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Dear Mr Currie,

PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR THE HYNET CARBON DIOXIDE PIPELINE

1. Introduction

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the Examining Authority’s (“ExA”) report dated 20 December 2023. The ExA consisted of two examining inspectors, Christopher Butler (Panel Lead) and Matthew Shrigley. The ExA conducted an Examination into the application submitted on 3 October 2022 (“the Application”) by Liverpool Bay CCS Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the HyNet Carbon Dioxide Pipeline and Authorised Development (“the Proposed Development”). The Application was accepted for Examination on 31 October 2022. The Examination began on 20 March 2023 and closed on 20 September 2023. The Secretary of State received the ExA’s Report on 20 December 2023.
- 1.2. On 31 January 2024 the Secretary of State issued a consultation letter¹ to the Applicant, Cadent Gas Limited, The Canal and River Trust, Dŵr Cymru Welsh Water, Environment Agency, Encirc Limited, Exolum Pipeline Systems Limited, Network Rail (England and Wales), National Grid Electricity Transmission PLC, National Grid Gas PLC, National Highways, Peel NRE Limited, United Kingdom Oil Pipelines Limited and Wales and West Utilities seeking information on protective provisions and any commercial agreements. The consultation closed at 23:59 on 14 February 2024 and responses were published on 16 February 2024.
- 1.3. The Proposed Development comprises the construction, operation and decommissioning of a 60.4 kilometre (“km”) carbon dioxide pipeline (24km of which is repurposed natural gas pipeline) from Cheshire, England to Flintshire, Wales with necessary infrastructure for its operation including Above Ground Installations (“AGIs”) and Block Valve Stations (“BVSs”).

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN070007/EN070007-003033-HYCO%20-%20Consultation%20Letter%201%20-%202031%20January%202024.pdf>

The Proposed Development route lies within the administrative boundaries of Flintshire County Council (“FCC”) and Cheshire West and Chester Borough Council (“CWCC”).

- 1.4. The Order, as applied for, would grant development consent for:
- Newbuild carbon dioxide pipeline:
 - Ince AGI to Stanlow AGI Pipeline - 4km section;
 - Stanlow AGI to Flint AGI Pipeline - 32km section and;
 - Flint AGI to Flint Connection Pipeline - 0.4km section;
 - Repurposed 24km of existing natural gas pipeline to transport carbon dioxide from the Flint Connection to the Point of Ayr Terminal, Point of Ayr;
 - Four AGIs- Ince, Stanlow, Northop Hall and Flint;
 - Six BVSS- three located along the new Stanlow AGI to Flint AGI Pipeline and three located along the existing Flint connection to Point of Ayr Terminal Pipeline;
 - Other above ground infrastructure, including cathodic protection transformer rectifier cabinets and pipeline marker posts;
 - Utility connection infrastructure, including power utilities and fibre optic cable and;
 - Temporary ancillary works integral to the construction of the carbon dioxide pipeline, including construction compounds and temporary access tracks.
- 1.5. The above elements are referred to in this letter as the Proposed Development. There is a wider project (referred to in the ExA Report as “the wider HyNet Project”) which includes plans for a new hydrogen production plant, hydrogen distribution pipelines, hydrogen storage and the creation of additional carbon capture and storage infrastructure. The overall goal of the wider HyNet Project is to reduce carbon dioxide emissions from industry, homes and transport and support economic growth. These elements of the wider HyNet Project do not form part of the Proposed Development and are subject to a separate consenting process.
- 1.6. The Applicant also seeks compulsory acquisition (“CA”) and temporary possession (“TP”) powers, as set out in the draft Order submitted with the Application.
- 1.7. As the Proposed Development comprises the construction of a cross-country pipeline, with one end in Wales and the other end in England, which is not being constructed by a gas transporter (as defined in the Pipelines Act 1962), the Proposed Development constitutes a Nationally Significant Infrastructure Project (“NSIP”) within s21 of the 2008 Act [ER 1.1.14]. Therefore, the Proposed Development meets the definition of an NSIP set out in s14(1)(g) of the 2008 Act and requires development consent in accordance with s31 of the 2008 Act [ER 1.1.14].
- 1.8. Published alongside this letter on the Planning Inspectorate’s National Infrastructure Planning website² is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 4-7 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 10. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER *.*.*”].

² <https://infrastructure.planninginspectorate.gov.uk/projects/wales/hynet-carbon-dioxide-pipeline/>

2. Summary of the ExA's Report and Recommendation

The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA's Report under the following broad headings:

- The Need Case for the Development;
- Assessment of Alternatives;
- Climate Change Resilience;
- Biodiversity, Ecology and Nature Conservation;
- Flood Risk, Water Resources, Land Contamination;
- Landscape and Visual Amenity/ Design and Layout;
- Cultural Heritage;
- Noise and Vibration;
- Air Quality and Emissions (which includes from dust, smoke and steam)
- Traffic, Transport and Waste Management Policy; and
- Socio-Economic Effects (Including Human Health)/ Agricultural Land Use/ Mineral Working Implications/ And Overall Cumulative Effects.

- 2.1. The ExA considered that the Proposed Development, in the form of the Applicant's alternative version of the draft Development Consent Order ("dDCO") (Embedded Pipe Bridge Version), meets the tests in section 105 of the 2008 Act. As such, the ExA recommended that the Secretary of State make the HyNet Carbon Dioxide Pipeline Order in the form attached at Appendix D to the ExA's Report ("rDCO") [ER 10.2.2].
- 2.2. This letter is intended to be read alongside the ExA's Report and, except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of her conclusions and recommendations.

3. Summary of the Secretary of State's Decision

- 3.1. The Secretary of State has considered the ExA's Report and all other material considerations, including written representations ("WR"), relevant representations ("RR"), responses to questions and oral submissions made during the Examination and RRs received after the close of the Examination, all of which are dealt with as appropriate in the decision letter below. Eighty-three RRs were made during the Examination in respect of the Application (with a further twelve for Change Request 1 and two for Change Request 2) by statutory authorities, businesses, non-governmental organisations, and individuals.
- 3.2. The issue of the crossing of the Alltami Brook is dealt with at 4.12 below. The Secretary of State agrees with the ExA that the crossing should be by way of embedded pipe. References to the rDCO in this letter are therefore to the ExA's recommended DCO which is based on the Applicant's alternative version of the dDCO (Embedded Pipe Bridge Version) provided at REP8-007.
- 3.3. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed

Development outweigh the harm identified, and that development consent should therefore be granted.

- 3.4. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the Proposed Development. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").
- 3.5. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4. The Secretary of State's Consideration of the Application

Legislative Considerations

- 4.1. The ExA considered the question of "Authorised Development" and "Associated Development", and the Applicant's view in the Environmental Statement ("ES") Chapter 2 (The Project) [REP7-035] that the proposed pipeline, together with the AGIs and BVSs, form the Proposed Development (i.e. the Authorised Development). This was particularly relevant in determining what could be included in the Application for the part of the Proposed Development in Wales given the more restricted definition of Associated Development in section 115 of the 2008 Act.
- 4.2. The Applicant stated that the Welsh Government did not agree with their view. The Welsh Government did not make any submissions to the Examination, or post-Examination, confirming their position [ER 4.8.1]. However, FCC stated that it agreed with the Applicant's view that the AGIs and BVSs were not considered to be "Associated Development" as they fell within the definition of a "pipeline" in section 65 of the Pipe-Lines Act 1962 (the "PLA").
- 4.3. The ExA was satisfied that the Proposed Development, inclusive of the pipeline, AGIs, BVSs and related infrastructure, constitutes Authorised Development as an NSIP within s14 and s21 of the 2008 Act, as the Proposed Development is a cross-country pipeline as defined in s235 of the 2008 Act which confirms it has the same meaning as a 'pipe-line' as set out in s65 of the PLA [ER 4.8.3]. Section 65(1) of the PLA defines a 'pipe-line' as "*a pipe (together with any apparatus and works associated therewith), or system of pipes (together with any apparatus and works associated therewith), for the conveyance of anything other than air, water, water vapour of steam...*".
- 4.4. The Applicant, notwithstanding its position on the BVSs being part of the Proposed Development and not constituting Associated Development, to prevent delay, included the Welsh BVSs in the Application for the Proposed Development and also submitted a planning application on 29 June 2023 to FCC under the Town and Country Planning Act 1990 ("the TCPA"). FCC determined to grant approval of the BVS application, subject to conditions, on 10 January 2024. The Applicant confirmed in its post examination submission of 24 January 2024 that if the BVSs are found to be part of the Proposed Development, then any works would be carried out under the DCO and not under the permission [PID-001]. The Applicant has stated that it has not implemented the TCPA planning permission, pending the decision by the Secretary of State on the Application.

- 4.5. The Secretary of State agrees with the ExA's position and, for the reasons given, is satisfied that no aspects of the Proposed Development constitute Associated Development. The BVSs have therefore been included within the Order.
- 4.6. The ExA also gave full consideration to the Marine and Coastal Access Act, noting that the Applicant confirmed at DL7 [REP7-001] that it had applied for a Marine Licence from Natural Resources Wales ("NRW") Marine Licensing Team for the River Dee (Afon Dyfrdwy) Crossing [ER 3.4.1]. The Applicant confirmed in its post examination submission of 19 December 2023 that it had resubmitted the Marine Licence application on 5 September 2023, responded to requests for further information from NRW and understands that a decision on the application for a Marine Licence can only be granted after the decision on the development consent application has been made by the Secretary of State [PIR-005].

