

WRITTEN SUMMARIES OF ORAL SUBMISSIONS MADE AT THE HEARINGS HELD DURING THE WEEK COMMENCING 7 AUGUST 2023

HyNet Carbon Dioxide Pipeline DCO

Planning Act 2008

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

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1. INTRODUCTION

1.1. PURPOSE OF THIS DOCUMENT

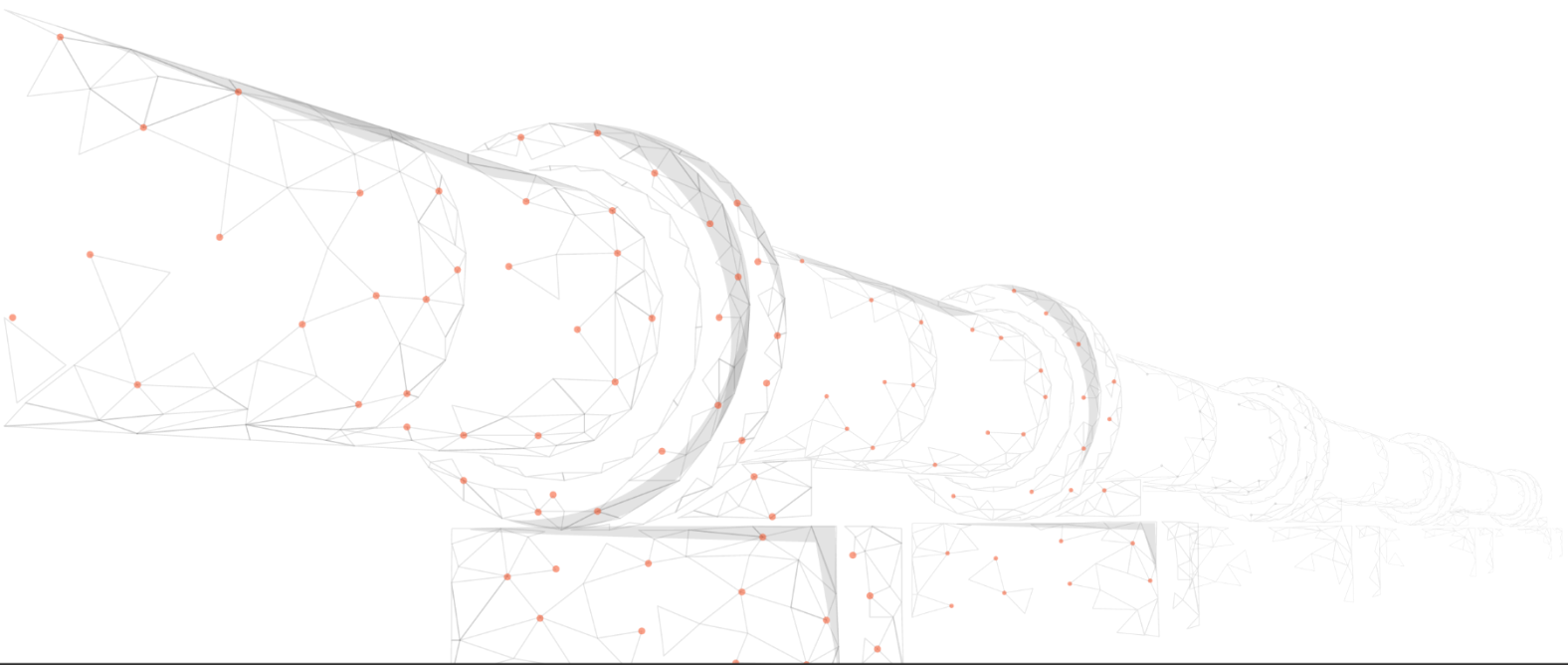
- 1.1.1. This document has been prepared on behalf of Liverpool Bay CCS Limited ('the Applicant') and relates to an application ('the Application') for a Development Consent Order (DCO) that has been submitted to the Secretary of State (SoS) for Energy Security and Net Zero (DESNZ) under Section 37 of the Planning Act 2008 ('the PA 2008'). The Application relates to the carbon dioxide (CO₂) pipeline which constitutes the DCO Proposed Development.
- 1.1.2. This document summarises the submissions made by Liverpool Bay CCS Limited at the Issue Specific Hearing on environmental matters (ISH3) on 9 August 2023 in Part 1. Part 2 summarises the submissions at the Compulsory Acquisition Hearing on 10 August 2023 (CAH2).

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 Examining Authority (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]**. The Applicant has submitted a further consolidated Environmental Statement (ES) at Deadline 7 which contains the concluding description of the DCO Proposed Development.

HyNet North West

PART 1 - ISSUE SPECIFIC HEARING ON ENVIRONMENTAL MATTERS ("ISH3") ON 9 AUGUST 2023



HyNet Carbon Dioxide Pipeline ISH3: The Applicant's Summary of Oral Submissions and responses to action points



This note summarises the submission made by Liverpool Bay CCS Limited (the Applicant) at the Issue Specific Hearing on environmental matters and the draft Development Consent Order (ISH3) on 9 August 2023. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.

1 CHANGE REQUESTS(S) AS RELEVANT TO ISH3

- 1.1 The ExA invited Additional Interested Parties and Additional Affected Persons as a result of the accepted Change Requests (CR) to make oral representations on the matters previously discussed at ISH1 and ISH2.
- 1.2 No Additional Interested Parties and Additional Affected Persons made oral representations, and the Applicant did not make any oral submissions.

2 WATER ENVIRONMENT / WATER FRAMEWORK DIRECTIVE / LANDSCAPE & DESIGN MATTERS / OTHER RESPONSES TO EXA'S WRITTEN QUESTIONS 2

- 2.1 The Applicant was invited by the ExA to set out its without prejudice case for derogation in relation to the proposed open-cut crossing of the Alltami Brook.
- 2.2 The Applicant noted that its without prejudice Water Framework Directive (WFD) derogation case for the proposed Alltami Brook crossing is set out in full in Without Prejudice Water Framework Directive Derogation Case for Alltami Brook Crossing [REP5-016], and that they would provide a summary of the key points.
- 2.3 The Applicant, as set out in the WFD assessment [REP4-174], submits that the Alltami Brook crossing is compliant with the WFD and that consent can be granted. The Applicant's position remains that the embedded pipe bridge is very much a fallback position where it is determined both that the trenched crossing is not WFD compliant, and that derogation should not be granted for that trenched crossing.
- 2.4 The Applicant is confident that the conclusion reached in the WFD assessment that the proposal is compliant is correct. The Applicant considers that the WFD assessment sets out, to an appropriate level of certainty, that the crossing proposed will not cause deterioration in the status of quality elements or overall status at the Wepre Brook water body scale. The core of Natural Resources Wales's (NRW) concern is that a trenched installation would create a pathway for water to be lost from the Alltami Brook. The evidence produced to date shows that the watercourse is gaining, not losing, water. Additionally, that fracture flow conditions within the aquifer are laterally discontinuous. Therefore, the Applicant maintains that there is no clear mechanism present which would allow for a loss of flow from the Alltami Brook to bedrock as a result of the proposed works.
- 2.5 The Applicant does not consider article 4(7) is engaged as it is not the case the environmental objectives of the WFD cannot be met due to the carrying out of works for the proposed trenched crossing.

