It is understood that the apparatus is highway drainage, and the Applicant has already committed not to interfere with that drainage as set out in the draft SoCG [REP5-009] at line 3.4.1.
5-20 Permanent acquisition of subsurface of 785 square metres of woodland and track carrying public footpath (318/FP1/1) lying to the south of M56, Mickle Trafford	For apparatus	The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with National Highway's apparatus in this location.
5-22 Permanent acquisition of subsurface of 36208 square metres of grassland, woodland, track, drain and culvert lying to the west of Ince Lane, Wimbolds Trafford	For apparatus	A commitment has been included within the Outline Construction Environmental Management Plan (OCEMP) [REP2-021] and Register of Environmental Actions and Commitments (REAC) [REP2-017] to satisfy National Highways that their ability to drain their highway will not be impacted by the Applicant's works.
5-23 Permanent acquisition of subsurface of 5934 square metres of grassland, drains and public footpath (318/FP1/1) lying to the west of Ince Lane, Wimbolds Trafford	For apparatus	Covered in Protective Provisions
6-02 Permanent acquisition of subsurface of 97 square metres of river (River Gowy) lying to the west of Ince Lane, Wimbolds Trafford	For apparatus	
6-03 Permanent acquisition of land of 540 square metres of river (River Gowy) lying to the west of Ince Lane, Wimbolds Trafford	None identified in the Book of Reference or SoCG	The Applicant has no record of National Highways holding a current interest in this plot which is owned by the Environment Agency, and National Highways have not advised of such an interest.
6-04 Permanent acquisition of subsurface of 139 square metres of agricultural land lying to the east of Picton Lane, Wervin	For apparatus	It is understood that the apparatus is highway drainage The Applicant has already committed not to interfere with that drainage as set out in the draft SoCG [REP5-009] at line 3.4.1.  The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with National Highway's apparatus in this location.

		<p>It is understood that National Highways may have unrecorded or unidentified rights to take access to inspect their bridge over the River Gowy through this plot. The proposed works cross the River Gowy and associated flood defences by trenchless techniques. The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with any access right.</p> <p>Covered in Protective Provisions</p>
<p>6-05 Permanent acquisition of subsurface of 449 square metres of track lying to the east of Picton Lane, Wervin</p>	For apparatus	<p>It is understood that the apparatus is highway drainage, and the Applicant has already committed not to interfere with that drainage as set out in the draft SoCG [REP5-009] at line 3.4.1.</p> <p>The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with National Highway's apparatus in this location. A commitment has been included within the Outline Construction Environmental Management Plan (OCEMP) [REP2-021] and Register of Environmental Actions and Commitments (REAC) [REP2-017] to satisfy National Highways that their ability to drain their highway will not be impacted by the Applicant's works.</p> <p>It is understood that National Highways may have unrecorded or unidentified rights to take access through an underpass in this location. The Applicant would be using that access route, but works would not interfere with that access and The Applicant would not seek to prevent National Highway's also using it. The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with this right.</p>
<p>6-06 Permanent acquisition of land of 9906 square metres of agricultural land lying to the east of Picton Lane, Wervin</p>	For apparatus	<p>It is understood that the apparatus is highway drainage, and the Applicant has already committed not to interfere with that drainage as set out in the draft SoCG [REP5-009] at line 3.4.1.</p> <p>The Applicant is not, and has repeatedly confirmed it is not, proposing to interfere with National Highway's apparatus in this location. A commitment has been included within the Outline Construction</p>

		Environmental Management Plan (OCEMP) [REP2- 021] and Register of Environmental Actions and Commitments (REAC) [REP2-017] to satisfy National Highways that their ability to drain their highway will not be impacted by the Applicant's works. Covered in Protective Provisions
6-07 Permanent acquisition of rights of 1709 square metres of track and river (Stanney Mill Brook) lying to the east of Picton Lane, Wervin	Part Owner	The recorded advised use by National Highways of this plot as set out in the draft SoCG [REP5-009] at line 3.4.1 is for access to Plot 6-06, this plot does not form part of the operational carriageway of the highway but rather provides access for drainage. The CA sought is subsurface only and compatible with the access being maintained resulting in no permanent impact on the use arising from acquisition of a sub-soil interest.  In the absence of a suitable land agreement the Applicant maintains that CA of this plot is necessary and should be granted.
7-05 Permanent acquisition of subsurface of 7207 square metres of motorway and verges (M53, Wervin)	Occupier	The Applicant notes that National Highways are the occupier of this plot and the subsurface ownership is held by the local authority not National Highways. In the absence of a suitable land agreement the Applicant maintains that CA of this plot is necessary and should be granted. The CA sought accordingly affects the local authority not National Highways and serious detriment cannot be claimed by National Highways in relation to the subsoil of this plot as it has not been acquired by them for the purposes of their undertaking.
9-04 Permanent acquisition of rights of 30 square metres of telecommunication mast and hardstanding lying to the east of Liverpool Road (A41), Backford	Rights granted by Conveyance dated 22 November 1948)	The plot is occupied by a telecommunications mast used by numerous telecoms providers. That telecommunications use is protected by the Protective Provisions in favour of electronic communication code providers. National Highways object to the loss of a private right but have not been able to advise the Applicant what the current purpose and use of the right they hold in this plot is. The plot is surrounded on three of four sides by Plot 9-03 within which no National Highways interest has been identified and on the fourth by plot 9-07 which is

		<p>the A41. This plot is accordingly not a connection to a wider right of access and the right held only applies to this plot.</p> <p>The Applicant is only seeking permanent rights over this plot in the form of restrictive covenants for the protection of the pipeline. There is no need to or proposal to extinguish any rights incompatible with those protections, including, for example, rights of access.</p> <p>In the absence of a suitable land agreement the Applicant maintains that CA of this plot is necessary to allow the pipeline to be protected once constructed and should be granted.</p>
<p>9-07 Permanent acquisition of subsurface of 1412 square metres of public road, footway, verge and woodland (Liverpool Road (A41), Backford)</p>	<p>Owner</p>	<p>In the absence of a suitable land agreement the Applicant maintains that CA of this plot is necessary and should be granted.</p> <p>The Applicant notes that this plot is in the local road network. National Highways holds an interest as an owner of the subsoil not as the Highway Authority.</p> <p>This plot is not accordingly not part of National Highways' statutory undertaking and serious detriment cannot apply to CA of these plots.</p>

3.4 The Applicant has identified a National Highways interest in the following plots where CA is sought but which are not included in the list of objections made at Deadline 5:

- (a) Plot 2-14. This plot is understood to contain an open watercourse that National Highways drainage may connect into and a right of access to that<sup>10</sup>. That drainage will not be interfered with.
- (b) Plot 5-14. This plot is subject to a right for apparatus<sup>11</sup> and to form part of the same drainage system as plots 5-10, 5-12, 5-15 5-20, 5-22, 5-23 and 6-02. The Applicant has made the same commitments to protection of drainage apparatus the Protective Provisions for these plots as those listed in the table.
- (c) Plots 9-08, 9-09, 9-10, 9-11, 9-12, 9-13<sup>12</sup> are listed in the Book of Reference as National Highways having an ownership or part ownership interest. The Applicant submits that the same positions apply for these plots as those listed in the table.

<sup>10</sup> As advised by National Highways and set out in the draft SoCG [REP5-009] at line 3.4.1, this has been noted in the SoCG, which is agreed with National Highways before submission, since before deadline 2 and was included in REP2-029

<sup>11</sup> This has also been listed in the SoCG as part of the drainage apparatus since before deadline 2 and is set out in REP2-029

<sup>12</sup> These have been listed by the Applicant as plots within which National Highways has an interest since application, see for example the application Book of Reference [APP-030] or paragraph 1.2.3 of the first draft SoCG. REP1-028, dated April 2023 where a list of plots in which the Applicant had identified a National Highways interest was set out.