Policy Considerations

- 4.7. Sections 104 and 105 of the 2008 Act provide for the approach to be taken to decisions where one or more of the National Policy Statements ("NPS") have effect (s104) and where no NPS has effect (s105). As there is no NPS in force for carbon dioxide pipelines, the ExA concluded that the Proposed Development falls to be determined under s105 of the 2008 Act. The Secretary of State agrees.
- 4.8. While the Proposed Development does not come under a specific NPS, the ExA has taken into account NPS EN-1 as an important and relevant consideration to the Proposed Development as a policy reference document including overarching principles that support decarbonisation and diversity of energy supply [ER 3.3.3]. The ExA also considers NPS EN-4 to be important and relevant to the Proposed Development as it provides guidance on technology specific considerations for pipelines, albeit gas and/or oil which include planning routes; pipeline safety; noise and vibration; biodiversity; landscape and visual amenity; water quality and resources; and soils and geology [ER 3.3.14].
- 4.9. The Energy White Paper, Powering Our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. The ExA has referred to these 2011 NPSs as EN-1 and EN-4 and this letter refers to them in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. The ExA makes reference to the March 2023 draft NPSs ("dNPS") throughout the Examination and ExA's Report, with dNPS EN-1 and dNPS EN-4 considered important and relevant.
- 4.10. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("2024 NPSs"). The ExA did not consider the 2024 NPSs, in the ExA's Report as they were released following the close of the Examination. The ExA stated in the event they were designated before a decision is made; the Secretary of State may wish to consider them in the determination of the Proposed Development [ER 3.3.18]. As such, the Secretary of State has had regard to the designated 2024 NPSs, in particular EN-1 and EN-4, in deciding the Application, and addresses these where relevant within this letter, but does not consider that there is anything contained within them that would lead her to reach a different decision on the Application than has been reached by consideration of the 2011 NPSs.

- 4.11. The Secretary of State has had regard to the British Energy Security Strategy (“BESS”) published on 7 April 2022, which outlined the steps to accelerate the government’s progress towards achieving Net Zero by 2050 and a long-term shift in delivering cheaper and cleaner power. The Secretary of State has also had regard to the updated National Planning Policy Framework (“NPPF”) from December 2023 which was released after the close of the Examination and similarly finds that there is nothing which would lead her to reach a different decision on the Application. The Secretary of State has had regard to relevant Welsh policy, in particular the updated Planning Policy Wales (“PPW”) from February 2024 and associated Technical Advice Notes (“TAN”). The Secretary of State has also had regard to Local Impact Reports (“LIR”) submitted by CWCC and FCC, environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State’s decision.
- 4.12. During the Examination, the ExA had regard to the ‘River Basin Planning Guidance: Statutory guidance on the implementation of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017’ (“Water Framework Directive”) [ER 5.6.36]. NRW advised that an open-cut trenched crossing of Alltami Brook could lead to potential deterioration of the Wepre Brook waterbody and would therefore have to satisfy the derogation requirements of the Water Framework Directive [ER 5.6.42]. At the close of the Examination, NRW maintained that evidence submitted by the Applicant [REP5-016] did not satisfy the derogation grounds of the Water Framework Directive [ER 5.6.45]. The ExA agreed with NRW that the derogation case was not successfully made by the Applicant and therefore derogation should not be granted [ER 5.6.77]. In response to the concerns raised by NRW, at DL7 the Applicant proposed an alternative crossing of the Alltami Brook in an alternative version of the dDCO [REP8-007] [ER 5.6.44]. This alternative involved crossing the Alltami Brook via an embedded pipe bridge which would prevent an increase in fluvial flood risk, comply with the requirements of NRW to allow adequate freeboard above the recommended design flood levels and satisfy the regulations of the Water Framework Directive [ER 5.6.12]. The ExA agreed with NRW that an embedded pipe bridge crossing would not conflict with the Water Framework Directive and there would be no need to grant derogation for that crossing [ER 5.6.78]. The ExA therefore concluded the Applicant’s preferred version of the dDCO (Trenched Crossing Version) was unacceptable for the reasons above [ER 10.1.1]. The ExA further concluded that the Applicant’s alternative version of the dDCO (Embedded Pipe Bridge Version) avoids a breach of the Water Framework Directive and the ExA considered that this met the tests in s105 of the 2008 Act. The Secretary of State agrees with these conclusions.
- 4.13. The Secretary of State agrees with the ExA’s conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- Climate Change Resilience (Neutral weight) [ER 5.4 et seq.];
 - Flood Risk, Water Resources, Land Contamination (Neutral weight) [ER 5.6 et seq.] (on the basis of the crossing of the Alltami Brook by way of embedded pipe as in the Embedded Pipe Bridge Version of the dDCO);
 - Landscape and Visual Amenity/ Design and Layout (Great negative weight) [ER 5.7 et seq.];
 - Air Quality and Emissions (which includes from dust, smoke and steam) (Neutral weight) [ER 5.10 et seq.]; and
 - Traffic, Transport and Waste Management Policy (Neutral weight) [ER 5.11 et seq.].

- 4.14. The Secretary of State has considered the following issues in further detail below but agrees with the ExA's conclusion in respect of weighting:
- The Need Case for the Development (Very great positive weight) [ER 5.2 et seq., 5.3 et seq.].
- 4.15. The Secretary of State has considered the following issues in further detail below and has come to conclusions that are set out in the paragraphs below:
- Assessment of Alternatives;
 - Biodiversity, Ecology and Nature Conservation;
 - Cultural Heritage;
 - Noise and Vibration; and
 - Socio-Economic Effects (Including Human Health)/ Agricultural Land Use/ Mineral Working Implications/ And Overall Cumulative Effects.

The Need Case for the Development and Assessment of Alternatives

The ExA's Consideration of the Need Case

- 4.16. Although this Application falls to be determined under s105 of the 2008 Act, the NPSs are important and relevant documents and the ExA have had full regard to these, alongside other policy and legislation for both Wales and England. The ExA acknowledged EN-1 recognises the Government's commitment to increasing the use of renewable energy and investment in low carbon energy generation while draft EN-1 refers to Government developing business models to incentivise the deployment of carbon capture, utilisation and storage ("CCUS") facilities in the UK [ER 5.2.5]. The ExA noted that existing and dNPS provision is applicable as a material consideration within Wales and England and, for Wales, also had regard to PPW which has a primary objective of ensuring the planning system contributes to the delivery of sustainable development and for England, had regard to sustainability provisions in NPPF [ER 5.2.6 et seq.]. The ExA also had regard to Local Development Plans ("LDPs") for FCC and CWCC [ER 5.2.7].
- 4.17. The Proposed Development would transport carbon dioxide (CO₂) released from industry and the production of low carbon hydrogen, contributing to the reduction of CO₂ emissions to meet the UK's legally binding targets of 100% reduction in emissions by 2050 [ER 5.2.13]. By reusing existing natural gas infrastructure, the capital cost of the Proposed Development is significantly reduced: usually operators and Government share decommissioning costs but by repurposing infrastructure the Proposed Development negates the need to decommission them, reducing the burden on UK taxpayers [ER 5.2.15].
- 4.18. The Proposed Development also enables elements of the wider HyNet Project to be developed, including the production, distribution, storage and end use of low carbon hydrogen for flexible power generation at periods when renewable energy generation is insufficient [ER 5.2.14]. These low carbon hydrogen elements are out of scope of the Proposed Development and outside of the Order Limits but are reliant on the CO₂ pipeline, without which low carbon hydrogen cannot be produced at sufficient scale to materially decarbonise industrial emissions across the region [ER 5.2.17]. The wider HyNet Project also includes associated cluster developments anticipated to act as economic hubs for green technology jobs [ER 5.2.14]. The Applicant argues that the use of carbon capture and storage ("CCS") for the wider HyNet Project would be pivotal in supporting the UK transition

to a low carbon economy, meeting the 2050 Net Zero target and decarbonising industrial clusters in North West England and North Wales [ER 5.2.19].

- 4.19. Both FCC and CWCC were generally supportive of the Applicant's need case for the Proposed Development and accepted that the Proposed Development and wider HyNet Project would contribute to carbon reduction and aid the UK in meeting its 2050 Net Zero target [ER 5.2.20]. FCC and CWCC also broadly agreed that the Proposed Development would deliver clear and substantial benefits on a local, regional and national level, accepting it would provide opportunities in the future (subject to separate consents) for industries to capture their carbon and connect to the Proposed Development for transport to offshore storage [ER 5.2.23]. There were some objections from other Interested Parties ("IPs") regarding safety, the unproven nature of CCS technology, upstream carbon assessment issues contravening cumulative assessments, risks associated with the Proposed Development and doubts over mitigation [ER 5.2.25].
- 4.20. The ExA asked the Applicant to further explain the overall need case for the Proposed Development relative to climate changes considerations, current knowledge, natural (or other) forms of carbon capture or sequestration and whether any changes stemming from innovation would give rise to other options which would provide the same climate change benefits as the Proposed Development [ER 5.2.28 – 5.2.29]. The ExA found that the overarching need case put forward by the Applicant was well made and found no conflict with NPS provisions, emerging dNPSs, wider UK strategy or local policy provision [ER 5.2.30 et seq.]. The ExA also had regard to Welsh policy and found the overarching need case would be consistent with the objectives of PPW to contribute towards the delivery of sustainable development and improve the social, economic, environmental and cultural well-being of Wales [ER 5.2.40].
- 4.21. The ExA had regard to EN-1 which anticipated the use of CCS and dNPS EN-1 which states that *"the Government is developing business models to incentivise the deployment of CCS facilities and hydrogen in the UK"* and *"there is an urgent need for all types of low carbon hydrogen infrastructure to allow hydrogen to play its role in the transition to net zero"* [ER 5.2.34]. The ExA recommended that the Secretary of State may wish to consider the revised NPSs from November 2023 [ER 3.3.18], referred to in this letter as 2024 NPSs following their designation in Parliament on 17 January 2024. The ExA also recommended that the Secretary of State may wish to consider the updated NPPF from December 2023 [ER 3.10.3]. The Secretary of State has considered the 2024 NPSs and NPPF at 4.32 below.
- 4.22. The ExA concluded that the NPSs, dNPSs, PPW, up to date UK strategy and a wide range of climate change related policy in England and Wales support CCS [ER 5.2.42]. The ExA concluded that the Proposed Development would help the Government and Welsh Government to meet national carbon targets and lead to a UK wide decarbonised economy far more quickly than without the Proposed Development [ER 5.2.43]. The ExA also agreed that the Proposed Development would enable the delivery of significant socio-economic benefits UK-wide [ER 5.2.39]. The ExA found there is a compelling overarching need case but that the consideration of alternatives for the Proposed Development was an overlapping issue [ER 5.2.44]. Therefore, the Secretary of State should consider the need case for the Proposed Development in tandem with the assessment of alternatives.