- 2.6 However, given that NRW does not agree and because of the level of risk to the project if it is determined that NRW is correct that the trenched crossing is not WFD compliant, the Applicant has prepared and submitted the without prejudice derogation case.
- 2.7 In terms of the derogation case, the Applicant noted that the construction works themselves are temporary and do not engage article 4(7) they would have no long-term consequences. It is only the crossing point once in situ that needs to be considered.
- 2.8 The Applicant explained that NRW had provided it with their Deadline 6A submission **[REP6A-024]**, and that, as there is no disagreement on the application of the first three derogation tests, the Applicant proposed to address the fourth test only.
- 2.9 The Applicant does not accept that there would be WFD deterioration in this case, however, were it to be found that there would, the Applicant would submit that this is outweighed by the need for the development as a whole and the very substantial policy support demonstrating the overall public benefit of this project and its contribution to achieving net zero. The Applicant refers to the need case for the authorised development set out in the Needs Case **[APP-049]** and the considerable policy support for it set out in the Planning Statement **[REP4-022]**. The Applicant submits that the benefits of the pipeline would substantially outweigh the impacts of the crossing at water body scale.
- 2.10 The Applicant does not agree with NRW that there is a significantly better option available, as required by the fourth derogation test.
- 2.11 The Applicant has provided both a bespoke Alltami Brook Crossing options report, as requested by NRW **[REP3-039]**, and the assessment of the embedded pipe bridge option **[CR2-017]**. The Applicant submits that an embedded pipe bridge is not a significantly better environmental option.
- 2.12 The Applicant accepts that the embedded pipe bridge is not ruled out on the grounds of technical feasibility or disproportionate cost and considers that the issue between the parties is accordingly the environmental impact.
- 2.13 In that regard, in line with industry best practice for below ground infrastructure, the Applicant's current proposal is that the pipeline would remain in situ at the end of its operational life and therefore would not be removed. The pipeline would be decommissioned in the sense of being taken out of service and left in a safe condition. The need to decommission an embedded pipe bridge would have temporary and localised impacts during decommissioning. Those would be similar to effects during construction and would include the need to remove planting which had been put in place at the end of the construction period. As such, the Applicant considers an embedded pipe bridge would have a greater, adverse environmental impact at the decommissioning stage than the Applicant's trenched crossing proposal.
- 2.14 The Applicant's position remains that the proposed trenched crossing is WFD compliant, and consent can be granted for it. If the ExA determines that it is not compliant, the Applicant seeks derogation for that, and the embedded pipe bridge option is very much only there as an ultimate fallback should be the trenched crossing be considered completely unacceptable.
- 2.15 The ExA asked the Applicant's views on why NRW is advising that the risk level is unacceptable. The Applicant explained that it concerns potential risk to be low under the open-cut trenched crossing proposal. The Applicant confirmed that it accepted there was some theoretical risk, but it maintained that its proposal was WFD compliant. The Applicant confirmed that its view is that NRW is assessing the level of risk incorrectly.
- 2.16 The Applicant set out that NRW has stated that their objection is based on a hypothetical worst-case scenario. The WFD requires an objective assessment, and under the WFD there is no requirement to demonstrate absolute certainty in the WFD Assessment.
- 2.17 NRW acknowledges that the fracture flows are discontinuous at the Alltami Brook, in which case even if an unsaturated fracture was encountered, once that fracture became full,

then the continuous flow of the stream would resume. Therefore, even in a worst-case scenario, there would only be a short term and temporary impact to the Alltami Brook, and therefore the Wepre Brook waterbody. Under the WFD short term temporary impacts would not constitute deterioration in the permanent sense. Therefore, this is a low risk, in a very worst-case scenario where several things must happen which the evidence weighs against being likely.

- 2.18 The Applicant noted that it had numerous meetings with NRW in relation to this specific trenched crossing proposal, and during those consultation meetings pre-submission, at no point did NRW raise this objection relating to hydrogeological impacts. If this was a significant issue, the Applicant submits that logically NRW would have brought it up at pre-submission stage. Instead, their primary objection at pre-submission stage was that they did not want the Applicant to cut through bedrock. When the Applicant questioned why, NRW presented an example of where consent was not granted for cutting through a waterfall to enable fish passage. However, waterfall is a natural barrier to fish passage, so the Applicant did not consider that to be a valid reason for NRW to object to this proposal and did not see the relevance or legal basis for NRW to object just because NRW does not want the Applicant to cut through bedrock. The potential for hydrogeological impacts issues arose only at the relevant representation stage.
- 2.19 The Applicant considers that NRW is presenting an unlikely, hypothetical worst-case risk, which they have no evidence to substantiate. The Applicant does not believe it needs to go to this level of hypothetical consideration. The WFD does not require this level of certainty for a determination to be made.
- 2.20 The ExA asked for the Applicant's view on NRW's rejection of the use of grouting as means of mitigation and maintaining WFD compliance.
- 2.21 The Applicant explained that there is variety of established methods routinely employed to control groundwater flow in fissured bedrock in construction projects. There is a British Standard associated with this – BS12715:2020 'Execution of special geotechnical work – grouting'. This provides information on various methods of grouting, the execution of it, monitoring and testing.
- 2.22 The approach to grouting, if required, will be developed by a specialist, competent contractor who would be appointed by the Applicant. In principle, any grouting of fractures would be done through injection, under pressure, with specific procedures and controls and grout uptake and losses. Wash out is unlikely in the long term, as the grout effectively modifies the ground conditions to prevent flow within any fissures or fractures in the grout zone, so that the grout would be essentially buried beneath the concrete structure which forms a cover to the pipeline. The Applicant confirmed there are examples of where this has been carried out successfully in the past.
- 2.23 The ExA asked the Applicant's views on NRW's criticisms in relation to the Applicant's borehole data.
- 2.24 The Applicant explained that it did seek to do some ground investigation at Alltami Brook through agreement with the landowner, which was withdrawn shortly before the ground investigation campaign was due to start, which the landowners were entitled to do. However, given the timing of that, and the Applicant's desire to avoid the use of s172 powers to access land in situations where the landowners had been working with it, this was not possible. The Applicant did not have time, with the investigation works which were already procured and ready to go, to serve s172 notices and go back to that location.
- 2.25 In any case, the ground investigation works the Applicant planned to do in that location would not have provided the level of detailed information NRW is currently seeking. It would not have gone into the level of detail the Applicant would need to answer all of NRW's queries at this stage.
- 2.26 The ExA asked the Applicant if there was a proportionality aspect around the baseline data, and the Applicant confirmed that there was.

- 2.27 The Applicant explained that, with regards to the historic borehole records, there are several boreholes which were installed for the A55 as part of their site investigations in the 1970s, which the Applicant refers to in its evidence. Five of those boreholes were showing a very shallow groundwater level, and one borehole indicated that it was dry, but that was only one reading. In consultation meetings with NRW, they agreed on the proximity of the nearby borehole records that it was applicable to the preferred crossing location. As agreed, the Applicant did not consider boreholes outside of the 500 m radius, would be applicable to the preferred crossing location because the hydrogeological conditions would be more likely to be not representative of that crossing location.
- 2.28 The ExA asked the Applicant whether it knew if the historic A55 culvert would have faced the same WFD issues as were being discussed.
- 2.29 The Applicant explained that when the A55 was constructed, the WFD did not exist, so there would not have been the same tests for the installation of that culvert. However, in terms of the environmental impacts of the installation of that culvert compared to what is being dealt with here in terms of any disturbance to the bedrock and potential risk of loss of water, similar considerations would have applied. There is no evidence that there has been any loss of water as a result of the installation of the culvert.
- 2.30 The ExA asked if the Applicant knew if the open cut trenching method would use similar construction methods to the culvert.
- 2.31 The Applicant explained that the key difference is that the culvert structure is above ground, and the trenched crossing installation is going to be below ground. However, there would still have been some disturbance to the bedrock for the installation of the culvert crossing. There would also have been additional implications for the water environment, such as fish passage and invertebrates, so there would have been wider environmental impacts due to the culvert crossing that are not relevant to the trenched crossing.
- 2.32 The ExA asked the Applicant to provide a short account of any good design measures incorporated into the design for the embedded pipe bridge.
- 2.33 The Applicant explained that if the embedded pipe bridge solution is ultimately required to cross the Alltami Brook, then the design would be primarily engineering design and safety led. The bridge would need to be sited and designed in such a way as to meet the functional requirements of the CO₂ pipeline and also to minimise the safety risks of an above ground pipeline crossing.
- 2.34 In the preliminary design submitted as part of CR2, is the CO₂ pipeline is surrounded by backfill material (sand or soil) and encased within a concrete structure to protect it from external corrosion mechanisms and to protect it from any third-party interference and / or vandalism. This would also minimise the amount of periodic maintenance required across its operating life, which is necessary because the bridge would be in a steep gorge with limited access. The bridge would also likely require features such as fencing and handrails to protect personnel and the public. The bridge would need to be designed to have a freeboard level that would not worsen flood risk within the gorge.
- 2.35 The Applicant noted that the preliminary design, submitted as part of the CR, remains conservative and would be refined at detailed design based on detailed topographic surveys, ground investigation, environmental surveys, and flood risk modelling. If the functional, engineering and safety requirements of the bridge can be met, then the final alignment of the bridge would be chosen so as to minimise the size of the structure and any associated environmental impacts, including visual. It was noted that, given the bridge will be in a deep gorge with tree cover, the Applicant submits that it would not result in any significant visual impacts to the surrounding landscape receptors.
- 2.36 The ExA asked whether consideration of the impact on the nearby footpath had been undertaken.