- 3.5 Temporary possession powers are also sought over plots within which National Highways has an interest, however these powers are not CA as there is no acquisition proposed. Temporary possession is by its nature a measure which is applied to minimise the need to seek or rely on CA powers where short term occupation for construction is all that is required, rather than acquisition of a permanent right. Section 127 accordingly does not apply to the following plots within which National Highways has an interest and for which only powers of temporary possession are sought: 2-02, 2-06, 2-07, 5-03 and 5-04.
- 3.6 Plots 5-03 and 5-04 are identified as having the same rights as plots 5-01 and 5-02 above but are not included in the National Highways' Deadline 5 list. These plots are for temporary possession but the same commitments to protection of drainage apparatus is applied in the Protective Provisions.
- 3.7 As noted in the Statement of Common Ground<sup>13</sup>, the parties have been engaging on the land interests and National Highways advised that some plots registered as being held by another body had transferred to them and that in some plots in which they were believed to have an interest they do not consider such an interest to be held. Following such discussions, the Applicant has then updated the Book of Reference to reflect that information. National Highways state in their Deadline 5 submission that "*National Highways has been made aware during the examination of some additional plots in which National Highways holds an interest as these been transferred from the Department for Transport*"<sup>14</sup> demonstrating that this has been an ongoing process of engagement. It is therefore correct that the list of plots in which National Highways is noted as having an interest has changed during Examination, however the casting of this as a criticism<sup>15</sup> and as a reason that National Highways have been unable to progress an agreement is inaccurate.
- 3.8 The Applicant has stated its case for compulsory acquisition in the Statement of Reasons<sup>16</sup> and notes that there have been frequent attempts to engage with National Highways in relation to their affected interests since December 2021. Through this contact, the Applicant considers that it has sought to engage with National Highways in order to put in place mechanisms to avoid having to rely on compulsory acquisition of any of National Highways' interests. Engagement attempts in relation to Heads of Terms negotiations are outlined in the Schedule of Negotiations of Land Interests<sup>17</sup>. The Applicant also provided National Highways with opportunities to give feedback on their affected interests via a Land Interest Questionnaire (posted to National Highways' registered address on 17 December 2021) and a Confirmation of Interests Questionnaire (posted to National Highways' registered address on 9 September 2022).
- 3.9 The Applicant notes that there have been the following changes to the plots National Highways are listed as having an interest in included in the Book of Reference<sup>18</sup>:
- (a) In revision A of the Book of Reference [APP-030] it was stated that National Highways owned the subsoil up to the half width of the highway under plot 2-11. This was removed in revision B [AS-023] following feedback on the Book of Reference provided by National Highways on 11 January 2023.
  - (b) National Highways was recorded as having drainage apparatus in plot 5-13 in revisions 01 [AS-023] and C of the Book of Reference [CR1-022] following feedback provided on 11 January 2023. However, following a review of utilities data, the applicant concluded that National Highways' drainage apparatus did not fall in this

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<sup>13</sup> REP5-009

<sup>14</sup> At paragraph 4.5

<sup>15</sup> National Highways Deadline 5 submission [REP5-in paragraph 4.1 states "the plots in which the Applicant believes National Highways has an interest seem to change at each submission deadline".

<sup>16</sup> CR3-011

<sup>17</sup> REP5-006

<sup>18</sup> CR3-013

plot. This interest was therefore removed in revision D of the Book of Reference [REP2-012].

- (c) National Highways was recorded as having rights over plots 2-05, 2-06 and 2-07 from revision D of the Book of Reference [REP2-012] onwards following a meeting with National Highways on 2 May 2023.
  - (d) National Highways was recorded as having rights over plots 2-02 and 2-03 from revision E of the Book of Reference [REP3-014] onwards following a meeting with National Highways on 2 May 2023. The rights were previously recorded as lying with the Secretary of State for Transport, as stated in Land Registry title CH104233. National Highways notified the Applicant that they are the current beneficiary of these rights during this meeting.
- 3.10 The Applicant has provided National Highways with Heads of Terms for all plots in which they have a Freehold or Leasehold interest, these plots being 2-09, 2-10, 5-06, 5-09, 6-07, 9-07, 9-08, 9-09, 9-10, 9-11, 9-12 and 9-13. These Heads of Terms were initially sent to National Highways on 5 September 2022. The Applicant has followed up on the Heads of Terms regularly, as detailed in the Schedule of Negotiations. The Applicant has not provided Heads of Terms covering plots where National Highways only hold rights interests, as it is not proposing to interfere with these rights. This is consistent with the approach taken with all landowners affected by the DCO Proposed Development.
- 3.11 As set out, the Applicant has therefore, been seeking to progress voluntary agreements with National Highways throughout Examination. While discussion is ongoing agreement has not been reached. That lack of agreement does not mean that the efforts to negotiate are inadequate. Negotiation requires agreement and is not a matter solely in the gift or control of the Applicant. During that negotiation National Highways changed position and requested different forms of documents, and it is reasonable that the Applicant should be allowed time respond to that.
- 3.12 The Applicant has set out clearly in its Statement of Reasons<sup>19</sup> why it considers that there is a compelling case in the public interest to compulsorily acquire land or create rights and impose restrictive covenants in, on, over or under land in all the plots included in the Book of Reference<sup>20</sup>. Interactions with the existing SRN will be appropriately managed through the Protective Provisions for National Highways (including, as appropriate, compliance with established National Highways' certification and approval processes for the use of tunnelling under the SRN and DMRB CD622).
- 3.13 National Highways has submitted that:<sup>21</sup> *“National Highways is of the view that the installations under the highway could be achieved via the New Roads and Street Works Act 1991 (NRSWA) therefore negating the need for compulsory acquisition. NRSWA specifically refers to tunnelling/boring under the highway (section 101). National Highways contends that parliament intended for street works to be undertaken pursuant to this Act”*.
- 3.14 The Applicant's view is that the works proposed as part of the scheme which include using trenchless techniques to install the pipeline under the SRN are an integral part of delivering the Nationally Significant Infrastructure Project. It is entirely appropriate that compulsory acquisition powers granted for them. The Applicant notes that the NRSWA is only applicable where works are undertaken 'in' a street and, as above, there is a wealth of established case law which confirms that the depth of a street (as a public highway) has a limit in law. The precise depth of the installation of the pipeline under the SRN will be determined post consent, however a minimum depth of 4m has been agreed. It may therefore be the case that the pipeline will be installed at a depth that falls within the remit of the subsoil owner and not within the street itself, in which case the NRSWA would not

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<sup>19</sup> REP4-012

<sup>20</sup> REP4-016

<sup>21</sup> National Highway's Deadline 2 submission [REP2-049] at paragraph 2.2.

be applicable and it is therefore entirely necessary and appropriate for the relevant compulsory acquisition powers to be sought within the draft DCO.

- 3.15 National Highways also often seek compulsory powers to acquire subsoil interests despite the surface of affected land having highway status and street works being applicable including for example in the A47 North Tuddenham to Easton Development Consent Order 2022. The Applicant reiterates that National Highway's position on this point in this Examination is inconsistent with its own actions.
- 3.16 The Applicant has made clear that all reasonable alternatives to CA have been properly explored and intended use of the land subject to CA powers is entirely clear.
- 3.17 The Applicant has demonstrated that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers in the Funding Statement
- 3.18 The Applicant therefore submits that CA powers should be granted as sought.

#### 4 **SERIOUS DETRIMENT**

- 4.1 The Applicant does not agree or accept that the CA sought in the DCO would result in serious detriment to National Highways. This part of this submission sets out why the Applicant considers that no serious detriment would arise.
- 4.2 National Highways is a Statutory Undertaker (SU) for the purposes of section 127 of the Planning Act 2008 (PA2008) as it falls within the definition set out in section 8(1) of the Acquisition of Land Act 1981. Where a SU has made a representation about the compulsory acquisition (CA) of land or rights over land which has been acquired for the purpose of their undertaking, and this representation is not withdrawn, s127 of the PA 2008 applies.
- 4.3 Section 127 of the PA2008 provides that:

*(1) This section applies in relation to land ("statutory undertakers' land") if—*

*(a) the land has been acquired by statutory undertakers for the purposes of their undertaking,*

*(b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and*

*(c) as a result of the representation the Secretary of State is satisfied that—*

*(i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or*

*(ii) an interest in the land is held for those purposes.*

*(2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).*

*(3) The matters are that the nature and situation of the land are such that—*

*(a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or*

*(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.*

*(4) Subsections (2) and (3) do not apply in a case within subsection (5).*

(5) *An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (6).*

(6) *The matters are that the nature and situation of the land are such that—*

*(a) the right can be purchased without serious detriment to the carrying on of the undertaking, or*

*(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.*

4.4 The Applicant agrees:

- (a) That National Highways is a SU for the purposes of the PA2008;
- (b) That land held by it and/or forming part of the highway for which it is the highway authority has been acquired by National Highways for the purposes of its undertaking (s127(1)(a));
- (c) That National Highways has submitted and prior to the completion of this submission has not withdrawn a representation under s127(1)(b); and
- (d) The Secretary of State is therefore required to consider the application of section 127.

4.5 National Highways has submitted that it objects to the CA powers sought by the Applicant on the basis that they would result in serious detriment to its statutory undertaking<sup>22</sup>. The Applicant notes that this submission was made even at the time that National Highways was also submitting that it was in the process of “*clarifying exactly what the Applicant is seeking to acquire and the true impact it has on National Highways*”<sup>23</sup>. The Applicant does not accept that National Highways could have made a reasoned, objective assessment of the impact of CA powers and determined that serious detriment would arise before it had even established the potential impact on its interests. The National Highway submission of serious detriment accordingly lacks any substance.

4.6 Although not listed in National Highways’ Deadline 5 objection, should any objection subsequently be made to the other plots within which National Highways has an interest, the Applicant has considered those below and submits the submissions made in this case would apply equally to them.

4.7 It is clear from previous considerations of section 127 in DCO decisions that what constitutes ‘serious detriment’ is a high bar. Just because there is any adverse impact or detriment will not mean that serious detriment exists<sup>24</sup>.