The ExA's Consideration of Assessment of Alternatives

- 4.23. The ExA noted that from a policy perspective, the NPSs do not contain any general requirement to consider alternatives, however, the EIA Regulations require an ES to include *“a description of the reasonable alternatives studied by an Applicant, which are relevant to the Proposed Development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment”*. In considering all alternatives for the Proposed Development, the ExA considered all LDP environmental policies for FCC and CWCC and found FCC LDP EN-11 (Green Wedges) and CWCC LDP STRAT9 (Green Belt and Countryside) to be important local policy aspects of any decision informing the pipeline route selection, along with CWCC LDP STRAT3 (Chester Settlement Location Areas) [ER 5.3.3].
- 4.24. EN-1 highlights that when a NSIP is located in the Green Belt in England, energy infrastructure projects are likely to comprise ‘inappropriate development’ where development is harmful to the Green Belt and the general planning policy presumption against it applies [ER 5.3.5]. EN-1 further highlights that, in Wales, Green Wedges can be designated locally and have the same protection as the Green Belt in England, albeit they are temporary designations and are reviewed by the local authority as part of development plan review processes [ER 5.3.6]. *“Very special circumstances”* (NPPF) or *“very exceptional circumstances”* (PPW) are needed to justify inappropriate development on the Green Belt or Green Wedge: harm by reason of inappropriateness must be outweighed by other considerations [ER 5.3.5]. The ExA attaches very great weight to any harm to the Green Belt or Green Wedge but notes that EN-1 states that below ground linear infrastructure can have a limited or no impact on the fundamental purposes of the designation [ER 5.3.5].
- 4.25. The Applicant provided an assessment of alternatives in ES Chapter 4 (Consideration of Alternatives) Rev C [REP7-038]. The Applicant found that a ‘do nothing’ baseline approach is not an option if the UK is to meet its 2050 Net Zero target as carbon emissions from industrial sources in North Wales and North West England would remain unabated [ER 5.3.9]. The Applicant evidenced a three-stage process to find a suitable pipeline route, taking the Southern corridor route as the preferred option in stage two for reasons including: the greatest opportunity to connect to other CO₂ emitters and achieve the greatest level of CO₂ emissions reduction; it being the least complex to build; it being more likely to provide route options with less direct impact upon international and national environmental designations; and it being the most cost effective solution [ER 5.3.15]. In stage three a 100m corridor was applied to the preferred route to enable more detailed consideration of specific planning, land use, environmental and social criteria and identify engineering, cost and constructability issues [ER 5.3.16].
- 4.26. Both FCC and CWCC took the view that the pipeline route alternatives considered by the Applicant were properly explained [ER 5.3.17]. Some IPs referred to the carbon intensive nature of differing types of hydrogen production in the wider HyNet Project, however, the ExA regarded this as not being directly related to the Proposed Development and beyond the scope of the Examination [ER 5.3.18]. Some IPs and a non-IP, Mr Stephen Gibbins, put forward that the route chosen was not necessarily the best one available [ER 5.3.19].
- 4.27. The ExA considered the ‘do nothing’ alternative an appropriate baseline for the Applicant’s ES [ER 5.3.22]. The ‘do nothing’ alternative was adequately evidenced during the Examination by the Applicant to be contrary to the UK’s 2050 Net Zero target, the Industrial

Decarbonisation Strategy, the British Energy Security Strategy and the UK Hydrogen Strategy [ER 5.3.22].

- 4.28. The ExA asked further questions to the Applicant regarding the possibility of a shorter route suggested by Mr Steven Gibbins [AS-064] which potentially had less impact on residential areas, was easily accessible for construction, was shorter and would minimise interference with the rights of private landowners [ER 5.3.23]. The Applicant contended that the route was analogous to the Northern strategic corridor which had been discounted from statutory consultation in 2021 due to a number of constraints and construction risks, a distinct lack of flexibility and opportunities which would pose a significant risk for the detailed routing of the newbuild pipeline and subsequent construction programme [REP7-038]. The Applicant contended that the best option had been put forward, having regard to all IP commentary received [ER 5.2.27].
- 4.29. The Applicant's route selection considered Green Belt designation in England and Green Wedge designation in Wales. While the pipeline route cuts through Green Belt and Green Wedge locations, the ExA found that the newbuild underground pipeline component of the Proposed Development would not diminish the openness and therefore sits within the limits of national policy for Wales and England for such designated areas [ER 5.3.37]. The ExA concluded that the newbuild underground pipeline and the temporary construction works do not constitute 'inappropriate development', having regard to general advice for gas pipelines from EN-1 [ER 5.3.39]. However, there would be one AGI (Ince) and two BVSs (Rock Bank and Mollington) sited within the Green Belt in England and one BVS (Aston Hill) sited within the Green Wedge in Wales [ER 5.3.34]. Due to their scale and nature, these would not preserve the openness of the Green Belt or Green Wedge and as such the ExA concluded they would constitute 'inappropriate development' [ER 5.3.35]. The Applicant accepted that the AGI and BVSs would impact the openness of the Green Belt and Green Wedge but argued that they are necessary to operate a pipeline efficiently and safely and therefore do not conflict with the purposes of such designations as set out in paragraph 138 of the NPPF nor paragraph 3.74 of PPW [ER 5.3.41]. The ExA must consider if there are "*very special circumstances*" (NPPF) and "*very exceptional circumstances*" (PPW) that would outweigh the harm to the Green Belt in England and Green Wedge in Wales [ER 5.3.42]. The ExA noted that FCC and CWCC did not object to the "*very special circumstances*" and "*very exceptional circumstances*" cases made for England and Wales by the Applicant in the Planning Statement [ER 5.3.43].
- 4.30. The ExA concluded that a 'do nothing' approach would not be realistic for meeting the UK's 2050 Net Zero target [ER 5.3.47]. The ExA found that the Applicant's ES had set out in detail its high-level overarching principles of how the final route corridor was narrowed down and settled on, demonstrating that alternatives had been properly discounted from the initial appraisal made [ER 5.3.49]. The ExA also found that there was no strong basis to conclude that any other alternative not assessed by the ES would offer a better overall environmental outcome [ER 5.3.50]. The ExA concluded that the Applicant's case was robust and convincing, accepting that there are no viable alternatives to the preferred route that would offer a demonstrably favourable option in environmental terms [ER 5.3.51]. The ExA attributed very great weight to harm arising from the 'inappropriate development' in the Green Belt and Green Wedge, in line with advice from EN-1 [ER 5.3.53]. The ExA found that a case for "*very special circumstances*" (NPPF) and "*very exceptional circumstances*" (PPW) would only exist if the inappropriateness of the development, and any other harm resulting, is clearly outweighed by other considerations [ER 7.2.8]. Overall, having regard to the need case for the Proposed Development, the ExA concluded that very special and very

exceptional circumstances are demonstrated which would allow the project to proceed in spite of the harm arising from inappropriateness and the material reduction in openness in Green Belt and Green Wedge locations [ER 7.2.17]. The ExA attributed very great weight to such resultant harms as a result of the above ground AGI and BVSs [ER 7.2.18].

- 4.31. Overall, the ExA found that an adequate and proportionate assessment of alternatives had been undertaken by the Applicant, covering both Wales and England [ER 5.3.54]. The ExA accepted that the need case was compelling and carries very great weight in favour of the Proposed Development [ER 5.3.54].

The Secretary of State's Conclusion on The Need Case for the Development and Assessment of Alternatives

- 4.32. The Secretary of State considers that the Proposed Development falls to be determined under s105 of the 2008 Act, but that the NPSs, in particular EN-1 and EN-4 are important and relevant considerations to the Application. The Secretary of State has also considered the 2024 NPSs, alongside the 2011 NPSs. 2024 EN-1 which sets out that reaching the UK's 2050 Net Zero target necessitates a significant amount of new energy infrastructure, including "*infrastructure needed to capture transport and store carbon dioxide*" [2024 EN-1 2.3.4]. The 2024 EN-1 also refers to the need "*to adapt existing networks or build new ones to integrate low carbon hydrogen into the system and enable the transport and storage of carbon dioxide*" [2024 EN-1 2.3.8]. 2024 EN-1 also sets out that there is an "*urgent need*" for CCS infrastructure and "*the Secretary of State has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008*" [2024 EN-1 3.2.7]. Finally, 2024 EN-1 states that "*alternatives to new CCS infrastructure for delivering net zero by 2050 are limited*" [2024 EN-1 3.5.9]. The Secretary of State considers that the need case for the Proposed Development has been properly made out and, while it is to be determined under s105, the NPSs are still important and relevant considerations, including the new 2024 NPSs. The Secretary of State has also considered the revised December 2023 NPPF and does not consider there is anything that would lead her to reach a different decision on the Application. The Secretary of State agrees with the ExA's conclusion that the need case for the development carries very great positive weight in the planning balance, as further supported by 2024 EN-1.
- 4.33. The Secretary of State agrees with the ExA that there is no evidence that a 'do nothing' approach would be a successful alternative to the Proposed Development. The Secretary of State agrees with the ExA that a range of alternatives have been properly explored. Mr Stephen Gibbins made a post-Examination submission [PIR-002] reiterating his proposal for the relocation of the pipeline route. The Secretary of State has had regard to this submission and is satisfied that the route chosen by the Applicant has been properly considered and alternatives fully explored.
- 4.34. The Secretary of State agrees with the ExA that the AGI at Ince and three BVSs at Rock Bank, Mollington and Aston Hill will impact the openness of the Green Belt and Green Wedge. The Secretary of State agrees with the ExA that these aspects of the Proposed Development constitute 'inappropriate development'. The Secretary of State also agrees with the ExA that very special and very exceptional circumstances are demonstrated which would allow the project to proceed in spite of the harms to the Green Belt and Green Wedge. The Secretary of State notes that the ExA has ascribed very great negative weight in the planning balance due to harm to the Green Belt and Green Wedge.