- 2.37 The Applicant explained that the diversion of the footpath had been included in the change request as well, taking a conservative approach. The Applicant believes that, if it can microsite the bridge during detailed design to minimise its size, the Applicant would not require to divert the footpath, and if it were to be required it would be very minor in nature, simply passing around the embankment, likely on the side of the gorge where the clearing is. The Applicant confirmed that visual impacts of the bridge from the footpath are considered in the environmental information submitted in support of the CR. **The Applicant confirms that this consideration can be found in Section 2.6 of the Environmental Statement Addendum CR2 [CR2-017].**
- 2.38 The ExA asked whether any piling would be required for the new Work Number 43, the embedded pipe bridge.
- 2.39 The Applicant advised the believed CR2 said piling was a possibility, but would be outside the watercourse and only if absolutely necessary. **The Applicant confirms that this statement can be found in Section 2.1.13, Section 2.2.7 and Table 2.3 of the Environmental Statement Addendum CR2 [CR2-017].**
- 2.40 The ExA asked for clarification that the coal mining risk assessment information does not require to be changed if the embedded pipe bridge were to be taken forward.
- 2.41 The Applicant confirmed that that is correct, and the embedded pipe bridge would not change the position within the coal mining risk assessment.
- 2.42 The ExA raised with the Applicant the interpretation of 'temporary' in relation to the WFD, and asked whether the Applicant was satisfied with how it had interpreted the meaning of temporary deterioration.
- 2.43 The Applicant explained that, typically with these types of infrastructure projects, a cutoff point of around six months is used for temporary impacts, and the temporary works for the trenched crossing of the Alltami Brook will certainly be done in a much shorter timescale than six months.
- 2.44 **The Applicant was asked to confirm its interpretation of 'temporary' in relation to the WFD in writing.**
- 2.45 The ExA asked what the timescales were for the trenched crossing. The Applicant advised it would confirm in writing. **The Applicant confirms that 6-8 weeks would be an approximate timescale for open cut works through the brook itself.**
- 2.46 The ExA asked the Applicant if it was satisfied that the REAC [REP6-006] includes everything it needs to in terms of the change requests. The Applicant confirmed that it had added everything from all the change requests into the REAC, including the optionality around the Alltami Brook crossing, and so the measures for both options are in the REAC.
- 2.47 The Applicant advised the ExA that it proposed to submit two alternative versions of the DCO at Deadline 7 – one for the trenched crossing, and one for the embedded pipe bridge.

3 BIODIVERSITY

- 3.1 The ExA asked the Applicant to provide an update on its Biodiversity Net Gain (BNG) strategy [REP6-033].
- 3.2 The Applicant advised that the BNG strategy was updated and submitted at Deadline 6 [REP6-033]. This included a number of revisions, including the most up to date information on the Applicant's progress with securing the offsite locations. The strategy included figures to show those locations the Applicant is currently looking to secure. The Applicant is at an advanced stage of discussion with both local authorities, and the locations they are able to provide are included in the strategy. Welsh woodland remains outstanding, but the Applicant is in advanced discussions with a third-party landholder, so there will be a further update in due course.

- 3.3 The Applicant noted that a comprehensive review and evaluation of the relevant policy, legislation, and strategies for both local authorities was included in the Deadline 6 submission. The Applicant has provided an evaluation against each item to evidence how its approach to BNG for the DCO Proposed Development aligns with those relevant policies or drivers. The Applicant believes that the evaluation is a comprehensive review of compliance with Flintshire County Council's (FCC), Cheshire West and Chester Council's (CWCC) and national drivers and strategies.. The Applicant highlighted that it had included consideration of the recent consultation on Planning Policy Wales, and that whilst the changes suggested around net benefit for biodiversity are relatively minor, the Applicant's approach to BNG for the DCO Proposed Development would be in accordance with those changes.
- 3.4 The Applicant noted that the updated BNG strategy takes account of the change requests, which mainly reduced the Order Limits. These have resulted in a slight benefit to the BNG baseline calculations, but that these reductions in Order Limits have in the main not resulted in changes to the extent of priority habitats requiring consideration. The Applicant noted that whilst there has been no change in area based priority habitats there has been a minor change in linear habitat (hedgerow) extent resulting in changes of less than 0.5% change in both England and Wales.
- 3.5 The Applicant confirmed that it proposed to submit a revised metric calculation and final BNG strategy at a later deadline. It confirmed it did not propose to submit a copy of any legal agreements with FCC or CWCC and had not agreed with them to do so.
- 3.6** The ExA asked the Applicant to clarify a reference in the REAC to the replacement ratios for woodland, and whether the Applicant's intention was to provide three trees for every tree to be lost. The Applicant confirmed this was correct. The ExA asked the Applicant whether it was satisfied this commitment was clear in the documents. The Applicant confirmed it currently considered it to be clear but would look at it further. The Applicant reaffirms that it believes the wording is clear on the nature of the 3:1 ratio of tree planting, as presented within item D-BD-063 of the REAC [REP6-006] and within the OCEMP [REP6-008] which states "**Trees will be replaced at a ratio of 3:1**".
- 3.7 The ExA asked the Applicant to clarify the management timescales referred to in the Outline LEMP [REP4-190] and REAC, given a 30-year period was referred to earlier in the session.
- 3.8 The Applicant explained that the 30-year management period is associated with the BNG only and does not apply to the environmental mitigation areas or any mitigation habitats which will be realised within the order limits. The Applicant confirmed that the S111 legal agreements referred to in relation to BNG were not of relevance to the environmental mitigation areas or any mitigation habitats within the order limits.
- 3.9 The ExA asked for an update on a request in early submissions for the creation of a seed bank. The Applicant advised that it would respond in writing.

ISH3-AP2: The Applicant is requested to further clarify if there will be a 'seed bank' provision included in either the Outline Landscape and Ecological Management Plan (and any revision triggered by Requirement 11) and/ or the Register of Environmental Actions and Commitments (REAC) document. Seed bank provision was previously encouraged in submissions earlier in the Examination and further justification is requested to be given for any potential omission of such provision.

The Applicant believes that the ExA is referring to FCC's DL3 response to Q1.4.3 [REP3-047] within which FCC noted "*...Management of the soil and the associated seed bank (relevant to established ancient hedgerows) needs to be included within the LEMP if not already.*" The Applicant provided a response at Deadline 4 within the Applicant's Comments on Submissions Received at Deadline 3 [REP4-263] confirming that consideration and inclusion of protection of soils and the seed bank would be included within the LEMP: "*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.*"

- 3.10 The ExA asked, in relation to mitigation planting, beyond the handover period, what the Applicant proposed for any incentive to maintain mitigation planting, and whether that would be dealt with in the S111 legal agreements. The Applicant confirmed that the S111 legal agreements do not touch on mitigation planting at all, and purely relate to BNG.
- 3.11 The ExA asked the Applicant to clarify a concern raised by the Environment Agency early on, relating to the degree to which excavation dewatering could interact with landfill sites, a scrapyards and service station in the vicinity of the pipeline route. The ExA asked if the Applicant's view whether those aspects are going to be able to be successfully tackled.
- 3.12 The Applicant advised that it had carried out an assessment, and thought it had responded to that in writing, and was happy to do so again. Any dewatering would be managed by the water management plan to ensure that any risks are not created. The Applicant confirms that its previous submission on this point can be found at [within the Applicant's response to Q1.10.4, Q1.10.9 and Q1.10.14 of Table 2-5 of the Examining Authority's first written questions **[REP2-038]**].
- 3.13 The ExA asked the Applicant for clarification in relation to GVA figures in the submitted Potential Environmental Impacts of the HyNet North West Project document **[REP1-046]**. The ExA noted that page 2 refers to £811m, while page 15 refers to £954m GVA to the North West area, and asked whether the figures for the annual GVA were accurate, and if so what the reason for the variation was.
- 3.14 The Applicant confirmed it would respond in writing.