4.8 In the Lake Lothing DCO<sup>25</sup> examination, Associated British Ports (“ABP”) (the port authority who were a statutory undertaker) argued that the proposals would cause serious detriment to their port undertaking at Port of Lowestoft. The proposals included:

- (a) the permanent compulsory acquisition of 3,000m<sup>2</sup> of land side and bed of the lake;
- (b) 2,500m<sup>2</sup> of airspace and rights under bridge decks; and
- (c) 4,500m<sup>2</sup> of rights over the only access to the port;

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<sup>22</sup> REP1-069, REP2-049

<sup>23</sup> REP2-049 at paragraph 3.2

<sup>24</sup> Set out in answer to FWQ 1.6.14

<sup>25</sup> Planning Inspectorate reference TR010023.

- 4.9 ABP argued that the implications of the rights sought under the Lake Loathing DCO were that there would be a loss of 165m of berthing and that the proposals would seriously compromise the operational viability of the port by creating a constraint on the retention of existing and the attraction of new business. This would in turn cause damage to the strategic significance and the economic contribution of the port. ABP submitted therefore that the impact on the Lake Loathing DCO on the Port of Lowestoft amounted to serious detriment.
- 4.10 The Examining Authority in their recommendation report found that *“the Proposed Development would cause material harm to the operational port. However, the extent of this harm, when considered in the context of the port operation as a whole, may be characterised as no more than moderate”*<sup>26</sup>.
- 4.11 In the decision letter, the Secretary of State concluded that the *“effect of the Proposed Development on the operation of the port would not justify refusing development consent”*<sup>27</sup>. The Secretary of State determined that *“in the context of section 127 of the 2008 Act that the CA and [temporary possession] powers sought would be detrimental to the carrying out of ABP’s statutory undertaking but this detriment would not be serious”*<sup>28</sup>.
- 4.12 Similarly, in the consideration of the Great Yarmouth Third Crossing DCO<sup>29</sup> the Examining Authority also had to consider the impact of the proposal on an operational Port. In that case the ExA accepted that 5 of 97 berths in the river would be permanently lost. Despite that, the ExA was *“satisfied that the Scheme would not have a significant detrimental impact on Port capacity”*<sup>30</sup>. Further while the construction of a new bridge would result in some *“unavoidable inconvenience”*<sup>31</sup> that would not result in serious detriment to local Port businesses. The ExA concluded that the inconvenience to commercial and recreational river traffic had to be weighed against the scheme benefits and found that *“these factors do not weigh heavily against the Scheme”*<sup>32</sup>. The impacts would be “minor and unavoidable dis-benefits to Port navigation during the construction phase and thereafter to a small number of recreational vessels” and did not amount to serious detriment. The Secretary of State agreed with the ExA and was satisfied that there would be no serious detriment to Port businesses.
- 4.13 The Applicant notes that there have been various considerations<sup>33</sup> of the interaction between SU’s over whom CA powers are sought in DCOs and the Protective Provisions which apply to them. In numerous instances it has been decided that some Protective Provisions are required to prevent the CA powers resulting in serious detriment. That does not however mean that the relevant Protective Provisions were granted in the form sought by the SU or that serious detriment is only avoided where SUs have agreed such provisions. Rather it is entirely open to the SoS to determine what provisions are appropriate to prevent serious detriment arising.
- 4.14 In the Hinkley Point C DCO<sup>34</sup>, CA of rights to install, operate and maintain an electricity line over Network Rail infrastructure were sought. Network Rail had objected to the CA of rights (in the form of an easement) over its operational land. The ExA concluded that Network Rail had not demonstrated that the grant of a permanent easement *“would in*

<sup>26</sup> Examining Authority Recommendation Report on the Lake Loathing Third Crossing Development Consent Order, paragraph 5.8.156

<sup>27</sup> Secretary of State Decision Letter on the application for the proposed Lake Loathing Third Crossing Development Consent Order dated 30 April 2020, Paragraph 25.

<sup>28</sup> Ibid, Paragraph 35

<sup>29</sup> Planning Inspectorate reference TR010043

<sup>30</sup> Examining Authority Recommendation Report on the Great Yarmouth Third River Crossing Development Consent Order, paragraph 4.5.55

<sup>31</sup> Ibid, paragraph 4.5.58

<sup>32</sup> Ibid, paragraph 4.5.59

<sup>33</sup> The following are given as indicative examples only and are not an exhaustive list: Hinkley Point C Connection Project Development Consent Order, Richborough Connection Development Consent Order, Thurrock Flexible Generation Plant Development Consent Order, M25 Junction 28 Improvement Project Development Consent Order

<sup>34</sup> Planning Inspectorate reference EN020001

any way compromise or otherwise adversely affect the safe and efficient operation of the railway”<sup>35</sup>. The ExA concluded with regard to the interface with Network Rail that “*Apart from the construction phase, the only possible interference would be on those occasions when maintenance or emergency works were being carried out to the Applicant’s equipment. The Panel is satisfied that rights required by the Applicant over the operational land in question could be taken without serious detriment to the carrying on of the undertaking*”<sup>36</sup>. This was subject to appropriate Protective Provisions being agreed.

- 4.15 Network Rail submitted that its preferred drafting of Protective Provisions was required to “*ensure the safe operation of the railway and compliance with its Network Licence*”<sup>37</sup> However the Applicant did not agree that the Network Rail drafting was appropriate. Therefore, while it was appropriate that Network Rail’s approval for the physical works was secured by Protective Provisions, there was no justification for a restriction on use of CA powers to require Network Rail’s consent. The ExA concluded “*The Panel considers that it is not necessary, nor would it be reasonable, to include paragraph 4 of [Network Rail’s] preferred form of the protective provisions and that it could compromise the Applicant’s ability to deliver the proposed development.*”<sup>38</sup>
- 4.16 In the same recommendation report, it was also found to be disproportionate to require various consents from RWE to the exercises of CA and temporary possession powers despite these being argued to be necessary “*to protect the ongoing safe operation of its undertaking*”<sup>39</sup> on an operational generating site.

#### **Impact of compulsory acquisition on the undertaking**

- 4.17 National Highways has submitted 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*”<sup>40</sup>.
- 4.18 For the prohibition on authorisation of CA powers to apply, the serious detriment must be to the ‘carrying on’ of the undertaking. The Applicant does not accept that the acquisition of rights in in the current circumstances causes any serious detriment to the ‘carrying on’ of the National Highways undertaking. There is nothing in the CA proposed which would any way fetter National Highway’s ability to operate this part of the SRN. The Applicant is seeking the acquisition of subsoil under the highway. The pipeline will be installed trenchlessly in order to prevent interference with the highway use. The acquisition of subsoil under an operational highway, where that does not prevent, restrict or interfere with the use of that highway, cannot meet the high test of being serious detriment. The Applicant would refer in particular to the Hinkley decision where erection of an electricity line over the railway was not found to interfere with that undertaking and submits that is clearly analogous to these facts.
- 4.19 The Applicant notes that it proposed to install the pipeline under the SRN by mean of trenchless installation and without interfering with the highway use and has set that out in its submissions<sup>41</sup>. The Applicant does not agree or accept that CA of sub-surface rights at depth below the highway (and in the Applicant’s opinion below the legal extent of highway status) which does not interfere with the use of the highway can constitute serious detriment. As the Applicant submitted at Deadline 3<sup>42</sup>, just because subsoil is acquired

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<sup>35</sup>Examining Authority Recommendation Report on the Hinkley Point C Connection Project Development Consent Order paragraph 8.5.227

<sup>36</sup> Ibid, paragraph 8.5.224

<sup>37</sup> Ibid, paragraph 8.5.225

<sup>38</sup> Examining Authority Recommendation Report on the Hinkley Point C Connection Project Development Consent Order, paragraph 8.5.230

<sup>39</sup> Ibid, paragraphs 8.5.250, 8.5.252, 8.5.253, 8.5.255, 8.5.259

<sup>40</sup> National Highway Written Representation [REP1-069] at paragraph 4.2

<sup>41</sup> See for example the answer to FWQ 1.19.54 in REP1-044 setting this out.

<sup>42</sup> REP3033, line 2.2.6

does not in and of itself cause any detriment to a highway. This is clearly demonstrated by the very common position where the adjoining property owns subsoil under a highway to the centreline which changes ownership each time that property is transferred.