- 4.35. The Secretary of State understands the location of the AGI and BVSs is dictated by the location of the pipeline and therefore very limited locations can be considered for the siting of the AGI and BVSs. In its ES Chapter 4, the Applicant comprehensively assessed a number of options for the siting of the AGI at Ince, noting that the location of an AGI is dictated by its ability to maximise opportunities for connecting into upstream emitters and that it had considered land use and visual impacts, presence of existing utilities, access and potential impact on future development [REP7-038]. Similarly the location of BVSs is a function of the volume of CO₂ that could be released, its rate of release and the way in which it disperses and the Applicant considered health and safety risks to ensure the location of BVSs was based on an 'As Low As Reasonably Possible' approach and also based on land and visual impacts, topography, population density, ease of access, prevailing wind direction and CO₂ dispersion characteristics [REP7-038]. The Secretary of State is satisfied that the Applicant properly considered all alternative locations for the AGI and BMVs that are within the Green Belt and Green Wedge, and all the others outside.
- 4.36. The Secretary of State appreciates that the size and mass of the AGI and BVSs would materially reduce the openness of the Green Belt and Green Wedge but considers that the proposed mitigation in the form of planting could eventually screen the AGI and BVSs. To secure the mitigation of the visual impact of the AGI and BVSs, the Secretary of State has added a requirement ("R") to the DCO to increase the planting aftercare period to 25 years, the lifetime of the Proposed Development.
- 4.37. The Secretary of State is content that the Applicant has considered a range of alternatives and that the design of the Proposed Development incorporates mitigation planting to reduce the impact on openness of the Green Belt and Green Wedge. The Secretary of State has strengthened the mitigation through the requirement added to the DCO. The Secretary of State considers that the visual impacts of the AGI and BVSs on the Green Belt and the Green Wedge are assessed by the ExA in Chapter 5 of the ExA's Report titled 'Landscape and Visual Amenity/ Design and Layout' and agrees with the ExA's weighting of great negative weight for this issue in the planning balance. The Secretary of State agrees with the ExA in concluding that alternatives have been properly considered and that there are very special and very exceptional circumstances to justify harm to the Green Belt and Green Wedge, as demonstrated by the Applicant in their need case.

Biodiversity, Ecology and Nature Conservation

- 4.38. The ExA have had regard to all relevant legislation and policies at national, regional, and local scales for Wales and England relating to biodiversity, ecology, and nature conservation. EN-1 sets out the general principle for development to avoid significant harm to biodiversity, including through mitigation, consideration of alternatives and appropriate compensation, noting that appropriate weight must be attached to biodiversity issues [EN-1 5.3.7]. dNPS EN-1 goes further in outlining the expectation that developers should consider whether there are opportunities for enhancements to "*leave the natural environment in a measurably better state than beforehand*", noting that, in England, planned biodiversity net gain ("BNG") outcomes should be presented in full as part of their application [dNPS EN-1 4.5.1 et seq.]. For Wales, PPW states that planning authorities must seek to maintain and enhance biodiversity while, for England, the NPPF states that the planning system should provide BNG where possible [ER 5.5.2 et seq.]. The ExA also considered county and local level policies which all encourage biodiversity protection and enhancement [ER 5.5.5]. The ExA further noted that the combined UK policy position both nationally, for Wales and England, and locally is that the Secretary of State should not grant development consent for any

development that would result in loss or deterioration of ancient and veteran trees unless the benefit of the development in that location clearly outweighs the loss of the woodland habitat [ER 5.5.7].

- 4.39. The Applicant set out likely significant effects (“LSE”) for biodiversity in ES Chapter 9 (Biodiversity) Revision D [REP7-046], concluding that during the construction phases, in the absence of secondary mitigation, there are moderate adverse or significant adverse effects for a range of habitats and species [ER 5.5.14]. However, post-mitigation, residual effects on biodiversity are assessed by the Applicant as either negligible or not significant during the construction, operation and decommissioning of the Proposed Development [ER 5.5.17]. The Applicant also provided a BNG strategy covering both Wales and England as part of its overall case, noting however that it is not required to deliver mandatory BNG as the Application was accepted for examination before the specified commencement date of the relevant provisions of the Environment Act 2021 of November 2025 [ER 5.5.21]. Also, post-mitigation, the Applicant considers all residual effects resulting from the Proposed Development in combination with predicted climate change effects are predicted to be either minor adverse or negligible and not significant [ER 5.5.24]. The Applicant acknowledged that the loss of trees will be required to facilitate the construction of the Proposed Development [ER 5.5.18]. A worst-case scenario is presented in ES Appendix 9.11- Arboricultural Impact Assessment Report Revision D [REP7-107].
- 4.40. CWCC highlighted concerns regarding absence of ecological surveys for certain species towards the start of the Examination [ER 5.5.61]. However, following further review, CWCC was content that the level of ecological data was appropriate, and FCC also accepted the surveys undertaken by the Applicant were in accordance with best practice [ER 5.5.63]. The completed Statement of Common Ground (“SoCG”) with both Natural England (“NE”) [REP8-022] and NRW [REP7-261] agreed that there will be a single project wide mitigation licence for each protected species in the respective jurisdiction for Wales and England [ER 5.5.65]. These SoCGs confirmed agreement on most matters [ER 5.5.31].
- 4.41. The Applicant confirmed in SoCGs with both FCC [REP7-259] and CWCC [REP8-021] that it was attempting to acquire land for its BNG strategy, but these legal agreements were not reached by the close of the Examination [ER 5.5.32, ER 5.5.33]. The Applicant and FCC were in advanced discussions at the close of the Examination to conclude a s111 agreement of the Local Government Act 1972 to secure creation and maintenance of hedgerow and pond habitat by FCC as a habitat offset [ER 5.5.32]. The Applicant and FCC were also in discussions at the close of the Examination to conclude a s111 agreement to require relevant parties to enter into s106 agreements under the TCPA, once the Applicant had acquired land, for the Applicant to create woodland habitat and maintain it for 30 years [ER 5.5.32]. The Applicant and CWCC still had to agree commercial terms of BNG offsetting and the Applicant had suggested a new requirement be inserted into the dDCO, which was not agreed upon in the final SoCG [ER 5.5.33].
- 4.42. The Woodland Trust commented throughout the Examination on the ancient and veteran tree impacts, submitting a signed SoCG at DL7 outlining concerns with the Ancient Woodland Inventory, impact due to noise and dust pollution and potential direct impact to one woodland which is subject to a trenchless crossing [REP7-107]. The Woodland Trust also raised that a 30m buffer zone should be implemented to ancient woodland, while the Applicant has provided a 15m buffer zone, with one exception of 13m at New Bridge Farm [ER 5.5.29]. In the signed SoCG with FCC, FCC agrees that this exception is acceptable, provided no intrusive works take place inside the 13m buffer area, with only surface access

required [ER 5.5.32]. Mitigation measures for this location including a site-specific Arboricultural Method Statement; a Tree Protection Plan and monitoring by an Arboricultural Clerk of Works is outlined in the Outline Construction Environmental Mitigation Plan (“OCEMP”) and secured through R11 of the dDCO [ER 5.5.29, ER 5.5.32]. The Woodland Trust maintained at the close of the Examination that it did not concur with allowing tree encroachment below a 30m buffer zone [ER 5.5.30].