ISH3-AP1: The Applicant is requested to clarify any differences (or variances) in the 'annual' Gross Value Added (GVA) figures presented on page 2 and page 15 of application document [REP1-046] - Potential Economic Impacts of the HyNet Northwest Project.

- 3.15 Response to Action Point ISH3-AP1: The Amion report **[REP1-046]** calculated that the project will generate an average combined GVA for the UK of £954m annually. The results of Amion's modelling suggest that the average gain of GVA for the UK would be £811m annually, this is net of inward investment (summarised in Section 4.4 on page 18, labelled as page 14 on the original report). The calculation of the £811m does not include the average annual GVA gain in relation to inward investment – calculated as £143m for the UK, as set out in the third paragraph on page 19, labelled as page 15 on the original report) of the report.
- 3.16 The Applicant confirmed that it considers the report to be robust. While it was produced at an early stage in the project development, it uses standard industrial practices in assessing benefits of projects early in their inception, and put before the ExA and Government the Applicant is happy to stand by it.

4 ARTICLES AND SCHEDULES OF THE DRAFT DCO

- 4.1 The ExA asked the Applicant to provide a very brief overview of how the change requests have resulted in alterations to the draft DCO.
- 4.2 The Applicant explained that CR1 resulted in no changes to the articles of the draft DCO. The Works descriptions were amended and a new section of access was added into Work Number 3. Work Number 16 was divided into 16A and 16B to better reflect the different uses of each section of that Work, and a new Work Number 45 was created, which is the formation of a permanent access to the Northup Hall AGI to the public highway.
- 4.3 The most significant part of CR2 was the addition of the Alltami Brook embedded pipe bridge option, that did include an amendment to the articles as a new article 14 allowing permanent stopping up of a section of the public right of way (PRoW) needed to be added. That change also added a bespoke limit of deviation for the embedded pipe bridge within the limits of deviation article, and some new definitions required to be added. A new Work Number 43E, being the bridge itself was added, and a new generic work for use of crane

pads had to be added. There was also amendments to the access to the 2 Sisters site on Chester Road which did not result in any changes to the Order articles. The only change to the Schedules was the creation of a new Part 2 in Schedule 6, in relation to the permanent stopping up of a section of PRow.

- 4.4 CR3 did not result in any changes to the Articles. It did result in some changes to the Works Descriptions, including a subdivision of the access at Work Number 3 on Encirc Limited's (Encirc) land interests to reflect the change following consultation on abnormal indivisible load access and the creation of a new Plot 1-06d for temporary possession only. Work No 41A, which was the proposed construction compound at Shotton Lane was deleted, and that also had a consequential impact on the wording of Works 41B and deletion of Work 41D. The only change to the Schedules was the addition of the new Plot 1-06, which was added to the temporary possession schedule following the change at Encirc.
- 4.5 The Applicant explained that there has also been a number of changes to the requirements, generally not under CRs, other than for Alltami Brook, as a result of consultation.
- 4.6 The ExA ran through the articles of the draft DCO.
- 4.7 The ExA flagged some typographical or formatting errors in the draft DCO which the Applicant confirmed it would correct.
- 4.8 The ExA queried why some Acts referred to in the draft DCO have citations in footnotes. The Applicant explained that this was done only the first time an Act was referenced in the draft DCO.
- 4.9 The ExA queried the disapplication of the vertical limits of deviation in relation to the crossing of the Alltami Brook.
- 4.10 The Applicant explained that the vertical limits of deviation in Article 6 relate to the pipeline works, and would not apply to the embedded pipe bridge option. The minimum level of the bridge will depend on flood risk assessment, and the need to include an allowance for climate change. Confirming the minimum level of the bridge prior to carrying out that flood risk assessment would be challenging. The Applicant is also unable to confirm precisely what depth the pipe will be within the bridge because that depends on the detailed design of the bridge – how big it is, how long it is, how deep it is under its concrete slab. A requirement relating to approval of detailed design of such a bridge has been included in the draft DCO.
- 4.11 The ExA ran through the schedules of the draft DCO.
- 4.12 In relation to Schedule 1, the ExA asked whether the reliance on Work No. 43 to enable Work Number 43E would cause an issue of the embedded pipe bridge option was taken forward, as Work 43 is quite specific. The Applicant confirmed this would need to be adjusted in the Alltami Brook version of the draft DCO.
- 4.13 The Applicant provided an update on progress in relation to Protective Provisions (PP).
 - (a) Airbus have confirmed they do not want PPs, will be deleted in next draft.
 - (b) CF Fertilisers – agreement has been reached. **This is confirmed in** Statement of Commonality for Statements of Common Ground [REP6A-006] **Appendix A.**
 - (c) SPEN – agreement has been reached. **This is confirmed in** Statement of Common Ground - Scottish Power Energy Networks (SPEN) [REP6A-011], **line SP3.3.1.**
 - (d) Cadent – largely agreed, one or two commercial point remain under discussion however the Applicant does not consider these to be irresolvable.

- (e) CRT – under negotiation, minor points around timing of issues remain under discussion however the Applicant does not consider these to be irresolvable.
- (f) Local authorities – two sets of PPs are being progressed to cover both, one for highways and one for Lead Local Flood Authority (LLFA). Highways have been circulated, and some minor comments remain under discussion however the Applicant does not consider these to be irresolvable. For the, LLFA the Applicant is considering drafting suggested by CWCC and will send back to both Councils.
- (g) Encirc – negotiation ongoing, remain under discussion however the Applicant believes the key issues have been resolved in principle and does not consider the remaining points to be irresolvable.
- (h) Environment Agency (EA) – some comments back, still in discussion. We think there is no irresolvable issue, but need some further discussion with them is required.
- (i) Exolum – similar to other businesses, one or two commercial points remain under discussion however the Applicant does not consider these to be irresolvable.
- (j) National Grid Gas (NGG) and National Grid Electricity Transmission (NGET) – largely agreed, one or two commercial points remain under discussion however the Applicant does not consider these to be irresolvable.
- (k) Network Rail (NR) – the PPs would bind applicant to enter into other agreements to deal with access and APA, PPs are largely agreed, but the parties are working through comments on those underlying agreements. Network Rail have been very responsive and the Applicant considers that these are making good progress.
- (l) Peel NRE – the Applicant considers that the key points have been resolved in principle, minor outstanding points remain around consultation and timings. Peel have advised that they want to see updated CEA before they'll agree PPs and that is in hand. The Applicant is not aware of irresolvable issues.
- (m) United Utilities – largely agreed, one minor commercial point remains under discussion however the Applicant does not consider this to be irresolvable.
- (n) UKOP – technical discussions are ongoing around pipeline separation distance. The Applicant does not consider this to be irresolvable, rather the parties are progressing to agree the process.
- (o) Wales and West Utilities – one minor commercial point remains under discussion however the Applicant does not consider this to be irresolvable.
- (p) Welsh Ministers as strategic highway authority – are considering draft provisions. The draft has very closely followed a recently agreed draft. The Applicant is not aware of irresolvable issues.
- (q) Welsh Water – waiting for comments from them. Welsh Water has not indicated that there are issues of key concern as yet.
- (r) 2 Sisters – have confirmed they don't want PPs.
- (s) Essar – we have sent them some drafts and await a substantive response.
- (t) National Highways – the Applicant submitted a detailed representation at Deadline 6 [REP6-035] which included a markup of the drafting submitted by National Highways. The Applicant considers that the parties have reached an impasse and will provide competing versions of the proposed Protective Provisions.