- 4.20 As set out in the Applicant's Deadline 5 submission<sup>43</sup>, National Highways has not provided any evidence 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 applied regardless of street works status meaning that approval of the tunnelling works is required from National Highways. Given that other infrastructure is routinely installed under highways, it is unclear to the Applicant how a pipeline under the highway could act to interfere with the management of the highway to the degree of creating serious detriment when existing infrastructure does not.
- 4.21 Further, given that National Highways submit that the grant of the CA powers could have such serious consequences, it is incumbent upon them to make the case as to how that effect would arise and provide an objective evidence base to support such a strong submission. National Highways have not provided a single example as to how that serious outcome would be created through reliance on CA. The National Highways objection does not set out any objective argument as to how and why the CA of subsoil under a highway would have the effect claimed.
- 4.22 Given that the Applicant does not accept any serious detriment can be caused, it has not proposed any alternative land which could be provided. The Applicant submits that the requirement of section 127(3)(a) that the land "*can be purchased and not replaced without serious detriment to the carrying on of the undertaking*" is met and that consideration of alternative land under s127(3)(b) is not required. The Applicant accordingly submits that for plots where CA of land is sought, the Secretary of State can be satisfied in terms of section 127(2) that the section 127(3)(a) is met and such powers can be granted.
- 4.23 The Applicant does not propose to acquire any rights from National Highways. The Application does seek to create new rights in land which they own in the form of restrictive covenants to protect the pipeline, which rights would be for the benefit of the acquired sub-surface land. The test for serious detriment is a high bar, met only in unusual circumstances. The Applicant does not consider that the acquisition of rights under an operational highway which is not proposed to be stopped up presents a serious detriment to National Highways carrying out its statutory duties. The installation of infrastructure under a highway is far from an unusual circumstance.
- 4.24 The Applicant entirely accepts that some of the standard restrictive covenants sought to be imposed along with compulsory acquisition on agricultural land would be unsuitable for the plots under the operational highway if CA were relied on. In particular, the Applicant would consider that the restriction on installing hard surfacing without its consent is inappropriate in that situation, and it would be unreasonable for the Applicant to interfere with the maintenance or replacement of that surfacing in the highway context. To address such points, the Applicant created a bespoke set of rights it would seek in such circumstances and set that out in the DCO. The Applicant has also demonstrated its willingness to put in place reasonable and proportionate Protective Provisions for the protection of National Highways. It does not however accept that the drafting of provisions sought by National Highways is necessary or reasonable in the circumstances of this development, or that such drafting is required to prevent serious detriment arising.
- 4.25 The Applicant accordingly submits that for the rights sought, the Secretary of State can be satisfied in terms of section 127(5) that the section 127(6)(a) is met, and such powers can be granted.

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<sup>43</sup> REP5-015 at line 2.20.2

## 5 PROTECTIVE PROVISIONS

- 5.1 As set out above, the consideration of serious detriment only applies to plots where CA powers are sought. There are no SRN highway works (in this case meaning works to or on the carriageway of the highway, to create new highway or to form accesses to highway) to be secured or delivered through CA. The CA would only deliver the pipeline works. The consideration of the Protective Provisions under the s127 test must therefore be predicted on the relationship of that to the CA powers. The draft protective provisions however are considerably wider than just CA powers and have therefore been considered separately in this section.
- 5.2 The Applicant fully accepts that Protective Provisions in favour of National Highways are appropriate but submits that these must be relevant and proportionate to the works which the DCO would consent. The Applicant further submits that National Highways current drafting of its preferred provisions go considerable beyond this and are drafted as if the Applicant were undertaking permanent alterations to the operational carriageway of the SRN or building new SRN. That drafting is inapplicable to the circumstances of the consent sought, is not reasonable with regards to the works to be controlled and unnecessarily risks creating confusion and disagreement at a later stage when it has to be argued by the Applicant's construction contractor that various insertions are not applicable or relevant.
- 5.3 The Applicant submits that is the necessary in considering protective provisions to have regard to the actual works and interactions for which consent is sought in the DCO. There are no works for which consent is sought that would create a new or altered highway layout, new permanent junctions or new carriageway. No operational phase design elements are included nor are ancillary operational highway works (for example highway signage and lighting).
- 5.4 The National Highways' submissions that the DCO somehow consents unknown, unspecified, unassessed works to the SRN which are not listed in schedule 1 and from which it requires protection continues to be rejected<sup>44</sup>. The Applicant notes that in it Deadline 5 submission National Highways has moved from quoting the articles without regard to the description of authorised development, to referring to the sweeper provision stating *"the wide wording included within Schedule 1 of the Draft DCO [...] which says: "...and in connection with Work Nos. 1 to 57N, and to the extent that they do not otherwise form part of any such work, development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement..." ) which provides extremely wide powers for highway and street works, which would include the SRN. Where the Applicant seeks a power to carry out unknown works on National Highways' network then it is relevant and proportionate for the protective provisions to provide sufficient protection in the form proposed by National Highways"*<sup>45</sup>.
- 5.5 The Applicant entirely rejects the misleading interpretation adopted by National Highways as set out in paragraph 5.4 above. The other works set out in sweeper must be *"in connection with"* the listed works. They must also be *"within the scope of the work assessed by the environmental statement"*. There is nothing in the works descriptions or the environmental statement that would support any interpretation that works to the English SRN<sup>46</sup>, as yet unidentified and therefore unassessed, would be consented. The submission that this wording would support unknown, unspecified works to the SRN is contrary to any sensible reading of the DCO. There is nothing in planning law which would

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<sup>44</sup> REP5-105 at line 2.2.10 onwards

<sup>45</sup> REP5-050 at paragraph 2.8

<sup>46</sup> There is a work on the Welsh SRN where the carriageway will be affected, a road connecting into the A55 which technically falls within the SRN boundary and will be crossed by open cut trenching.



support the contention that unspecified works to the operational SRN itself would be consented by this DCO, and certainly not of the scale envisaged by the National Highway protective provisions drafting (which includes new carriageway, highway structures, lighting and signage).

5.6 National Highways state that *“What is fundamental is that the protective provisions as proposed by National Highways are secured on the face of the Development Consent Order to ensure that the proposed works comply with for example CD622 which deals with managing geotechnical risk within the Design Manual for Roads and Bridges (DMRB)”*<sup>47</sup>. The Applicant agrees with this point and has provided for this in its draft provisions.

5.7 National Highways submitted at Deadline 1 that:<sup>48</sup>

*“The draft DCO does not include any protective provisions for the benefit of National Highways and the latest copy of National Highways’ protective provisions is included at Appendix 1. National Highways has specific requirements where works are proposed to the highway (including street furniture). These include securing:*

*- Bonds, cash deposits and commuted sums to ensure that National Highways is not exposed financially as a result of the Applicant’s works;*

*- Road space booking procedures to ensure that network occupancy requirements are managed effectively for the safety of the public and contractors;*

*- Detailed design information to appropriately consider and approve the specification of works in accordance with technical standards;*

*- Appropriate maintenance obligations and defects liability periods;*

*- Collateral warranties from contractors and designers in respect of works undertaken on behalf of the Applicant;*

*- Restrictions on the commencement of works and the use of powers until detailed design specifications are agreed and safety implications have been satisfactorily addressed;*

*- Handover of maintenance responsibilities;*

*- Payment of all reasonable fees incurred by National Highways in respect of the Authorised Development;*

*- Indemnities for any loss incurred by National Highways in respect of the Authorised Development;*

*- Dispute resolution provisions.*

5.8 The Applicant notes that the majority of the listed provisions are inapplicable to the works for which consent is sought and it accordingly objects to their inclusion. The Applicant understands why National Highways would prefer standard protective provisions across DCOs affecting its network, but submits that seeking to impose drafting clearly designed to address significant highway works where new SRN will be created to projects of this type where no such works are proposed is unreasonable. For example:

- Bonding provides a financial guarantee to allow National Highways to complete highway works not finished or inadequately finished, however the Applicant does not propose any works which would become SRN highway for which National Highways

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<sup>47</sup> REP5-050 at 2.2

<sup>48</sup> National Highway’s Written Representation [REP1-069] at paragraph 3.1.

would be liable (any damage arising from the pipeline installation being covered by the indemnity not this provision).

- Commuted sums are normally only agreed to address increased costs of maintenance for non-standard structures, no such structures are proposed.
- Road space bookings are covered under other legislation which does not need to be duplicated here and have been noted as required in the other consents and licences statement<sup>49</sup>.
- The the only works in place would be the pipeline under the highway, there are no works to the operational SRN itself that could be found to be defective and which National Highways would be liable to repair (any damage arising from the pipeline installation being covered by the indemnity not this provision).
- Collateral warranties would only relate to the design of highway elements, they will not be provided for the design of the pipeline, no relevant highway elements are proposed.
- There will be no handover for maintenance as no new SRN is to be constructed.

5.9 The Applicant agrees that “*Restrictions on the commencement of works and the use of powers until detailed design specifications are agreed and safety implications have been satisfactorily addressed*” applies to the trenchless pipeline installation works in this case. However, the Applicant would note it objects to National Highways’ drafting around this point which includes inter alia references to road safety audits (RSAs) being required. RSAs can only be carried out on a highway design and RSA4 can only be carried out once the highway concerned has been open to traffic for 12 months. There are no works proposed in this application to which SRN RSAs would be applicable.

#### **Consideration of the detailed drafting of National Highways Protective Provisions**

5.10 The Applicant has included in Appendix 3 a markup of the most recent version National Highways’ Protective Provisions provided to it in addition to the clean draft in Appendix 2.

#### **Paragraph 1(2) Application etc.**

5.11 National Highways’ drafting provides:

*(2) Nothing in this Order affects or prejudices the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways’ statutory functions.*

5.12 The reference to the 1991 Act (NRSWA) is rejected as being contrary to and incompatible with article 12 of the DCO. As set out in this note, several provisions of NRSWA cannot reasonably be applied to DCOs. The Applicant does not consider that the remainder of this paragraph serves any useful purpose. There is nothing in the DCO which could be read as seeking to disapply the statutory provisions cited.