- 4.43. The ExA was satisfied that the appropriate licenses were being sought for protected species [ER 5.5.66]. The ExA was also satisfied that, in response to consultation responses, the Applicant confirmed that a Biosecurity Method Statement would accompany the OCEMP and address concerns regarding invasive species [ER 5.5.70]. The ExA agreed that the Proposed Development would result in habitat loss, but that post-mitigation the residual effects would be either negligible or not significant during the construction, operational and decommissioning stages [ER 5.5.91]. The ExA recognised that BNG provision is not yet mandatory in England for NSIPs and in Wales there is no adopted BNG metric but accepted that the BNG information provided by the Applicant was suitable to understand the level of ecological enhancement in both England and Wales [ER 5.5.71]. The Applicant’s stated goal at the close of the Examination was to secure “a *minimum*” of 1% BNG in Priority Habitats in both England and Wales [REP8-024]. The ExA found that it was clear that a s111 of the Local Government Act 1972 would be used to secure biodiversity net benefit (“BNB”) for pond and hedgerow Priority Habitats in Wales, BNB for woodland Priority Habitat in Wales (with a s106 under the TCPA) and BNG covering all the habitats required in England and was satisfied that this would be secured [ER 5.5.83]. The ExA found that BNG would not be guaranteed unless a requirement was inserted into the dDCO and concurred with the Applicant’s wording in the form set out in SoCGs with FCC [REP7-259] and CWCC [REP8-021], inserting this into the rDCO [ER 5.5.96]. The ExA was satisfied that a diverse range of planting species had been chosen by the Applicant, which are able to thrive in relation to future anticipated climatic conditions and was satisfied that precise species and management of the soil and seed bank would be secured in the Landscape and Ecological Management Plan (“LEMP”) by R11 of the dDCO [ER 5.5.88]. The ExA concluded that appropriate consideration had been given to all LSE on biodiversity and, subject to the inclusion of the Applicant’s R to the rDCO, biodiversity carries neutral weight in the planning balance [ER 5.5.100].
- 4.44. The ExA noted that, in the absence of a finalised detailed design, definitive extents of hedgerow and tree losses across the Order Limits could not be fully confirmed [ER 5.5.39]. The ExA further noted that the Applicant has evidenced it had sought to avoid sensitive habitats and further efforts would be undertaken at the detailed design stage to avoid such receptors, as secured by R4 of the dDCO [ER 5.5.27]. The total amount of unavoidable tree loss would be compensated through new tree planting at the Flint and Northop Hall AGIs and Aston Hill, Mollington, Rock Bank, Babell, Pentre Halkyn and Cornist Lane BVSs [ER 5.5.42]. The ExA was satisfied that, while the worst-case scenario tree loss would result in significant adverse effects, the Applicant’s mitigation strategy, secured by R11 of the dDCO, is considerable [ER 5.5.90].
- 4.45. The ExA found that there was evidence of a package of measures to protect the ancient woodland including non-intrusive and intrusive mitigation practices, excavation techniques and limited linear relationship of the pipeline route with the woodland [ER 5.5.49]. The Applicant’s Arboricultural Impact Assessment Report Revision D [REP7-107] presented that no ancient woodland loss was proposed: for all ancient and veteran tree locations, trenchless construction methods would be used, with the aim of avoiding harm, secured in the OCEMP

[REP7-292] [ER 5.5.40, 5.5.51]. The ExA found that by applying a 15m buffer zone to ancient woodland, the Applicant was broadly in line with the content of National Planning Policy Guidance (“NPPG”), noting that such advice is not adopted by Wales in PPW or a TAN and the Woodland Trust’s advised buffer zone of 30m is not a formally adopted figure in Wales or England [ER 5.5.53, 5.5.55]. The ExA recognised that, close to New Bridge Farm, the pipeline works would be much closer to the ancient woodland but the package of measures, along with a change in ground levels between the pipeline route and ancient woodland, enabled the ExA to conclude that the Proposed Development is unlikely to harm the ancient woodland at New Bridge Farm or anywhere else along the pipeline route [ER 5.5.50]. The ExA was satisfied that these construction works would be completed in accordance with the OCEMP and secured by R5 of the dDCO [ER 5.5.60]. The ExA concluded that, post mitigation, the risks to ancient woodland were minimal [ER 5.5.90]. However, acknowledging national policy for Wales and England recognises that ancient woodland is irreplaceable, the ExA found that any potential risk to the health of the ancient woodland carried great negative weight in the planning balance [ER 5.5.98].

The Secretary of State’s Conclusion on Biodiversity, Ecology and Nature Conservation

- 4.46. The Secretary of State agrees with the ExA that the Applicant’s assessment methodology was appropriate to base a decision upon [ER 5.5.89]. The Secretary of State agrees with the ExA that the residual effects on biodiversity will be either negligible or not significant during the construction, operational and decommissioning stages, post mitigation and compensation and this carries neutral weight in the planning balance [ER 5.5.91]. The Secretary of State has had regard to the 2024 NPS EN-1 which outlines the expectation for projects to consider and seek to incorporate BNG where possible and that the Secretary of State should give weight to BNG where applicable [2024 EN-1 4.6.3]. The Applicant confirmed in its post Examination submission of 19 December 2023 that it was continuing to work with CWCC and FCC to identify appropriate offset locations and commit to BNG offsetting [PIR-005]. The Applicant stated that the draft BNG agreement was with CWCC for comment. FCC had identified and agreed a replacement location for hedgerow BNB provision and the Applicant had agreed and signed heads of terms with the landowner for the woodland BNB provision. Both draft BNB agreements were with FCC for comment. The Secretary of State considers that this continued engagement means it is very likely these agreements will be signed. The Secretary of State considers that BNG of 1% is secured by R14 in the DCO and has assigned this very slight positive weight in the planning balance, noting that BNG is not a mandatory requirement at this time.
- 4.47. The Secretary of State notes that the ExA was satisfied that the overall tree compensation strategy was appropriate [ER 5.5.90]. The Secretary of State is content that the total amount of unavoidable tree loss would be sufficiently compensated and is secured by R4 of the rDCO. The Secretary of State has further strengthened the mitigation offer by increasing the planting aftercare to 25 years, the lifetime of the Proposed Development. The Secretary of State notes the ExA have ascribed great negative weight to overall tree loss but considers that moderate negative weight should be ascribed to the overall tree loss, taking into account the mitigation secured by the dDCO. The Secretary of State notes that the ExA ascribes great weight to the potential risk to the health of the ancient woodland, but also notes that the ExA describes this risk as limited [ER 5.5.98]. On balance, the Secretary of State takes the view that the limited nature of this threat to the ancient woodland, with detailed mitigation measures, carries moderate negative weight in the planning balance. The Secretary of State concludes that, overall, all biodiversity, ecology and nature conservation considerations carry minor negative weight in the planning balance.

Cultural Heritage

- 4.48. The ExA have considered the full suite of legislation and policy for Wales and England relating to cultural heritage issues. EN-1 states “...*there should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost heritage assets cannot be replaced and their loss has a cultural, environmental, economic, and social impact*” [EN-1 5.8.14]. EN-1 also refers to considering the impacts on other non-designated heritage assets on the basis that assets have a heritage significance that merits consideration in decision making, even though the assets are of lesser value than designated heritage assets [EN-1 5.8.6]. For Wales, PPW, and for England, NPPF, also contain clear presumptions to protect heritage assets from harm: in the NPPF “*great weight*” is applied to any resultant harm to any designated asset.
- 4.49. The Applicant assessed cultural asset implications using a mixture of desk top studies, site visits and geophysical survey data in its ES Chapter 8 (Cultural Heritage) [REP7-044]. The Applicant noted that most residual effects on heritage assets would be not significant due to mitigation through preservation by record or preservation in situ through avoidance. The Applicant did however identify that there would be a moderate adverse residual effect on a non-designated asset, possible Bronze Age funerary remains, even with preservation by record. The Archaeological Evaluation Report [REP4-267] details evidence of these possible Bronze Age funerary remains in a large proportion of excavated trenches in the western-most section of the Proposed Development from Northop Hall to Babel BVS site, in Flintshire, Wales [ER 5.8.33].
- 4.50. Cadw, the Welsh Government’s Historic Advice Service, initially noted the “*potential impact*” on historic assets from the Proposed Development [RR-007]. Cadw confirmed that the Proposed Development would not have a direct impact on any designated historic assets or their settings, apart from the Registered Hollywell Common and Halkyn Mountain Landscape of Outstanding Historic Importance, and that while the Proposed Development would have a direct impact on these assets, the impact would be minor and not significant [ER 5.8.20]. In its SoCG, Cadw also requested further trial trenching and confirmed this could be done at a later stage by the Applicant given access issues [REP6A-010]. In its SoCG, Historic England noted two listed buildings would be temporarily affected but agreed with the Applicant’s assessment of a minor adverse magnitude of impact during construction with the effect being temporary slight adverse and not significant [REP6A-009]. The Applicant’s completed SoCGs with FCC [REP7-259] and CWCC [REP8-021] confirm agreement on all matters relating to cultural heritage.
- 4.51. The ExA concluded that the Applicant had designed the pipeline route to avoid and minimise as far as reasonably possible any risk to heritage assets as an overarching principle [ER 5.8.46]. The ExA concluded that no significant residual harm to designated assets would occur due to the Proposed Development with all mitigations, in accordance with statutory responses and SoCGs [ER 5.8.29]. The ExA agreed with the Applicant that after preservation by record there would still be a moderate adverse residual effect during construction on the Bronze Age funerary remains [ER 5.8.35, ER 5.8.50]. PPW, and supporting documents, such as TAN 24 ‘The Historic Environment’ does not give specific advice on non-designated assets within Wales [ER 5.8.36]. For England, NPPF sets out that harm to non-designated assets is a balance considering the scale of any harm or loss and the significance of the heritage asset [ER 5.8.37]. In the absence of specific guidance for Wales in PPW, TAN or local development plans, the ExA had reference to EN-1 which does

apply to Wales and adopted a similar approach to that outlined by the NPPF that harm to non-designated heritage assets is a balance considering the scale of any harm or loss and the significance of the heritage asset [ER 5.8.51]. The ExA concluded that there would be potential risk of harm to a non-designated asset and attributed moderate negative weight to this issue as it still has importance due to local cultural significance [ER 5.8.39, ER 5.8.51].