- 4.14 The ExA queried whether the Applicant consider there was any likelihood of agreement with National Highways. The Applicant stated that it considered that very unlikely, as the Applicant does not consider National Highways' drafting is appropriate, reasonable or proportionate given the development authorised by the DCO does not include works to an operational carriageway. National Highways have advised they will not accept any amendments to their standard drafting, so it seems there is an impasse.
- 4.15 In relation to NRW, the Applicant advised that it has proposed alternative Protective Provisions to those included in the draft DCO protect the access NRW raised. The Applicant is waiting for a response from NRW as to whether they want that in Protective Provisions or in another form.

5 SCHEDULE 2 OF THE DRAFT DCO – REQUIREMENTS

- 5.1 The ExA asked the Applicant to advise whether the requirements have changed as a result of the change requests.
- 5.2 The Applicant confirmed that the requirements are generally not altered by the change requests. CR1 included a change to the construction working hours, and there has been an addition to requirement 4 in relation to Alltami Brook and the submission of detailed design should that be taken forward. The majority of the other changes to the requirements have come about due to discussions with interested parties, rather than as a result of CRs. Those changes have included matters such as better defining what the stages are and how that control would work, the sub-plans within the Construction Environmental Management Plan (CEMP), and discussion around construction working hours and start-up and shut-down activities.
- 5.3 The ExA ran through the requirements in the draft DCO.
- 5.4 In relation to requirement 9, the Applicant confirmed that its position remained that written approval of the verification reports should not be required.
- 5.5 In relation to requirement 14, the ExA noted that it required the undertaker to comply with the approved mitigation plan, but did not specify how long the undertaker was required to comply with the plan once approved. The ExA asked the Applicant to clarify. The Applicant confirmed that, given the requirement relates to operational noise, if there was an exceedance, the Applicant would expect to have to comply with the plan during the operational lifetime of the project.
- 5.6 In relation to requirement 17, CWCC and FCC confirmed their preference would be for the operational and maintenance environmental management plan to be subject to approval by the local authorities. The Applicant advised it would confirm its position in writing, but thought that it had made submissions on this earlier, and that a lot of the OMEMP would be governed by the Pipeline Safety Regulations. **The Applicant's previous submissions on this point are set out in its summary of oral submissions in ISH2 at paragraph 2.24 [REP2-264]. That provides that, the Applicant, having considered this point, does not consider approval of this plan to be necessary or appropriate. The operation of the pipeline will require to be undertaken in accordance with the Pipeline Safety Regulations and any obligations imposed by the Health and Safety Executive. These requirements will be the main drivers of the operational and maintenance regime, the Applicant must be able to comply with those and cannot be restricted or delayed in doing so by this plan.**
- 5.7 **Operation and maintenance of the above ground sites will be determined by HSE considerations and the applicable codes of practice. Operational noise is controlled under a separate requirement and does not form part of the plan. The main operational impact above ground which has the potential to cause operational impacts is therefore separately controlled.**
- 5.8 **The new pipeline will be operated and maintained in a similar manner to the existing natural gas pipeline. Pipeline inspection will largely be taken from within the**

pipeline itself and intrusive investigation ('digging down' to the pipeline) would only be necessary in response to issues arising, is not a planned regular activity and would primarily be driven by safety considerations given that. Accordingly, there is little opportunity for the LPAs to require changes to this plan and approval is not necessary or appropriate. The Applicant confirms that it maintains the position set out in previous submissions.

6 ARTICLE 44 OF THE DRAFT DCO – CERTIFICATION OF PLANS

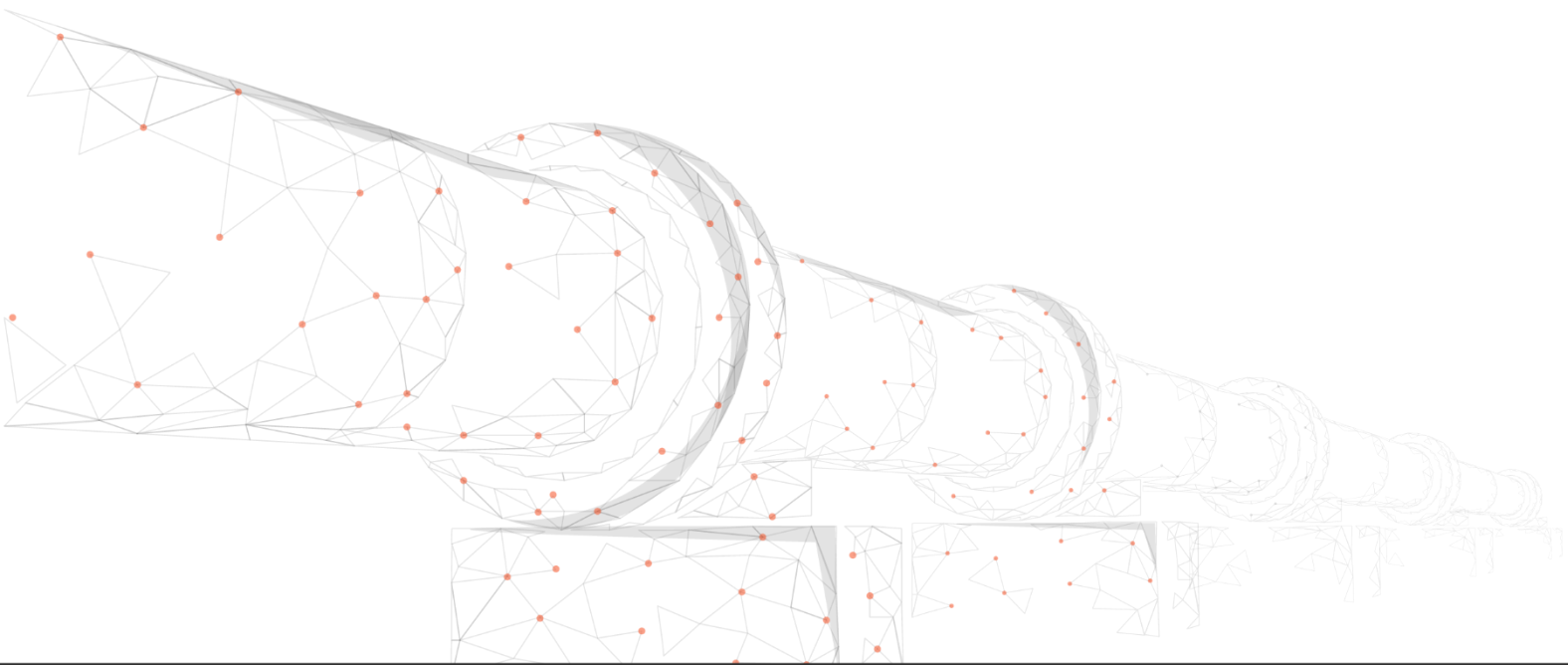
- 6.1 The ExA asked the Applicant to confirm if any changes were required as a result of the CRs, and if the plans and documents in revision H [CR3-008] now represent the complete list of certified documents.
- 6.2 The Applicant confirmed that, with the exception of the general arrangement plans, the Applicant considers article 44 to contain a complete and accurate list. The general arrangement plans relate to the AGIs and BVSs, but do not include similar drawings for the Alltami Brook embedded pipe bridge option. The Applicant confirmed it was looking into whether or not that was necessary. There is not currently a drawing for that yet. The Applicant advised it would confirm its position in writing.
- 6.3 The ExA queried why the Applicant was hesitant about including the illustrative plan for the embedded pipe bridge, and the Applicant explained that it is partly because it is an illustrative plan, and partly because the other general arrangement plans include details such as elevations and formatting that the illustrative plan does not quite align with.
- 6.4 The Applicant confirms that it does not consider that the illustrative plan for the embedded pipe bridge should be a certified document given that it is illustrative and subject to detailed design. The final design will require to have regard to the final crossing point selected and the outputs of flood modelling work which will likely result in some divergence from the illustrative drawings.**