#### **Paragraph 2 Interpretation**

5.13 The Applicant objects to the following drafting by National Highways:

Drafting	Reason for objection
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<sup>49</sup> REP4-019

<p>“as built information” means one electronic copy of the following information—</p> <p>(a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;</p> <p>(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);</p> <p>(f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;</p> <p>(g) organisation and methods manuals for all products used;</p> <p>(h) as constructed programme;</p> <p>...</p> <p>(i) test results and records as required by the detailed design information and during construction phase of the project;</p>	<p>This drafting presumes that roadworks designed and carried out in accordance with DMRB are required. No such works are consented by this order.</p> <p>Items (c) <i>product data sheets and technical specifications for all materials used</i> and (k) <i>the health and safety file</i> are not objected to in principle but National Highways has not set out any specification of what it actually needs under these items specific to the Applicant's works.</p>
<p>(j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;</p>	<p>RSAs are undertaken on highway design and are not applicable to the works proposed. RSA3 follows on from RSA 1 and 2 undertaken at the early design stages - there is no RSA 1 and 2 for the works under this DCO.</p>
<p>“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;</p>	<p>The Applicant objects to provision of a bond in principle as being unnecessary given there are no SRN works which could be left incomplete as no relevant works are consented by the Order.</p> <p>The Applicant would also note it considers requiring 200% of the cost, including the cost of the commuted sum, to be entirely unreasonable. That would require the provision of a bond for twice the cost of the total works (if there were any) and twice the cost of anticipated maintenance – given that provision of bonds can be very expensive, it is clearly unreasonable to seek such a disproportionate sum.</p>
<p>“the cash surety” means the sum agreed between the undertaker and National Highways;</p>	<p>The cash surety is a guarantee sought to provide recourse should payments not be made to National Highways. The Applicant does not agree that such payments are required and does not agree that a cash security for such payment would be reasonable or proportionate in this case even were such payments to be required.</p>

<p>“commuted sum” means such sum calculated as provided for in paragraph 16 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;</p>	<p>The Applicant objects to inclusion of a commuted sum in principle given there are no SRN works National Highways would become liable to maintain.</p>
<p>“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;</p>	<p>There are no SRN works to which this would apply</p>
<p>“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—</p> <p>...</p> <p>(c) road restraints systems and supporting road restraint risk appraisal process assessment;</p> <p>(d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways</p> <p>(f) pavement, pavement foundations, kerbs, footways and paved areas;</p> <p>(g) traffic signs and road markings;</p> <p>(h) traffic signal equipment and associated signal phasing and timing detail;</p> <p>(i) road lighting (including columns and brackets);</p> <p>(j) regime of California Bearing Ratio testing;</p> <p>(k) electrical work for road lighting, traffic signs and signals;</p> <p>(l) motorway communications as required by DMRB;</p> <p>(m) highway structures and any required structural approval in principle;</p> <p>(n) landscaping;</p> <p>(o) proposed departures from DMRB standards;</p> <p>(p) walking, cycling and horse riding assessment and review report;</p> <p>(q) stage 1 and stage 2 road safety audits and exceptions agreed;</p>	<p>The listed items are all inapplicable to the works for which consent is sought. There is no new highway which requires these elements.</p> <p>Item (j) the California bearing ratio (CBR) test is a penetration test used to evaluate the potential strength of subgrade, subbase, and base course material including recycled materials. The results are used for the design of roads and hardstanding. As such it is not relevant and should not be included here.</p> <p>RSAs 1 and 2 cannot be carried out as there is no applicable highway design to assess.</p> <p>The other items, including road markings and signage, are not applicable to the works for which consent is sought.</p>

<p>...</p> <p>(s) topographical survey;</p> <p>(t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;</p> <p>(u) health and safety information including any asbestos survey required by GG105 or any successor document; and</p>	
<p>“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 14;</p> <p>“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 7 when it considers the specified works are substantially complete and may be opened for traffic;</p>	<p>No alteration to the SRN is proposed, there are no works which will be opened to traffic and the system of provisional and final certificates will not apply. These definitions are irrelevant and should not be included.</p>
<p>“road safety audit” means an audit carried out in accordance with the road safety audit standard;</p> <p>“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;</p>	<p>As above RSAs cannot be carried out as there is no applicable highway design to assess.</p>
<p>“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;</p>	<p>Road space bookings are covered under other legislation which does not need to be duplicated here and have been noted as required in the other consents and licences statement.</p>
<p>“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;</p>	<p>There is no new highway which requires to meet this specification.</p>
<p>“winter maintenance” means maintenance of the road surface to deal with snow and ice.</p>	<p>The Applicant is not seeking to control the operational highway and accordingly cannot be responsible for winter maintenance of it.</p>

**Paragraph 3 General**

5.14 The Applicant is not aware whether or not National Highways have appointed a DBFO.

**Paragraph 6 Works outside the Order limits**

5.15 National Highways have inserted a new paragraph 6:

*Works outside the Order limits*

*—If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.*

5.16 The DCO does not provide any consent to undertake works outside of the Order Limits. Accordingly, if the Applicant wished to undertake works to the SRN outside the Order Limits a further consenting process, including the relevant consents of National Highways, would be required to be undertaken in the normal manner. There is nothing in the DCO that this inclusion addresses and is therefore not necessary.

**Paragraph 4 (7 in National Highways draft), Prior approvals.**

**Sub-paragraph (1)**

5.17 The Applicant objects to items (a), and (f) which require RSAs 1 and 2 and approval of the designers carrying out those audits as, as set out above, there is no relevant design to assess.

5.18 Road space booking is controlled under separate legislation and does not need to be duplicated in the DCO. Item (c)(ii) is unnecessary.

5.19 There will be no relevant impact from the works proposed that would justify requiring a walking, cycling and horse riding assessment and review process in accordance with DMRB GG142 – Designing for walking, cycling and horse riding. Item (c)(v) is unnecessary and unjustified, and should be deleted.

5.20 The Applicant objects to item (g) requiring the estimate of the commuted sum to be agreed as the Applicant does not agree that a commuted sum is necessary or justifiable.

5.21 The Applicant is not seeking to occupy the operational highway; it is not appropriate nor reasonable for maintenance of the highway, including winter maintenance, to be the responsibility of the Applicant. Item (h) does not apply in the circumstances of this DCO.

5.22 There is no highway design for which a collateral warranty in favour of National Highways is justified. Item (i) is therefore rejected.

**Sub-paragraph (2)**

5.23 The Applicant cannot agree the disapplication of the CA powers and other powers in the absence of a suitable voluntary agreement. That a voluntary agreement has not yet been concluded demonstrates why these powers are required to ensure delivery of the NSIP.

**Sub-paragraph (4)**

5.24 The Applicant objects to deemed refusal. It is unreasonable that National Highways should delay the delivery of a NSIP by failing to determine any application within the period set out.

**Paragraph 7 Construction of the specified works**

- 5.25 The Applicant considers that National Highways' rights to undertake any work where the Applicant fails to do so or fails to complete works requires to be limited to those works necessary to make the area safe, but cannot include any works which may adversely affect the pipeline,

#### **Paragraph 8 Payments**

- 5.26 The Applicant objects to the provisions seeking payment in advance in the circumstances of this DCO where the costs incurred by National Highways will be mainly the cost of its officers' time in reviewing and approving works proposals.

#### **Paragraphs 9, Provisional Certificate, 10, Opening, 12, Defects Period and 13 Final certificate**

- 5.27 All of these paragraphs relate to approval of highway works of a type not consented by this DCO. They are all irrelevant to the works for which consent is sought.

#### **Paragraph 11 Final Condition Survey**

- 5.28 The Applicant considers that the principle of approval of work post-completion is reasonable but that the drafting proposed requires substantial amendment.

#### **Paragraphs 14 Security and 15 Commuted sums**

- 5.29 The Applicant objects to provision of a bond in principle as being unnecessary given there are no SRN works which could be left incomplete as no relevant works are consented by the Order.
- 5.30 The Applicant objects to inclusion of a commuted sum in principle given there are no SRN works National Highways would become liable to maintain.
- 5.31 National Highways is funded to maintain the SRN. It is noted that in its own DCOs, National Highways will only agree to pay commuted sums to other highway authorities for non-standard structures, not the standard costs of maintaining the highway network<sup>50</sup>. It is unreasonable for National Highways to seek to make an Applicant liable for the costs of maintaining its network once completed to the required standard.