The Secretary of State's Conclusion on Cultural Heritage

- 4.52. The Secretary of State agrees with the ExA that the pipeline route has been designed to avoid and minimise, as far as reasonably possible, all heritage assets as an overarching principle [ER 5.8.46]. The Secretary of State considers that there is no significant harm forecast to designated assets resulting from the Proposed Development but acknowledges that there is potential harm to Bronze Age funerary remains, a non-designated asset, in Wales.
- 4.53. The ExA is clear that the risk of a moderate adverse residual effect to this specific non-designated asset, despite mitigation, carries moderate negative weight in the planning balance [ER 5.8.39, ER 5.8.51]. The Secretary of State notes that the ExA have had reference to EN-1 and the NPPF in coming to their conclusion on the non-designated asset, noting the absence of specific policy for Wales. The Secretary of State has considered PPW and TAN24 in full and considers that, while specific advice is not given for non-designated assets, there is sufficient information on general historic assets to come to a view.
- 4.54. PPW includes archaeological remains in its overarching definition of an historic asset and clarified that assets yet to be formally identified could include buried archaeological remains [PPW 6.1.3]. The Secretary of State is satisfied that the Bronze Age funerary remains constitute archaeological remains and therefore fall to be considered under PPW. PPW also confirms that the planning system recognises the need to conserve archaeological remains and that this is a material consideration in determining planning applications, whether the remains are a scheduled monument or not [PPW 6.1.23]. While PPW does not use the terminology of non-designated assets, it does state *"in cases involving less significant archaeological remains, planning authorities will need to weigh the relative importance of the archaeological remains and their settings against other factors, including the need for the proposed development"* [PPW 6.1.25]. TAN24 emphasises that *"the local planning authority should consult with their archaeological advisor about the impact, including the potential scale and harm, of the development on archaeological remains, and/or the adequacy of the mitigation of what has been proposed"* [TAN24 4.9]. The Secretary of State has had reference to the SoCG with FCC [REP7-259] which documents the record of engagement regarding the Application. The Secretary of State notes meetings and correspondence involving Clwyd Powys Archaeological Trust ("CPAT") who were involved alongside FCC and Cadw in determining the study areas for the Proposed Development and is satisfied that the local planning authority, in this case FCC, have consulted an archaeological advisor regarding the archaeological remains. The Secretary of State considers that the signed SoCG with FCC reflects the advice of CPAT and notes that all cultural heritage issues are agreed upon, particularly noting that trial trenching in additional consultation with CPAT will occur with a second phase of trenching post consent and requirements for archaeological watching where this second phase trenching is not possible [REP7-259].
- 4.55. The Secretary of State, having considered the relevant policy in relation to impacts on non-designated assets and, in particular, to the Bronze Age funerary remains in Flintshire, ascribes moderate negative weight to cultural heritage issues in the planning balance.

Noise and Vibration

- 4.56. The ExA have considered the full suite of legislation and policy for Wales and England relating to noise and vibration issues. EN-1 requires that operational noise should be assessed using the principles of the relevant British Standards (BS4142, BS6472 and BS8233) [ER 5.9.1]. For Wales, PPW and TAN11 and the Noise and Soundscape Plan for Wales 2018-2023 set out advice for new development that would generate noise or be exposed to existing noise sources [ER 5.9.2]. For England, the NPPF and NPPG seek to protect quality of life interests to related to new development and the Noise Policy Statement for England is also relevant which sets out Government's long-term vision for effective management of noise [ER 5.9.3]. The ExA also had regard to local and county level policies and principal noise and vibration related legislation [ER 5.9.7].
- 4.57. The Applicant assessed likely significant noise and vibration effects involved in the construction, operation and decommissioning of the Proposed Development in its ES Chapter 15 (Noise and Vibration) [REP7-057]. ES Chapter 15 refers to relevant British Standards, as set out in EN-1 and details that some local receptors are likely to experience an adverse noise impact of either medium or high magnitude as a result of trenchless installation techniques [REP7-057]. The Applicant states that this activity will mostly occur occasionally and for a short period of time, but at six locations the evening and nighttime working is expected to last up to four weeks [ER 5.9.12]. The Applicant detailed that receptors in residential areas of Mollington, Sandycroft, Aston, Ewloe and Northop Hall would experience either a medium or high adverse magnitude of noise impact, resulting in significant adverse effects even post mitigation [ER 5.9.14]. The Applicant assessed vibration effects during construction, operation and decommissioning as not significant and noise effects during operation as not significant [ER 5.9.16].
- 4.58. CWCC raised concerns regarding start-up and shutdown activities which were resolved during the Examination by amending the dDCO and Outline Noise and Vibration Management Plan Revision B [REP7-282]. There were no other objections from CWCC or FCC by the close of the Examination.
- 4.59. The ExA considered the effects of noise and vibration relative to NPS EN-1 and EN-4 and agreed that the Applicant had made a good account of all likely impacts within the overall ES [ER 5.9.25]. A worst-case noise mitigation approach was used in the ES at all locations and the ExA considered this reasonable in assessing effects during construction [ER 5.9.29]. The ExA was also satisfied a reasonable worst case was used for construction noise as the noise assessment of trenchless installation techniques was based on the use of horizontal directional drilling methods [ER 5.9.33].
- 4.60. The ExA found that during operational periods there would be no significant noise effects at any sensitive receptor and therefore attributed neutral weight to noise during operation [ER 5.9.16]. The ExA found that there would be no significant vibration effects during the construction, operation and decommissioning phases of the Proposed Development [ER 5.9.16, 5.9.27]. However, the ExA found that there would be significant noise disruption (medium or high magnitude) during construction for the residential areas of Mollington, Sandycroft, Aston, Ewloe and Northop Hall, even post carefully applied mitigation measures [ER 5.9.39]. The ExA attributed great negative weight to noise during construction, albeit taking place short term and during specific periods [ER 5.9.40].

The Secretary of State's Conclusion on Noise and Vibration

- 4.61. The Secretary of State considers that operational noise and vibration is negligible and agrees with the ExA that this carries neutral weight in the planning balance [ER 7.2.18]. The Secretary of State considers that there will be significant noise disruption on certain residential areas during construction, even post mitigation. The Secretary of State agrees with the ExA that noise during construction carries great negative weight [ER 7.2.18], but also considers that this disruption will be short lived and only during specific periods. Having regard to all noise and vibration effects during construction, operation and decommissioning, the Secretary of State has attributed moderate negative weight to noise and vibration overall in the planning balance.

Socio-Economic Effects (Including Human Health)/ Agricultural Land Use/ Mineral Working Implications/ And Overall Cumulative Effects

- 4.62. The ExA have considered the full suite of legislation and policy for Wales and England relating to socio-economic effects, agricultural land use, mineral working implications and overall cumulative effects.

Socio-Economic Effects (Including Human Health)

- 4.63. EN-1 states that all effects on humans should be assessed in the ES for each element of the project, at local and regional levels, including health impacts, job creation, training opportunities, provision of additional local services, improvement to local infrastructure, provision of education/visitor facilities, effects on tourism and impact of the changing influx of workers during different stages [ER 5.12.1]. For Wales, PPW encourages involving the local community and consideration of needs, aspirations, health and wellbeing of all people to enhance a sense of community, as does Future Wales: The National Plan 2040 [ER 5.12.3]. The Well-Being of Future Generations Act 2015 ("The WBFGA") is about improving the social, economic, environmental and cultural wellbeing of Wales and the ExA have had regard to this for Wales [ER 5.12.10]. For England, NPPF states "*policies and decisions should aim to achieve healthy, inclusive and safe places*" and places a focus on supporting economic interests [ER 5.12.4]. LDPs for both FCC and CWCC require development to create places that are safe, accessible and encourage and support good health, well-being and equality [ER 5.12.9].
- 4.64. The Applicant assessed a range of socio-economic and health factors in its ES Chapter 16 (Population and Human Health) Rev C [REP7-059] and provided a bigger picture economic context in ES Appendix B- Potential Economic Impacts of the HyNet North-West Project [REP1-046]. The Applicant considered a range of factors on human health from construction and operation, including air quality, noise, physical activity and employment opportunities [ER 5.12.20].
- 4.65. The Applicant found that, at some locations, the duration of evening and nighttime working is expected to last for four weeks and noise impacts on human health are therefore likely to result in a significant adverse effect on human health during construction [ER 5.12.22]. The Applicant found that users of recreational facilities Hawarden and Ewloe Community Woodland nature reserve and community allotments on Upper Aston Hall Lane are likely to experience significant adverse effects through pedestrian route distance increase and reduced accessibility during construction [ER 5.12.23]. The Applicant analysed impacts on Public Rights of Way ("PRoWs") and found that at various sections of the Proposed

Development these would include temporary delays to journeys due to potential increases in volume of construction traffic, temporary loss in amenity value from construction work, temporary severing of routes by open cut trenches and consequent significant adverse effects for walkers, cyclists and horse riders [ER 5.12.24 – 5.12.28]. The Applicant found that, post mitigation, the residual effects during construction are considered to be either neutral or not significant, except users of ProW routes 309/BR4/1 and 309/FP3/1, residents at Thorton Manor Care Centre and Nursing Home, pupils and staff at St Oswald's School, users at Sandycroft County Primary School and users at Greenacres Animal Park where there are significant adverse effects, albeit temporary [ER 5.12.31]. The Applicant set out a range of potential risks but concluded that there would be no LSE from major accidents or due to safety and security matters [ER 5.12.38]. In relation to overarching economic impacts, the Applicant argued that the wider HyNet Project offers substantial investments estimated to be in the region of £17.7 billion and operating expenditure of £29.1 billion in the period up to 2050 [ER 5.12.34].