7 CONSENTS, LICENCES AND OTHER AGREEMENTS

- 7.1 The ExA asked the Applicant to provide an update on the consents, licences and other agreements required for the Proposed Development.
- 7.2 The Applicant confirmed that the change requests do not change the scope of the consents/licences/agreements required. In terms of an update, the marine licence application was withdrawn to allow the preparation of a bespoke package of information which has been progressed. That package information should be completed and going into quality assurance this week. The Applicant hopes to resubmit that application by mid-August and will confirm when that is done.
- 7.3 All draft or shadow European Protected Species (EPS) licence applications have now been met, and the Applicant is awaiting comments back on the majority of them and has received comments on some.
- 7.4 The ExA asked the Applicant whether it was anticipating completing any of the licences/consents/agreements prior to close of the examination.
- 7.5 The Applicant advised that they had received comments back from Natural England on three of the EPS licence applications, and it is anticipating being able to hopefully close those out before the end of the examination.

HyNet North West

PART 2 - COMPULSORY ACQUISITION HEARING ("CAH2") ON 10 AUGUST 2023



HyNet Carbon Dioxide Pipeline CAH2: The Applicant's Summary of Oral Submissions and responses to action points



This note summarises the submission made by Liverpool Bay CCS Limited (the Applicant) at the Compulsory Acquisition Hearing (“CAH2”) on 10 August 2023. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.

1 APPLICANT TO PROVIDE AN UPDATE TO ITS CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION IN THE LIGHT OF ITS ACCEPTED CHANGE REQUESTS

- 1.1 The ExA invited the Applicant to provide an update on its case for compulsory acquisition and temporary possession in the light of its accepted change requests.
- 1.2 The Applicant explained that, as regards the overall approach to compulsory acquisition (CA), this has not fundamentally changed and remains as set out in the Applicant's previous submissions and at the previous hearing, and as summarised in the Applicant's Written summaries of oral submissions made at any Hearings held week commencing 5 June 2023 [REP4-264].
- 1.3 In line with DCLG guidance, the Applicant has continued to explore all reasonable alternatives to compulsory powers, and this has included making amendments to the draft Development Consent Order (DCO) [CR3-008] where possible where that will facilitate reaching voluntary agreement. The Applicant would note that many of the changes which have been sought were in response to ongoing engagement with landowners or to reduce impacts on them. The Applicant accordingly considers that the submission of these requests demonstrate that it has been meaningfully engaging with landowners and has been acting reasonably in seeking to accommodate requests where the Applicant could.
- 1.4 CR1 sought the relocation of the Northop Hall Above Ground Installation (AGI) (Work No. 45) and Cornist Lane Block Valve Station (BVS) (Work No. 51) in direct response to landowner engagement. Those relocations were by just a number of metres, and the Applicant considers that the original overall siting justification for these Works is still valid. The changes were sought to reduce landowner impacts, and the need for those particular works remains as set out in the application.
- 1.5 The Applicant also extended the order limit to avoid impacting veteran trees near Backford Brook (Work No. 24), leading to the creation of plots 9-14a, 9-16a, 9-16b, 9-18b, and 9-19a.
- 1.6 CR1 also included the extension of the access routes to the Ince AGI to meet the public highway as part of Work No. 3.
- 1.7 CR1 also included a number of reductions in the land take: to exclude an area of railway spur at Work No. 3, to reduce the impact on the Shropshire Union Canal, to remove a section of public right of way (PRoW) alongside the River Dee, and to make it clearer that two residential properties were not within the redline and the Applicant is not seeking compulsory acquisition powers over them.

- 1.8 CR2 saw the addition of the Alltami Brook embedded pipe bridge crossing option. That did not increase the land take over which the Applicant is seeking powers but did change the nature of the acquisition sought from subsurface to surface.
- 1.9 In CR2 there was also the addition and removal of a number of small plots at the 2 Sisters site on Chester Road to allow the Applicant to resolve a potential access conflict at that location.
- 1.10 CR3 sought the removal of the Shotton Lane compound at Newbridge Farm. The Applicant brought that forward in response to the landowners' concerns about the quantum of land impacted in that area. In considering that, the Applicant had to balance constructability and buildability with the landowners' concerns. That did mean a change in the construction approach, and it did mean the Applicant had to undertake some assessment and sought deliverability advice. The removal of that compound then sought to reduce the impact on those landowners.
- 1.11 Also at CR3, the Applicant has sought to reduce the land take at Picton Lane by narrowing the access route at Work Nos. 16A and 16B. There has also been a change to the powers sought on the Encirc land to create one sub-plot where temporary possession is sought rather than acquisition of permanent rights (plot 1-06d).
- 1.12 At each stage the Book of Reference (BoR) has been updated to reflect any changes as these have been submitted **[CR1-022, CR2-013 and CR3-013]**.
- 1.13 The changes made do not materially impact the assessment of overall liability to compensation and blight under the Funding Statement **[APP-029]**. The Funding Statement already included a considerable contingency, and the Applicant considers that the Funding Statement remains valid for the application as amended.
- 1.14 The Statement of Reasons (SoR) has been updated for the change requests and sets out what each parcel of land is required for **[CR1-020, CR2-011 and CR3-011]**. The DCLG guidance provides at paragraph 9 that the Applicant must have set out a clear idea of how each plot would be used. The need and proposed use for each area is set out in the tables of the updated SoR.
- 1.15 Although powers are sought over a wider corridor than that which will be finally acquired, that is necessary to allow the development to undertake detailed design in the final routing of the corridor. It is disproportionate to do that work ahead of consent being granted.
- 1.16 The Applicant is seeking powers over land required for mitigation (primarily landscape and mitigation planting). The DCLG guidance sets out at paragraph 11 that powers should not be sought over more land than is 'reasonably required' The guidance is clear that land necessary for works to make the development acceptable such as landscaping may be acquired compulsorily, as set out in paragraph 12. The Applicant accordingly submits that these areas are therefore reasonably required and meet the statutory tests and the guidance.
- 1.17 The Applicant maintains that there is a compelling case in the public interest for the granting of the CA powers. Paragraphs 12 and 13 of the DCLG guidance expand on this as requiring compelling evidence that the public benefits outweigh private loss. The case for the development is set out in the Need Case **[APP-049]**. While the project does not fall within the scope of the current National Policy Statements (NPSs), it is firmly rooted in national policy as required by paragraph 19 of the DCLG guidance.
- 1.18 The Applicant considers that the powers sought are necessary to deliver the DCO Proposed Development, are proportionate and are sufficient to justify the interference with landowners' rights. The strong policy support for the proposed development, and importantly the contribution it would make towards achieving Net Zero and decarbonising industry in the Northwest of England and North Wales, demonstrate the clear public benefit of the project being granted the powers necessary to ensure its delivery.

2 CHANGE REQUESTS

- 2.1 The ExA invited Affected Persons or Interested Parties to make oral representations on the proposed provision for the CA of additional rights over land set out in the Applicant's accepted Change Requests (CR), and invited any Additional Affected Persons to make oral representations on matters relating to the proposed CA of land/rights in general.
- 2.2 No Affected Persons, Interested Parties or Additional Affected Persons made oral representations, and the Applicant made no oral submissions.