#### **Paragraph 19 Land**

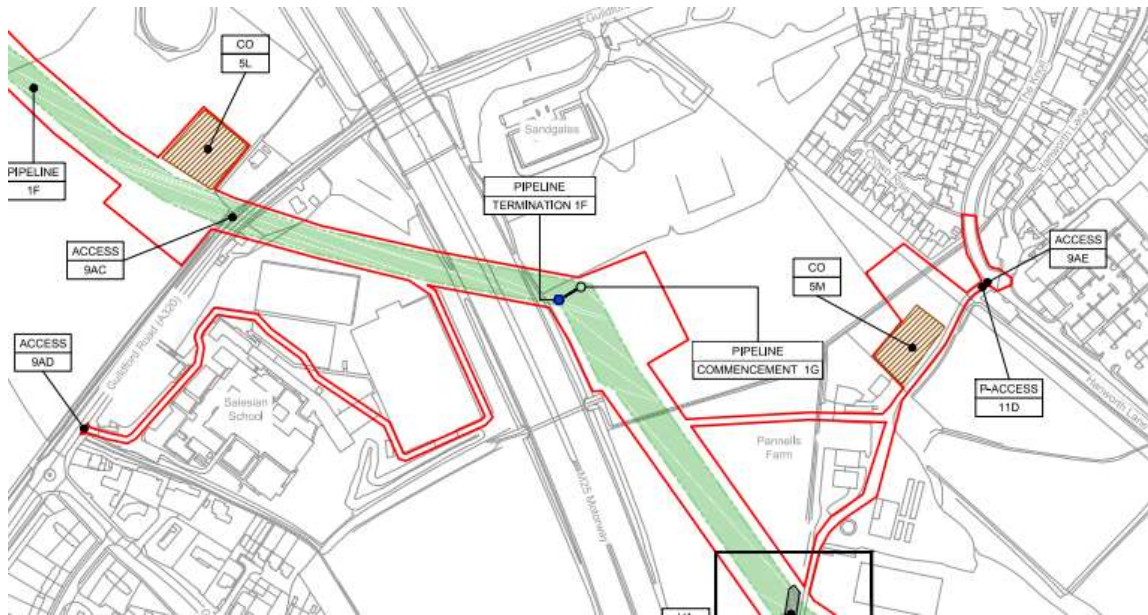
- 5.32 The obligation set out in National Highways drafting to transfer land within the SRN to it should not apply in the circumstances as the only land the Applicant will have acquire is for the pipeline and that would be acquired from National Highways.
- 5.33 The prohibition on acquiring or using any land, acquiring rights or imposing or extinguishing restrictive covenants is incompatible with the seeking of compulsory acquisition powers, and should be deleted.

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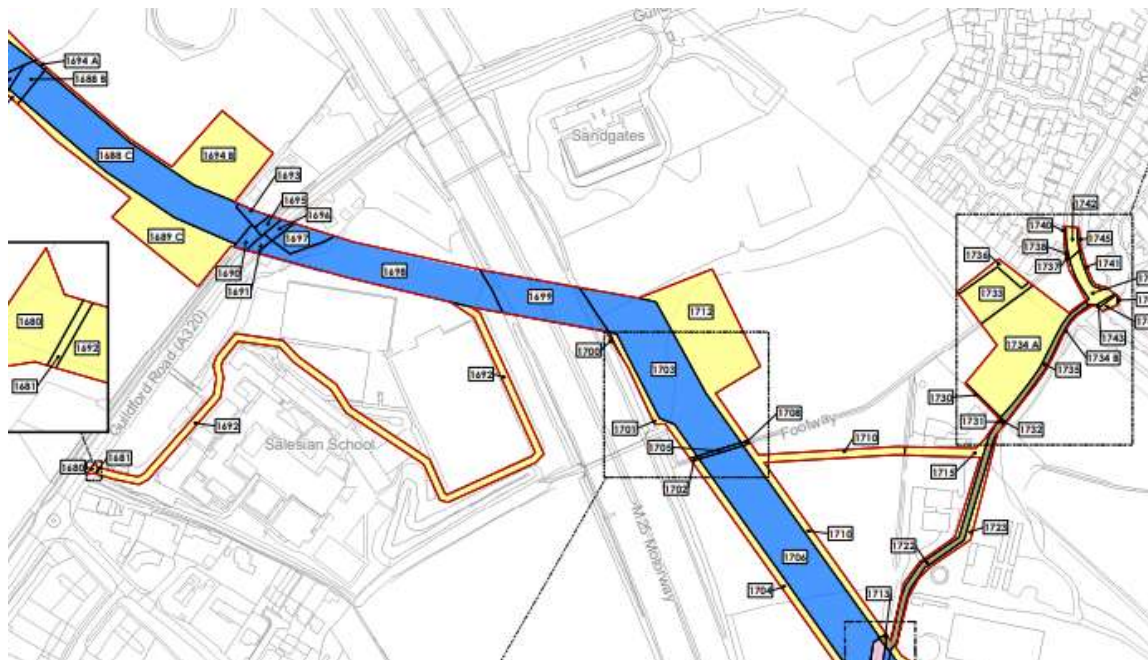
<sup>50</sup> See for example, schedule 8 part 4 of the A303 Sparkford to Ilchester DCO where new local highway was being created and in which the commuted sum to be paid by National Highways is defined as "*Commuted Sum*" means the sum to be paid by the undertaker to the local highway authority for the future maintenance of **Non-standard Highway Assets not previously forming part of the local highway** which will be transferred to the local highway authority, as calculated in accordance with paragraph 50 of this Part of this Schedule" (emphasis added).

## Appendix 1

Southampton to London Pipeline DCO: excerpts showing interaction with the SRN (M25).

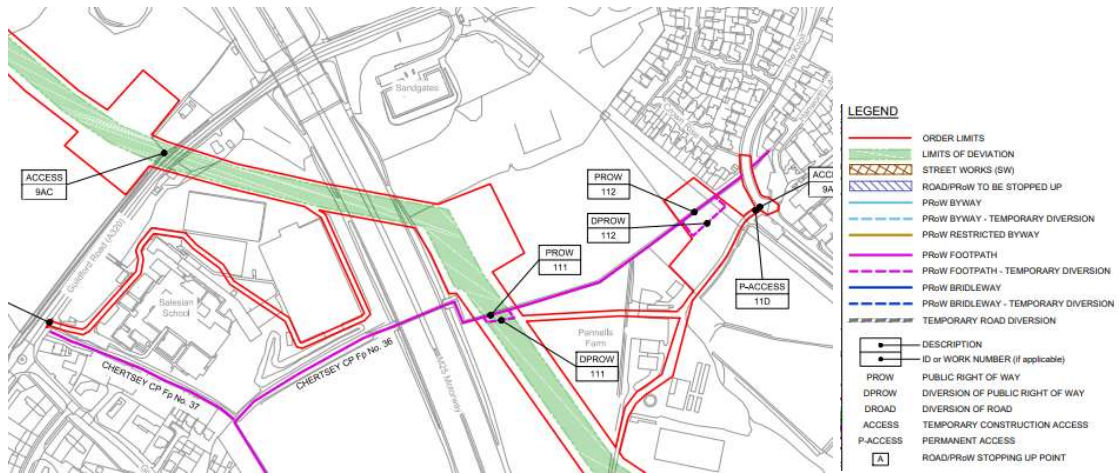


Extract from Southampton to London Pipeline DCO works Plans Sheet 47 showing Work 1F crossing the M25 motorway



Extract from Southampton to London Pipeline DCO works Plans Sheet 47 showing Work 1F crossing the M25 motorway in plot 1699





Extract from Southampton to London Pipeline DCO Access and rights of way Sheet 47 showing Work 1F crossing the M25, and associated legend showing street works to be denoted by brown hatching, no brown hatching is shown on the M25

<b><u>In the County of Surrey</u></b>	
B4311 – Frimley Green Road	Access & Rights of Way Plan Sheet Nos. 36 and 113
Balmoral Drive	Access & Rights of Way Plan Sheet Nos. 36, 112 and 113
St Catherines Road	Access & Rights of Way Plan Sheet Nos. 36 and 113
Rhododendron Road	Access & Rights of Way Plan Sheet Nos. 36 and 113
Deepcut Bridge Road	Access & Rights of Way Plan Sheet No.38
B3015 The Maultway	Access & Rights of Way Plan Sheet Nos. 38 and 39
B311 Red Road	Access & Rights of Way Plan Sheet No.40
Guildford Road	Access & Rights of Way Plan Sheet No.41
Blackstroud Lane East	Access & Rights of Way Plan Sheet No.41
Halebourne Lane	Access & Rights of Way Plan Sheet No.42
Steep Hill	Access & Rights of Way Plan Sheet No.43
B383 – Windsor Road	Access & Rights of Way Plan Sheet No.43
Canford Drive (1 of 2)	Access & Rights of Way Plan Sheet Nos .48 and 116
Canford Drive (2 of 2)	Access & Rights of Way Plan Sheet Nos .48 and 116
Roakes Avenue	Access & Rights of Way Plan Sheet Nos. 48 and 116
Mead Lane	Access & Rights of Way Plan Sheet Nos. 49 and 117
Ashford Road	Access & Rights of Way Plan Sheet Nos. 51, 119 and 124
Buxton Road	Access & Rights of Way Plan Sheet Nos. 52 and 120
Prison entrance from Woodthorpe Road	Access & Rights of Way Plan Sheet Nos. 52 and 121
Woodthorpe Road	Access & Rights of Way Plan Sheet Nos. 52, 121 and 122

Extract from Southampton to London Pipeline DCO street works schedule.

## Appendix 2

### Applicant's draft Protective Provisions

#### FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

##### Application etc.,

1. —The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

##### Interpretation

2.—(1) Where the terms defined in article 2 (*interpretation*) of this Order are inconsistent with subparagraph (2) the latter prevail.