- 4.66. FCC and CWCC were broadly content with the merits of the socio-economic case made by the Applicant [ER 5.12.36]. FCC requested the Applicant to upgrade the Bridleway and ProW 309/10/30 to a tarmac surface to make them suitable for construction traffic [ER 5.12.36]. Various IPs made detailed submissions relating to specific land areas and businesses [ER 5.12.37]. Some IPs raised concern around the possibility of an explosion and the potential security risks at working areas during construction [ER 5.12.38]. CF Fertilisers [RR-081] indicated that the new pipeline and AGI terminal at Ince were within close proximity of land subject to a Control of Major Accident Hazards ("COMAH") impact zone [ER 5.12.39]. However, in the SoCG between the Applicant and CF Fertilisers [REP4-255] it is noted that this site is no longer subject to a COMAH impact zone and Health and Safety Executive ("HSE") did not raise any objections in this regard [REP7-314 and REP8-045]. The Applicant [REP8-035] in response to IPs safety concerns, confirmed that the risk of corrosion of CO2 pipeline systems is well known and understood and that the Proposed Development would comply with precisely defined limits covering all operating parameters [ER 5.12.84]. Liverpool Friends of the Earth ("LFoE") cited the goals of the WBFGA and submitted that the spirit of these goals is not embraced by the Proposed Development, owing to the high-level business model delivery approaches by 'Eni' (the Applicant's alleged parent company) [REP7-315] [ER 5.12.40].
- 4.67. The ExA asked various questions regarding stated wider socio-economic benefits of the Proposed Development [ER 5.12.55]. The ExA acknowledged that employment opportunities from construction work would have significant wide ranging positive societal effects [ER 5.12.55]. The Applicant submitted that it was looking to maximise economic benefits of the Proposed Development in relation to supply chain effects and has engaged with 250 local and national organisations [ER 5.12.56]. The Applicant also evidenced that it was promoting a 'local content' requirement within the invitation to tender for construction contractors bidding for the pipeline contract and would consider this as part of the technical and commercial evaluations prior to any award of contract [ER 5.12.57]. The Applicant is a member of the HyNet Consortium which has worked collaboratively under the University of Chester's leadership alongside the Engineering Construction Industry Training Board to address provision for high skill job opportunities for the local community and develop a pilot HyNet apprentice programme [ER 5.12.58]. The Applicant has also proactively met with local education providers to discuss the development and the opportunity for interaction in the project and/or with the Applicant's existing outreach programmes which provide educational opportunities to schools across the North Wakes region through the provision of environmental education and the DangerPoint education centre [ER 5.12.60].

- 4.68. The ExA concluded that the Applicant had accurately assessed population and human health effects within ES Chapter 16 Rev C [REP7-059] using appropriate methodologies and study area [ER 5.12.72]. The ExA found that adverse population and human health effects were broadly agreed upon by all relevant technical parties active in the Examination [ER 5.12.54]. The ExA agreed that some community assets, private properties and local businesses would experience moderate or significant adverse effects, even post mitigation, during the construction period due to noise or other temporary construction activity [ER 5.12.73]. The ExA concluded that the noise and disruption and effects on human health during construction periods carried great negative weight in the planning balance [ER 7.2.18]. The ExA agreed with the Applicant that upgrading the Bridleway and ProW 309/10/30 was not necessary for the construction of the Proposed Development and would be an onerous requirement [ER 5.12.42]. The ExA was content, considering the responses from HSE, that safety interests would be respected regarding the land that was a COMAH impact zone [ER 5.12.69]. The ExA found that appropriate and adequate mitigation would be secured in the dDCO and there would be no significant effects arising from accidents, safety or security matters and ascribed this neutral weight in the planning balance [ER 5.12.87].
- 4.69. The ExA accepted there are bigger picture socio-economic positive impacts associated with the Proposed Development and the wider HyNet Project [ER 5.12.61]. The ExA noted that the majority of the wider HyNet Project construction spend would be sourced in the North West while equipment spend would be more dispersed [ER 5.12.62]. The ExA acknowledged that there would be overall annual job creation of around 5,979 jobs for the North West region and 11,259 for the UK as a whole from the wider HyNet Project and acknowledged that this offers very great socio-economic benefits both regionally and nationally [ER 5.12.64]. The total Gross Value-Added gains from the wider HyNet Project spend are estimated at £16.9 billion for the North West and £30.5 billion for the UK as a whole [REP1-046]. The ExA recognises that the wider HyNet Project offers a generational opportunity to deliver extensive decarbonisation of the economy and generate very great economic benefits and notes that the Proposed Development would be inextricably linked to ensuring the delivery of the wider HyNet Project aims and benefits [ER 5.12.67]. The ExA concluded that the range of wider HyNet Project economic benefits regionally and UK wide are substantial and ascribed this matter very great weight in the planning balance [ER 7.2.21].

Best and Most Versatile Agricultural Land

- 4.70. EN-1 advises Applicants should seek to minimise impacts on best and most versatile (“BMV”) agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and use land of poorer quality instead [EN-1 5.10.8].
- 4.71. The Applicant assessed the impact of the Proposed Development on BMV agricultural land in its ES Chapter 11 (Land and Soils) [REP7-050]. ES Chapter 11 identified that 73% of soil samples collected within the Newbuild Infrastructure Boundary are BMV and the potential loss and deterioration of BMV soil at AGIs and BVSs is a significant moderate adverse effect of the Proposed Development [ER 5.12.14]. Elsewhere along the route, the magnitude of the impact would be mitigated through careful extraction, handling and re-use of the differing agricultural soils, which would be documented in a Soil Management Plan (“SMP”) within the OCEMP [ER 5.12.14]. Post mitigation, the Applicant stated that there would only be permanent loss of BMV land at the AGIs and BMVs, which has a moderate adverse impact

[ER 5.12.16]. Additionally, the Applicant argued it had applied an effective avoidance and mitigation package along the pipeline route to avoid any other loss of BMV [ER 5.12.44].

- 4.72. The ExA accepted that the SMP used to base the final Construction Environmental Mitigation Plan (“CEMP”) upon would manage the risk of damage to soil structure as far as possible and that the detailed design would take into consideration the location of BMV soils seeking to reduce impacts to and/or avoid these areas wherever possible [ER 5.12.76]. The ExA found that the dDCO did not prevent landowner access over the below ground pipeline aspects of the Proposed Development post construction and the Proposed Development is designed to allow access by farm machinery and traffic currently known to use the land [ER 5.12.75]. However, the ExA further notes that if very heavy machinery were needed, that use could be restricted where it could damage the pipeline [ER 5.12.75]. The ExA found that there would be some loss of BMV agricultural land where the AGIs and BVSSs are proposed to be located, even with mitigation as secured by the dDCO [ER 5.12.77]. The ExA attributed moderate negative weight to this issue, as only a small amount of land was involved, and other BMV land affected by the Proposed Development would otherwise remain available for agricultural purposes [ER 5.12.78].

Mineral Working Implications

- 4.73. The Applicant assessed the land for the Proposed Development against the Mineral Safeguarding Areas (“MSAs”) within FCC’s and CWCC’s administrative areas in ES Appendix 11.3 Mineral Resource Assessment Parts 1 and 2 Rev A [REP7-120] and [REP7-121].
- 4.74. The ExA acknowledged the presence of the MSA and had regard to local policy which protects such sites [ER 5.12.70]. The ExA concluded that the LSE assessed in the ES were correct, existing development was already sterilising such areas and the impacts to MSAs were otherwise inconsequential, noting that there was no significant concern arising from LIR submissions from FCC or CWCC [ER 5.12.70]. The ExA concluded that there were no significant adverse effects to MSAs to count against the Proposed Development [ER 5.12.79] and ascribed neutral weight to mineral working implications in the planning balance [ER 7.2.18].

Overall Cumulative Effects

- 4.75. The Applicant assessed the impact of the Proposed Development in conjunction with other developments in its ES Chapter 19 (Combined and Cumulative Effects) Rev C [REP7-065]. The Applicant did not identify any additional mitigation measures in their ES Chapter 19 [REP7-065] and did not identify any significant in-combination and cumulative effects [ER 5.12.71].
- 4.76. The ExA asked questions to the Applicant regarding their methodology in assessing cumulative effects [ER 5.12.89]. The Applicant stated that a continual review of prospective other developments after the submission of its ES was not proposed as part of its methodology and a line must be drawn at a point in time to enable the assessment of cumulative effects to be completed, pointing the ExA to the Planning Inspectorate’s Advice Note Seventeen: Cumulative Effects Assessment (August 2019) which states it “*is understood that applicants are required to stop assessment work at a particular point in time in order to be able to finalise and submit an application*” [ER 5.12.92]. The Applicant had consulted the public and all consultees on the long list of developments presented in the

HyNet DCO Consultation Report [APP-031]. The Applicant continued to consult with both FCC and CWCC regularly, as recorded in their respective SoCGs [REP7-259] and [REP8-021]. Identified development 22/03693/FUL, Encirc Glass, is of a proximity and scale to have the potential for significant Inter-Project Effects but was received by CWCC on 30 September 2022 and, as such, fell outside of the scope of the ES assessment [ER 5.12.94]. The Applicant voluntarily engaged with Encirc Glass via SoCG discussions [REP6-026] regarding the interaction between the two developments, primarily related to site access, and this is being handled via commercial discussions [ER 5.12.94]. No changes to the conclusions of the assessment of cumulative effects in the ES are anticipated as a result of inclusion of other developments noted during the course of the Examination [ER 5.12.95].

- 4.77. The ExA found that ES Chapter 19 properly assessed how the effects of the Proposed Development would combine and interact with the effects of other development (including projects for which consent has been sought or granted, as well as those already in existence) and that the Proposed Development complied with EN-1 and the EIA Regulations [ER 5.12.99]. The ExA considered IP submissions, CWCC LIR [REP1A-002], Appendix [REP1A-003] and FCC LIR [REP1A-005], Appendix [REP1A-006] as well as all Examination updates [ER 5.12.100]. The ExA agreed with the findings of ES Chapter 19 [ER 5.12.71] and considered there would be no significant cumulative effects arising from the construction or operation of the Proposed Development, given the findings of the ES and proposed mitigation secured in the dDCO [ER 5.12.97]. The ExA also found that there would be no significant cumulative effects due to decommissioning of the existing pipeline and the Proposed Development [ER 5.12.102].
- 4.78. The ExA considered the submissions of LFoE but found that many of its submissions referred to wider HyNet Project impacts, relating to EIA and HRA matters, which the ExA considered went beyond the remit of the Examination [ER 5.12.97]. The ExA considered the Proposed Development stood apart from the wider HyNet Project and was not considered to form part of a wider multi-phase large-scale project by the Planning Inspectorate at the 'Acceptance' stage of the Application [ER 5.12.97]. Notwithstanding this, the ExA was satisfied by the Applicant that work relating to the offshore storage of CO₂, outside the scope of the Proposed Development, was being overseen by a competent regulatory body, the North Sea Transition Authority [ER 5.12.101]. However, the ExA accepted that there are clear wider direct/indirect environmental and socio-economic benefits overlaps when looking at the bigger picture arguments relating to the wider HyNet Project and acknowledges these as part of the assessment of the need case [ER 5.12.98].
- 4.79. The ExA concluded that there would be no significant cumulative effects for any aspect of the Proposed Development [ER 5.12.103] and assigned neutral weight to this in the planning balance [ER 7.2.18].