3 INDIVIDUAL OBJECTIONS, ISSUES AND VOLUNTARY AGREEMENTS

- 3.1 The ExA invited the Applicant to provide an update on discussions with Peel NRE (Peel).
- 3.2 The Applicant advised that discussions have been ongoing, and the Applicant considers that it has managed to resolve in principle issues. Peel is awaiting some documents from the Applicant to confirm requested changes have been made before they can confirm they are happy, and the Applicant hopes to make progress week commencing 14 August.
- 3.3 The ExA invited the Applicant to provide an update on discussions with Network Rail.
- 3.4 The Applicant advised that the current proposal with Network Rail is to put protective provisions in place which would resolve their concerns. The protective provisions are largely agreed, with a few minor points outstanding, however they would require the undertaker to enter into other agreements, and the parties are working through those.
- 3.5 Agents instructed by Encirc made submissions regarding Encirc's current position in relation to the scheme. The Applicant noted that some of the comments made are being dealt within the protective provisions.
- 3.6 In relation to technical points, the Applicant explained that its position in relation to the crossing of Encirc's rail sidings and Network Rail's railway, and whether a single trenchless crossing would be possible, or whether two crossings with an intermediate pit would be required. This had to be understood in the context of Network Rail's trenchless crossing procedure, which is a very prescriptive and lengthy process for any party undertaking a trenchless crossing of Network Rail's assets. As a statutory undertaker they essentially get the final technical sign off on the crossing design. The Applicant cannot confirm there will be a single crossing because Network Rail may want to reduce the chance of a trenchless crossing failure by reducing the length of the permitted trenchless crossing. The Applicant explained that it can take 9 – 12 months from the start of detailed design before the Applicant can get that approval from Network Rail.
- 3.7 The Applicant explained that it had not seen Encirc's proposals to expand the railhead, or had any confirmation as to what Encirc is proposing to build. Trenchless crossings are mostly used for existing assets, things the Applicant cannot disturb.
- 3.8 The access to the land between Network Rail's railway and the Encirc rail siding would be required; if the Applicant does get permission for a single trenchless crossing, it would still need access to Network Rail's railway and the existing Encirc siding for settlement monitoring during the trenchless crossing work, so would still need access.
- 3.9 The Applicant confirmed that there is no proposal to crossing the existing rail siding via an open cut trench. The Applicant does not intend to stop its use or interfere with that. The Applicant would propose to cross the existing spur using the same Network Rail technical standards. The issue is not about crossing the assets which are there, but whether the Applicant can justify to Network Rail the risk of increasing risk for an asset that is not currently there.
- 3.10 The Applicant confirmed there is nothing that would stop them from installing the pipeline at depth without it being a single trenchless crossing. The Applicant is not objecting to the principle of Encirc installing a new rail spur over a pipeline that is already installed. The Applicant sees this as a temporary works issue and relates to access in construction only.

The Applicant can maintain the depth of crossing if it is installed without a single trenchless crossing. Trenchless crossing depth is normally driven by predicted settlement as a result of drilling underneath an existing in asset. In principle the Applicant has no objection to a new rail line being installed over a pipeline which is already there. The Applicant would reserve the right to approve the construction design and proposed techniques.

- 3.11 Agents instructed by S & C Oultram made submissions on his clients' current position in relation to the DCO Proposed Development. In particular, concerns were raised regarding the Oultrams' ability to move their cattle from the field to the farm while certain plots were subject to temporary possession.
- 3.12 The Applicant explained that the access will be used for getting construction vehicles in and out, and so the Applicant has said it is willing to coordinate with the landowner and pause movements twice a day to allow cattle to be moved, but some level of control is required for safety of both parties, so providing 24/7, unimpeded, unmanaged access for cattle movements is not possible. The Applicant confirmed that it is not proposing to prevent access by single vehicles at other times, and the "twice a day" proposal is intended to address concerns related to movement of the cattle.
- 3.13 The Applicant explained that although temporary possession is being sought over the plots, the Applicant has sought to work with the landowners, and is not seeking to exclude their access at that point. The Applicant has set that out in the Ewloe Routing and Mitigation Position Paper [REP6-037], and this has been proposed to the landowners. The Applicant explained that the mechanism for securing that with the landowners is not progressing because they have asked the Applicant not to send them any further heads of terms at this stage. The Applicant confirmed it stands by the offer to ensure access between the field and the farm will be maintained in a suitable form. The Applicant confirmed it has updated Heads of Terms it would like to share with the landowner.
- 3.14 The ExA asked the Applicant if it would like to make any comments on discussions with National Highways.
- 3.15 The Applicant notes National Highways' objection and does not agree with it. The Applicant does not agree that the DCO Proposed Development would cause serious detriment to National Highways' undertaking. The Applicant confirmed its position remains that the principle of protective provisions in favour of National Highways is accepted, but the Applicant cannot agree to National Highways' wording. Negotiation is ongoing in relation to voluntary land agreements.
- 3.16 The ExA invited the Applicant to provide an update in relation to Canal and River Trust (CRT), Environment Agency and Travelodge.
- 3.17 The Applicant advised that, in relation to CRT, good process is being made in the negotiation of a voluntary agreement, which will then allow the Applicant to agree the terms of protective provisions and resolve their concerns.
- 3.18 The Environment Agency has been provided with updated heads of terms and has appointed an agent, but the Applicant has not yet had comments back.
- 3.19 Travelodge is not in receipt of head of terms, they are not a landowner (they just have rights), and the Applicant is negotiating with the landowner.

4 UPDATE ON THE BOR, SOR, LAND PLANS, DILIGENT ENQUIRIES AND UPDATES

- 4.1 The ExA asked the Applicant whether it had anything to add in relation to the updated Schedule of Negotiations submitted at Deadline 6A [REP6A-004]. The Applicant confirmed that it did not.
- 4.2 The Applicant advised that it has issued revised heads of terms with increased commercial terms, having reviewed the commercial benchmark following comments during landowner engagement. The Applicant is confident that will resolve a lot of landowner issues, and the Applicant should be able to sign a lot of them up. The Applicant note that the

landowners have only had the revised heads of terms for a short period, so the Applicant was unable to advise on a return date in the hearing.

- 4.3 The ExA asked the Applicant if anything had changed in the steps taken to identify unknown parties or interests as set out at CAH1. The Applicant confirmed the steps taken are in line with that response. **The Applicant's previous response is summarised in its written summary of oral submissions made at CAH1 [REP4-263].**
- 4.4 The ExA asked the Applicant if there was any further update in relation to diligent enquiries since CAH1.
- 4.5 The Applicant advised that, as noted during CAH1, a Land Registry refresh was undertaken and incorporated into the Book of Reference submitted at Deadline 4 **[REP4-016]**, along with any other updates that have come to light as a result of engagement with landowners. Changes in landownership and occupation that have been made known to the Applicant continue to be updated into the BoR submitted at each deadline.
- 4.6 The Applicant had no specific update but confirmed that as and when things come to light they are included in the updates to the BoR.
- 4.7 The ExA asked the Applicant to clarify what liaison with affected parties has taken in relation to detailed design and whether this would continue through the remainder of the examination and whether any further CRs are anticipated.
- 4.8 The Applicant clarified that detailed design is not ongoing. The work currently being carried out is not detailed design, which will be undertaken by contractors once appointed. The Applicant is not anticipating or preparing any further change requests.
- 4.9 The Applicant explained that engagement continues with affected parties, including meetings, calls and correspondence ongoing with landowners and their agents. The alterations contained in the CR submitted to the Examination have been discussed with affected parties, and a number of the changes included within the change requests are as a result of requests made by landowners themselves. This engagement will continue through the remainder of the Examination, especially in discussions and negotiations for acquisition of land through agreement.
- 4.10 The ExA asked the Applicant whether its response regarding the need for a process to consider human rights to be secured during detailed design had changed. The Applicant confirmed that its position remains as expressed in CAH1. **The Applicant's previous response is summarised in its written summary of oral submissions made at CAH1 [REP4-263].**
- 4.11 The ExA invited the Applicant to provide an update with regards to Crown interests.
- 4.12 The Applicant explained that it had provided a response at CAH1 to confirm that of the five Crown bodies that were included in the BoR at DCO application submission **[APP-030]** (being SoS for Transport, SoS for Defence, Welsh Ministers, SoS for Wales and the Crown Estate) only three of them (being SoS for Defence, Welsh Ministers and the Crown Estate) remain holders of interests within the scheme. These changes have been made to the updated BoR **[CR3-013]**.
- 4.13 At CAH1, the ExA requested confirmation from the CRT as to whether its assets in plot 8-03 is Crown land. Its response to that action point **[REP4-273]** confirms that it is not.
- 4.14 In relation to the SoS for Defence, the Applicant confirmed that it is in contact with the relevant party at the Ministry of Defence. They have confirmed that they are arranging for a letter of consent to be signed in a form that has been accepted elsewhere. They are content with the information provided by the Applicant. The Applicant hopes to have a letter of consent shortly and will submit it once received. The Applicant will continue to follow up to ensure it is received before the end of the Examination.