(1) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats showing the location and depth of the pipeline as installed and any ancillary or protective measures installed within the strategic road network;
- (b) as constructed information for any utilities discovered or moved during the specified works;
- (c) method statements for the specified works carried out;
- (d) in so far as it is relevant to the specified works, the health and safety file; and
- (e) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time.

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the specified works—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) utilities diversions; and
- (g) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the specified works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“nominated persons” means the undertaker's representatives or the contractor's representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“specified works” means so much of the authorised development, including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority, and specifically including Work No.12 in so far as that crosses the M56 motorway, Work No.16 in so far as that crosses the M53 motorway, and Work No. 22 in so far as that crosses the A41 highway.

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

(2) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

### **General**

3.The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways may have appointed or may appoint a highway operations and maintenance contractor.

4.Notwithstanding the limits of deviation permitted pursuant to article 6 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road carriageway at a distance less than 4 metres below the lowest point of the carriageway surface.

5.References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

### **Prior approvals and security**

6.—(1) Any specified works which involve tunnelling, boring or otherwise installing the pipeline under the strategic road network without trenching from the surface, must be designed by the undertaker in accordance with DMRB CD622 unless otherwise agreed in writing by National Highways.

(2) The specified works must not commence until—

- (a) the programme for those works has been approved by National Highways;
- (b) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
  - (i) the detailed design information;
  - (ii) the identity and suitability of the contractor and nominated persons; and
  - (iii) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
- (c) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the specified works, has been agreed in writing by National Highways.

(3) National Highways must, prior to the commencement of the specified works, inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (2).

(4) Any approval of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been given if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways (acting reasonably) within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any reasonable conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 6(2) of this Part.

### **Construction of the specified works**

7.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start.

(2) The specified works must be carried out by the undertaker to the reasonable satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 6(2) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) in so far as it may be applicable, the DMRB, save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same.

(3) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(4) If any part of the specified works is constructed-

- (d) other than in accordance with the requirements of this Part of this Schedule; or
- (e) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways, acting reasonably.

(5) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(6) If within 28 days on which a notice under sub-paragraph (4) or sub-paragraph (5) is served on the undertaker (or in the event of there being, in the reasonable opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure reasonably incurred by National Highways in so doing.

(7) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the

carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(8) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities.

(9) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 6(2)(b) of this Part, or suspends the carrying out of any specified work beyond 14 days, and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

## **Payments**

**8.**—(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 6(2);
- (b) the supervision of the specified works;
- (c) any costs reasonably incurred under paragraph 7(7) of this Part, and
- (d) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways the total NH costs properly and necessarily incurred by National Highways within 30 days of receipt from National Highways of an invoice for the costs incurred which shows a breakdown of those costs. More than one invoice may be issued for the NH costs.

(3) If any payment due under sub-paragraph (2) above, is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

## **Condition survey and as built details**

**9.**—(1) The undertaker must, as soon as reasonably practicable after completing the specified work, arrange for any highways structures and assets that were the subject of the condition survey under paragraph 6(2)(c) to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph 9 (1) indicates that any damage has been caused to a structure or asset, National Highways must remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing from the undertaker

(3) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

(4) Within 30 days of completion of the specified works, the as built details must be provided by the undertaker to National Highways.

## **Insurance**

**10.** Prior to the commencement of the specified works the undertaker must effect and maintain in place until the completion of all of the specified works, public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

## **Indemnity**

**11.** The undertaker fully indemnifies National Highways from and against all reasonable costs, claims, expenses, damages, losses and liabilities suffered by National Highways directly arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 30 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways and always excluding any consequential or indirect loss.

## **Maintenance of the specified works**

**12.**—(1) The undertaker must, prior to the commencement of any works of external maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably. Works of inspection or maintenance undertaken from within the pipeline will not be subject to this paragraph.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 14 days' in advance of the planned commencement date of the maintenance works.

## **Land**

**13.**—(1) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove, damage or prevent or impair the functioning of, and must on reasonable request (or in case of emergency, on demand) allow access by National Highways to, the highway drainage assets located in plots 2-14, 4-20, 5-01, 5-02, 5-03, 5-04, 5-10, 5-14, 5-15, 5-20, 5-22, 5-23, 6-02, 6-04, 6-05, 6-06,

(2) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove or prevent access by National Highways in pursuance of any right held over plots 2-03, 2-14 and 5-05.

(3) The undertake must not, in reliance on or in exercise of any power under this Order, acquire, extinguish or remove any right National Highways holds for the purposes of its undertaking in any of the plots listed in sub-paragraphs (1) and (2) and plot 9-04.

## **Expert Determination**

**14.**—(1) Article 49 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable but commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49 (*arbitration*).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

## Appendix 3

### Tracked changes to National Highways draft Protective Provisions

#### FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

##### Application etc.,

1.— The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

~~(1) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.~~

##### Interpretation

2.—(1) Where the terms defined in article 2 (*interpretation*) of this Order are inconsistent with subparagraph (2) the latter prevail.

(1) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

(a) as constructed drawings in both PDF and AutoCAD DWG formats ~~for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document~~ showing the location and depth of the pipeline as installed and any ancillary or protective measures installed within the strategic road network;

~~(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);~~

~~(c) product data sheets and technical specifications for all materials used;~~

~~(d)~~ (b) as constructed information for any utilities discovered or moved during the specified works;

~~(e)~~ (c) method statements for the specified works carried out;

~~(f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;~~

~~(g) organisation and methods manuals for all products used;~~

~~(h) as constructed programme;~~

~~(i) test results and records as required by the detailed design information and during construction phase of the project;~~

~~(j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;~~

~~(d)~~ the health and safety file; and in so far as it is relevant to the specified works, the health and safety file; and

~~(k)~~

~~(l)~~ (e)—such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time.

~~“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;~~

~~“the cash surety” means the sum agreed between the undertaker and National Highways;~~



~~“commuted sum” means such sum calculated as provided for in paragraph 9 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;~~

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

~~“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;~~

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the ~~development~~specified works—

(d) site clearance details;

(e) boundary, environmental and mitigation fencing;

~~(f) road restraints systems and supporting road restraint risk appraisal process assessment;~~

~~(g) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys—standards for Highways~~

~~(h)~~(f) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

~~(i) pavement, pavement foundations, kerbs, footways and paved areas;~~

~~(j) traffic signs and road markings;~~

~~(k) traffic signal equipment and associated signal phasing and timing detail;~~

~~(l) road lighting (including columns and brackets);~~

~~(m) regime of California Bearing Ratio testing;~~

~~(n) electrical work for road lighting, traffic signs and signals;~~

~~(o) motorway communications as required by DMRB;~~

~~(m) highway structures and any required structural approval in principle;~~

~~(n) landscaping;~~

~~(o) proposed departures from DMRB standards;~~

~~(p) walking, cycling and horse riding assessment and review report;~~

~~(q) stage 1 and stage 2 road safety audits and exceptions agreed;~~

~~(r)~~(f) utilities diversions; and

~~(s) topographical survey;~~

~~(t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;~~

~~(u) health and safety information including any asbestos survey required by GG105 or any successor document; and~~

~~(v)~~(g) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;

~~“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;~~

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

~~“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 9;~~

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the ~~authorised development~~ specified works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

~~“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;~~

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

~~“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 7 when it considers the specified works are substantially complete and may be opened for traffic;~~

~~“road safety audit” means an audit carried out in accordance with the road safety audit standard;~~

~~“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;~~

~~“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;~~

~~“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;~~

“specified works” means so much of ~~any work, including highway works and signalisation,~~ the authorised by this Order development, including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority; and specifically including Work No.12 in so far as that crosses the M56 motorway, Work No.16 in so far as that crosses the M53 motorway, and Work No. 22 in so far as that crosses the A41 highway.

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

~~“winter maintenance” means maintenance of the road surface to deal with snow and ice.~~

(2) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

## General

3.The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways may have appointed ~~the~~ or may appoint a highway operations and maintenance contractor.

4.Notwithstanding the limits of deviation permitted pursuant to article ~~[—]~~ 6 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road ~~network~~ carriageway at a distance ~~within~~ less than 4 metres ~~of below~~ the lowest point of the ~~ground~~ carriageway surface.

5. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

### ~~Works outside the Order limits~~

~~6.— If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.~~

### Prior approvals and security

6.—(1) Any specified works which involve tunnelling, boring or otherwise installing the pipeline under the strategic road network without trenching from the surface, must be designed by the undertaker in accordance with DMRB CD622 unless otherwise agreed in writing by National Highways.