- 4.15 In relation to Welsh Ministers, as set out in the updated Schedule of Negotiations with Land Interests, which has been provided at Deadline 6A [REP6A-004], negotiations are ongoing with the Welsh Ministers. The Applicant has continued to review its commercial offering and benchmark this against comparable land transactions, and, as such, updated heads of terms have been issued recently. The Welsh Ministers have acknowledged receipt of these, and the Applicant is seeking a meeting with them to continue discussions on these in the next week.
- 4.16 In relation to the King's Most Excellent Majesty in Right of His Crown, the Applicant is in contact with the relevant party at the Crown Estate. They have confirmed that they can prepare a draft s135(2) consent letter. Discussions are ongoing, but the Applicant expects the letter to be provided shortly. The Crown Estate have no concerns as far as the Applicant is aware, and the Applicant will continue to follow up to ensure it is received before the end of the Examination.
- 4.17 The ExA asked the Applicant to clarify how it proposed to carry out drainage works consisting of the opening of a small trench in Plot 17-02 given CA is sought in relation to the subsurface only.
- 4.18 The Applicant explained that a compulsory right to install and maintain the drainage would be included. The Applicant proposes to undertake surface works under temporary possession powers, then remove from the surface and maintain the works in situ under a subsurface right.
- 4.19 The ExA queried how the Applicant could do that as Plot 17-02 is not included in the temporary possession schedule.
- 4.20 The Applicant explained that the temporary possession powers apply to all of the order land unless disapplied. The schedule sets out land for which only temporary possession is required and is a restriction on CA powers. The Applicant considers it appropriate to temporarily possess Plot 17-02 under the DCO powers.

Action Point: CAH2-AP2: During the CAH the Applicant agreed to submit a written explanation of its response to the ExA's question concerning the Special Category Land at Plot no. 17-02 and what rights are being sought to enable the installation and subsequent operation of a new underground drain.

Response to Action Point CAH2-AP2:

With respect to section 132 of the Planning Act 2008, the Applicant notes that powers of temporary possession are not powers of compulsory acquisition. The powers under articles 35 and 36 of the dDCO (numbering as per revision H, [CR3-008]) do not fall within the scope of that section as they do not authorise the compulsory acquisition of a right over land.

The Applicant notes that the primary purpose of the power of temporary possession is to allow use of land required to deliver the authorised development without requiring the compulsory acquisition of such land (or rights) where all of the land is not needed in operation. Powers of temporary possession accordingly allow the minimisation of land subject to compulsory acquisition by providing a means for construction activities to be carried out on land without it being compulsorily acquired. Temporary possession also allows construction to be commenced ahead of land being compulsorily acquired.

The DCO drafting starts on the basis of the powers in the articles applying to all of the order land unless they are specifically limited. This is true for both temporary possession and compulsory acquisition. Authorisation of a greater form of interference will also include authorisation of the lesser, for example authorisation of the compulsory acquisition of land includes the authorisation of compulsory acquisition of rights in and over that land. The purpose of specifying plots of land in schedules 7 and 8 is to limit the broad power in the articles in the case of specific plots. Accordingly, for plots listed in schedule 8, the effect of the schedule is to remove the power to acquire the land itself and limit the application of the power to acquire rights to those listed. Inclusion in a schedule therefore reflects a limitation on the application of the powers of the DCO,

it does not set out a list of where those powers apply. Any plot which is not listed in these schedules is subject to the broad powers. This is particularly clear in the wording of article 27(2):

“... in the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule”

Article 35 (temporary use of land for carrying out of the authorised development) of the dDCO provides that temporary possession may be taken of the land specified in schedule 7 (article 35(1) (a)(i) and (ii)) and

“(iii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;” (emphasis added)

The article therefore provides that temporary possession may be taken of any other (ie not listed in schedule 7) order land for which no notice of entry under compulsory acquisition powers has been served and no general vesting declaration has been made.

The effect of article 35(1)(a)(i) and (ii) is to limit the purpose for which the land listed in schedule 7 may be subject to temporary possession. It imposes a restriction on the exercise of the power so that it can only be exercised for “for the purpose specified in relation to that land” (Art 35(1) (a)(i)) or to take access (Art 35(1) (a)(ii)). This restriction ensures that in cases where landowners have been advised that possession will only be taken for certain purposes, that is reflected in the DCO drafting. Items 1) (a)(i) and (ii) are accordingly limitations on the wider power reflected in (iii) applying to the land listed in schedule 7. There is nothing limiting the power in item (iii) to the land or purposes set out in schedule 7. Plot 17-02 forms part of the order land, is not listed in schedule 7, is not subject to the restrictions of that schedule, and temporary possession can be taken for it under article 35(1)(a)(iii).

Article 35(1)(g) provides that the undertaker may, on land of which it has temporary possession, “construct such works on that land as are mentioned in Part 1 of Schedule 1 (authorised development)”. The drainage connection is part of Work No. 35 (falling within item (f), being a connection to existing drainage). Article 35 accordingly empowers the construction of the drainage connection under temporary possession.

The period for which the Applicant could remain in temporary possession of the land following the installation of the drainage pipeline is limited by the operation of article 35(3)(b) to one year from the completion of the work. This allows a period for the progression and completion of the compulsory acquisition of the necessary rights. The acquisition of rights to maintain and operate the drainage pipe could be acquired compulsorily under article 27(1). That would be undertaken once the pipe was in situ. In such a circumstance, the drafting of article 35(1) (a)(iii) applies in that temporary possession does not end when notice of entry for rights only is sought, but could continue until the rights are acquired:

“(iii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;” (emphasis added)

This is because there is commonly a ‘gap’ between a notice of entry being served and the date of entry itself. The drafting allows a notice of entry for compulsory acquisition of rights to be served but the temporary possession to be maintained until the rights for which entry would be affected come into force.

The Applicant’s approach where no voluntary agreement is in place and powers have to be relied upon is accordingly:

- take temporary possession of an area of the surface of plot 17-02 to the extent necessary to install the pipeline (in sections to maintain access throughout) in accordance with article 35(1)(a)(iii) (section 132 is not engaged);
- install the drainage pipeline under temporary possession powers in accordance with article 35(1)(g) and restore the surface (section 132 is not engaged);
- progress compulsory acquisition to acquire the necessary rights for the (now installed) drainage pipeline (section 132 is engaged at this stage); and
- as and when such rights are in place, release the land from temporary possession.

The Applicant refers to its submissions on the application of the test in section 132 set out in the Applicant's Written summaries of oral submissions made at any Hearings held week commencing 5 June 2023 [REP4-264]. In the case of the drainage pipeline, installation would be carried out under temporary possession powers not compulsorily acquired rights. Once the drain has been installed there will be no ongoing impact on the current, open space use and the acquisition of the rights sought will not render the open space less advantageous than it is at present to its owner or the public. The Applicant accordingly considers that the test set out in section 132(3) of the Planning Act 2008 is met and the powers of compulsory acquisition of rights sought can be granted.

5 ANY OTHER CA OR TEMPORARY POSSESSION MATTERS

- 5.1 The ExA asked the Applicant to advise whether it was changing its position on plots excluded in CR3 as a result of the costs application [REP6-052].
- 5.2 The Applicant confirmed that it is not changing its position because of the costs application. The Applicant concurs that the plots listed in the costs application are those it has sought to remove. Any further response on costs will be made in writing.