(2) The specified works must not commence until—

- ~~(a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;~~
- ~~(b)(a) \_\_\_\_\_ the programme ~~of~~for those works has been approved by National Highways;~~
- ~~(c)(b) \_\_\_\_\_ the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—~~
  - ~~(i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub paragraph (a);~~
  - ~~(ii) details of the proposed road space bookings;~~
  - ~~(iii)(ii) the identity and suitability of the contractor and nominated persons; and~~
  - ~~(iv)(iii) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;~~
  - ~~(v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142— Designing for walking, cycling and horse riding; and~~
- ~~(d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;~~
- ~~(e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub paragraph (c)(v) above;~~
- ~~(f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;~~
- ~~(g) the undertaker has agreed the estimate of the commuted sum with National Highways;~~
- ~~(h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;~~
- ~~(i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and~~

~~(j)~~(c) \_\_\_\_\_ a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the specified works, has been agreed in writing by National Highways.

~~(2) The undertaker must not exercise—~~

- ~~(a) article [ ] (maintenance of authorised development);~~
- ~~(b) article [ ] (street works);~~
- ~~(c) article [ ] (permanent stopping up of streets, rights of way and rights of access);~~
- ~~(d) article [ ] (temporary stopping up of streets, rights of way and rights of access);~~
- ~~(e) article [ ] (traffic regulation);~~
- ~~(f) article [ ] (discharge of water);~~
- ~~(g) article [ ] (protective works to buildings);~~
- ~~(h) article [ ] (authority to survey and investigate the land);~~
- ~~(i) article [ ] (compulsory acquisition of land);~~
- ~~(j) article [ ] (compulsory acquisition of rights);~~
- ~~(k) article [ ] (temporary use of land for carrying out the authorised development);~~
- ~~(l) article [ ] (temporary use of land for maintaining the authorised development); or~~
- ~~(m) article [ ] (felling or lopping trees) of this Order,~~

~~over any part of the strategic road network without the consent of National Highways including \_\_\_\_\_ from \_\_\_\_\_ [ThirdPartySchemesNWA10@nationalhighways.co.uk](mailto:ThirdPartySchemesNWA10@nationalhighways.co.uk) \_\_\_\_\_ and [Area10Roadspace@nationalhighways.co.uk](mailto:Area10Roadspace@nationalhighways.co.uk), and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.~~

~~(3)~~(2) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) National Highways must, prior to the commencement of the specified works, inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph ~~(4)~~ ~~or~~ (2).

~~(4)~~(3) Any approval of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been ~~refused~~ given if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways (acting reasonably) within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any reasonable conditions as National Highways considers necessary.

~~(5)~~(4) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request ~~along with collateral warranties in a form agreed by National Highways.~~

~~(6)~~(5) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph ~~7~~(~~6~~) (2) of this Part.

### **Construction of the specified works**

7.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start ~~unless otherwise agreed by National Highways.~~

(2) ~~The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.~~

~~(3)~~ The specified works must be carried out by the undertaker to the reasonable satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph ~~7(1)(6)(2)~~ above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) ~~the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016~~ in so far as it may be applicable, the DMRB, save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same ~~and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.~~

~~(4)~~ The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

~~(5)~~ If any part of the specified works is constructed-

- (d) other than in accordance with the requirements of this Part of this Schedule; or
- (e) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways, acting reasonably.

~~(6)~~ If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

~~(7)~~ If within 28 days on which a notice under sub-paragraph ~~(5)~~ or sub-paragraph ~~(6)~~ is served on the undertaker (or in the event of there being, in the reasonable opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure reasonably incurred by National Highways in so doing; ~~such sum to be payable within 30 days of demand.~~

~~(8)~~ Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

~~(9)~~ In constructing the specified works, the undertaker must at its own expense divert or protect all utilities ~~and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.~~

~~(10)~~ ~~During the construction of the specified works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(h) and the undertaker must carry out such maintenance at its own cost.~~

~~(11)~~ ~~(9)~~ The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph ~~7(1)(6)(2)~~(b) of this Part, or suspends the carrying out of any specified work beyond 14 days, and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

## Payments

8.—(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph ~~7(1)(2)~~ 7(2);
- (b) the supervision of the specified works;
- ~~(c) the checking and approval of the information required to determine approvals under this Order;~~
- ~~(d) all~~any costs ~~in relation to the transfer of any land required for the specified works; and~~
- ~~(e)~~(c) ~~all legal and administrative costs and disbursements~~reasonably incurred by National Highways ~~in connection with the Order and sub-paragraphs (a)–(d);~~under paragraph 7(7) of this Part, and
- ~~(f)~~(d) ~~any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,~~

together comprising “the NH costs”.

~~(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total NH costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.~~

~~(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.~~

~~(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within ~~28~~30 days of the date of the notice a sum equal to the excess.~~

~~(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).~~

~~(6) Within 28 days of the issue of the final account:~~

~~(7)~~(2) ~~if the final account~~receipt from National Highways of an invoice for the costs incurred which shows a ~~further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;~~breakdown of those costs. More than one invoice may be issued for the NH costs.

- ~~(a) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.~~

~~(8)~~(3) If any payment due under ~~any of the provisions of this Part of this Schedule~~sub-paragraph (2) above, is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

## Provisional Certificate

9.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself

~~that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.~~

~~(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.~~

~~(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:~~

~~(a) inspect the specified works; and~~

~~(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.~~

~~(4) When—~~

~~—(a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;~~

~~(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the satisfaction of National Highways;~~

~~(c) the as built information has been provided to National Highways; and~~

~~(d) the undertaker has paid the commuted sum to National Highways;~~

~~National Highways must issue the provisional certificate.~~

~~(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.~~

~~(6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as built information to National Highways.~~

## **Opening**

~~10. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.~~

## **Final condition** **Condition survey and as built details**

~~11.2—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), completing the specified work, arrange for the any highways structures and assets that were the subject of the condition survey under paragraph 6(2)(c) to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.~~

~~(1) If the re-surveys carried out pursuant to paragraph 12(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.~~

~~(2) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.~~

~~(3) (1) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 12(1) give notice in writing that National Highways will. National~~

Highways must remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing. from the undertaker

~~(4)(2)~~ The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

~~(5)(3)~~ Within 30 days of completion of the specified works, the as built details must be provided by the undertaker to National Highways.

### **Defects Period**

~~12.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—~~

- ~~(a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);~~
- ~~(b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and~~
- ~~(c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.~~

~~(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.~~

### **Final Certificate**

~~13.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.~~

~~(2)—Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:~~

- ~~(a) inspect the strategic road network; and~~
- ~~(b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.~~

~~(3)—The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).~~

~~(4)—When National Highways is satisfied that:~~

- ~~(a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and~~
- ~~(b) the NH costs have been paid to National Highways in full;~~

~~National Highways must issue the final certificate after which the bond shall be released in full.~~

~~(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.~~

### **Security**

~~14.—(1) The specified works must not commence until—~~

- ~~(a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses~~



~~arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and~~

- ~~(b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 9 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.~~

### **Commuted sums**

~~15.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.~~

~~(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.~~

### **Insurance**

~~16.10.~~ Prior to the commencement of the specified works the undertaker must effect [and maintain in place until the completion of all of the specified works](#), public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

### **Indemnity**

~~17.11.—(1)~~ The undertaker fully indemnifies National Highways from and against all [reasonable](#) costs, claims, expenses, damages, losses and liabilities suffered by National Highways [directly](#) arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within [1430](#) days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways [and always excluding any consequential or indirect loss](#).

### **Maintenance of the specified works**

~~18.12.—(1)~~ The undertaker must, prior to the commencement of any works of [external](#) maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably. [Works of inspection or maintenance undertaken from within the pipeline will not be subject to this paragraph.](#)

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any [reasonable](#) requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than [714](#) days' in advance of the planned commencement date of the maintenance works.

~~(4) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.~~

### **Land**

~~19.—(1) Following the issue of the final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent~~

~~of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.~~

~~(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.~~

~~(3) The undertaker must not under the powers of this Order:~~

~~(a) acquire or use land forming part of;~~

~~(b) acquire new or existing rights over; or~~

~~(c) seek to impose or extinguish any restrictive covenants over;~~

~~any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to [generalcounsel@nationalhighways.co.uk](mailto:generalcounsel@nationalhighways.co.uk).~~

~~(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article [—] (*compulsory acquisition of land*) and article [—] (*compulsory acquisition of rights and imposition of restrictive covenants*) as applied by articles [—] (*application of the 1981 Act*) and article [—] (*modification of the 2017 Regulations*) of this Order to directly vest in National Highways any such land or interest.~~

## Land

13.—(1) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove, damage or prevent or impair the functioning of, and must on reasonable request (or in case of emergency, on demand) allow access by National Highways to, the highway drainage assets located in plots 2-14, 4-20, 5-01, 5-02, 5-03, 5-04, 5-10, 5-14, 5-15, 5-20, 5-22, 5-23, 6-02, 6-04, 6-05, 6-06.

(1) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove or prevent access by National Highways in pursuance of any right held over plots 2-03, 2-14 and 5-05.

(2) The undertaker must not, in reliance on or in exercise of any power under this Order, acquire, extinguish or remove any right National Highways holds for the purposes of its undertaking in any of the plots listed in sub-paragraph (1) and (2) and plot 9-04.

## **Expert Determination**

~~20.14.~~—(1) Article [—]49 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use bestall reasonable but commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article ~~149~~[149](#) (*arbitration*).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.