The Secretary of State's Conclusion on Socio-Economic Effects (Including Human Health)/ Agricultural Land Use/ Mineral Working Implications/ And Overall Cumulative Effects

- 4.80. The Secretary of State considers that there will be significant adverse impacts on human health during the construction of the Proposed Development and agrees with the ExA that this should carry negative weight in the planning balance. However, she concludes that this impact will be temporary and ascribes moderate negative weight to the noise and disruption impacts on human health. The Secretary of State agrees with the ExA that there are no significant effects arising from major accidents and disasters, safety or security matters and is content to ascribe this neutral weight in the planning balance. With regard to the broader

socio-economic effects of the Proposed Development the Secretary of State considers that, while the Proposed Development is related to the wider HyNet Project, the full economic benefits from the wider HyNet project are not all attributable to the Proposed Development. The Secretary of State has therefore attributed an overall great positive weighting to the socio-economic effects (including human health), also noting the, albeit temporary, adverse effect on human health resulting from noise and disruption during construction.

- 4.81. With regard to BMV agricultural land, the Secretary of State notes the moderate negative weight ascribed by the ExA. The Secretary of State notes the quantum of land that would be affected, the proposed mitigation and avoidance by the Applicant and considers that the Applicant would use the SMP and CEMP to further mitigate the damage to soil structure and avoid the location of BMV soils wherever possible. As such, the Secretary of State ascribes minor negative weight to the loss of BMV land.
- 4.82. The Secretary of State agrees with the conclusion drawn by the ExA regarding mineral workings and attributes neutral weight.
- 4.83. The Secretary of State concludes that, overall, socio-economic effects (including human health), agricultural land use and mineral working implications carry great positive weight in the planning balance.
- 4.84. The Secretary of State notes that the Proposed Development is separate from the wider HyNet Project and considers that cumulative effects, including those related to the wider HyNet Project where appropriate and where sufficient information is publicly available, have been comprehensively assessed by the Applicant and is satisfied with the methodology used. The Secretary of State agrees with the conclusion drawn by the ExA regarding cumulative effects and assigns this neutral weight.

5. Habitats Regulation Assessment

- 5.1. The Secretary of State's HRA is published alongside this letter. The paragraphs below should be read alongside the HRA which sets out in full the Secretary of State's consideration of these matters.
- 5.2. The Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation ("SACs"). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together form part of the UK's National Site Network ("NSN").
- 5.3. The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as "protected sites").
- 5.4. Regulation 63 of the Habitats Regulations provides that: *"....before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely*

to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."

And that: "In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."

- 5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects ("LSE") cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the protected site in view of its conservation objectives.
- 5.6. Where an adverse effect on the integrity ("AEoI") of the site cannot be ruled out beyond all reasonable scientific doubt, regulations 64 and 68 of the Habitats Regulations provide for the possibility of a derogation which allows such plans or projects to be approved provided three tests are met:
- there are no feasible alternative solutions to the plan or project which are less damaging to protected sites;
 - there are imperative reasons of overriding public interest ("IROPI") for the plan or project to proceed; and
 - compensatory measures are secured to ensure that the overall coherence of the NSN is maintained.
- 5.7. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites unless he chooses to continue to consider the derogation tests as above. The complete process of assessment is commonly referred to as a HRA.
- 5.8. The ExA considered that there was sufficient information before the Secretary of State to enable her to undertake an AA, in order to fulfil her duties under the requirements of the Habitats Regulations.
- 5.9. The Secretary of State has carefully considered the information presented during the Examination, including the Report on the Implications for European Sites ("RIES"), the ES, representations made by IPs, the ExA's Report and all representations received in response to the consultation letters. She considers that the Proposed Development has the potential to have an LSE on seven protected sites when considered alone and in-combination with other plans or projects:
- River Dee and Bala Lake/Afon Dyfrdwy a Llyn Tegid SAC;
 - Deeside and Buckley Newt Sites SAC;
 - Mersey Estuary SPA;

- Mersey Estuary Ramsar site;
- Dee Estuary/ Aber Dyfrdwy SAC;
- Dee Estuary SPA; and
- Dee Estuary Ramsar site.

5.10. The Secretary of State has undertaken an AA in respect of the conservation objectives of the sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects, will result in an AEol of the identified protected sites. The Secretary of State has considered all information available to her including the recommendations of the ExA, the advice NE as the Statutory Nature Conservation Body (“SNCB”) for England and for English waters within 12nm, NRW, the SNCB for Wales and Welsh waters within the 12nm limit, the views of all other IPs and the Applicant’s case.

The Secretary of State’s Conclusion on the HRA

5.11. Having considered the available information, including the mitigation measures proposed by the Applicant, the Secretary of State is satisfied that an AEol on the identified protected sites can be excluded beyond reasonable scientific doubt, subject to the secured mitigation measures. This conclusion and its reasoning are consistent with the recommendations of the ExA and advice of NE and NRW.

6. Consideration of Land Rights and Related Matters

6.1. To support the delivery of the Proposed Development, the Applicant is seeking powers of CA and TP of land and rights which it had not been able to acquire by voluntary agreement. The Applicant is seeking these powers to:

- acquire land permanently within the Order limits;
- acquire interests in subsoil within the Order limits;
- temporarily possess land within the Order limits;
- acquire rights over some land within the Order limits;
- acquire rights over some subsoil or airspace under or over any street within the Order limits;
- extinguish rights over some of the land within the Order limits; and
- temporarily suspend rights over some of the land within the Order limits in order to construct, operate and maintain the Proposed Development [ER 8.3.3].

6.2. None of the land is National Trust Land or Common Land but there are Open Space Land and Crown Land or Interests within the Order Limits [ER 8.2.2].

Open Space Land

6.3. Sections 131 and 132 of the 2008 Act apply to the CA of Open Space Land and for the Secretary of State to grant development consent they would need to be satisfied that one of the relevant subsections applies or the Order would be subject to Special Parliamentary Procedure. The ExA was satisfied that Special Parliamentary Procedure under s131 of the 2008 Act was not required as the Proposed Development would comply with both limbs of the test as set out in s131(5), namely that the width of substratum would be no more than 8m and total area no more than 200 square metres, and there would be no need for the giving of exchange land [ER 8.8.9]. The ExA was also satisfied that Special Parliamentary Procedure under s132 of the 2008 Act was not required as the Open Space Land would be

no less advantageous than it was before, in accordance with s132(3) of the 2008 Act [ER 8.8.17]. The Secretary of State agrees.

Crown Land

- 6.4. Section 135(1) of the 2008 Act precludes the CA of interests in Crown Land unless the land is held “*otherwise than by or on behalf of the Crown*” and the appropriate Crown authority consents. Section 135(2) of the 2008 Act precludes a SCO from including any provision applying to Crown Land or Interests without consent from the appropriate Crown authority. The Applicant at Appendix 2 of its DL7 covering letter [REP7-001] provided a copy of the necessary Crown authority for England, from the Ministry of Defence on behalf of the Secretary of State for Defence, in accordance with s135(1) and s135(2) of the 2008 Act [ER 8.8.23]. The Welsh Ministers and the Crown Estate on behalf of The King’s Most Excellent Majesty in Right of His Crown [REP9-016] provided the necessary Crown authority for Wales on 20 September 2023, in accordance with s135(1) and s135(2) of the 2008 Act [ER 8.8.23]. The ExA is satisfied that the necessary Crown authority has been obtained [ER 8.8.24]. The Secretary of State agrees.

Protective Provisions

- 6.5. At the close of the examination, a number of statutory undertakers and other parties had protective provisions in the dDCO which had not been agreed and the ExA recommended that the Secretary of State should seek updates [ER 10.2.1]. The Secretary of State wrote to these parties and the Applicant on 31 January 2024 requesting an update.

Cadent Gas Limited

- 6.6. Cadent Gas Limited confirmed by letter on 2 February 2024 that it and the Applicant had reached an agreement on the form of Protective Provisions (“PPs”) within a side agreement and it had withdrawn its objection. The PPs agreed are the same as included in the ExA’s rDCO at the close of the Examination. This was confirmed by the Applicant on 14 February 2024.

The Canal and River Trust (“CRT”)

- 6.7. CRT confirmed by letter on 14 February 2024 that it and the Applicant had not yet reached an agreement on the form of PPs and a voluntary land agreement and its objection remained. CRT also submitted additional PPs for inclusion in the DCO for the consideration of the Secretary of State.
- 6.8. The Applicant confirmed on 14 February 2024 that the parties were continuing to progress negotiations for the voluntary land agreement and the Applicant stated that it considered its commercial offer to be fair and reasonable. The Applicant considered that PPs were not fully agreed due to an outstanding point on restriction of CA powers. The Applicant considers that it cannot agree to restriction of the use of compulsory powers unless the voluntary land agreement is in place, citing that this would create a ransom situation and create risk to the delivery of the Proposed Development.
- 6.9. The ExA considered the PPs were fit and appropriate for inclusion in the rDCO [ER 9.2.51]. The Secretary of State agrees with the ExA and is of the view that the PPs provide sufficient protection to CRT.

Dŵr Cymru Welsh Water (“Welsh Water”)

- 6.10. Welsh Water confirmed by letter on 14 February 2024 that it and the Applicant had not yet reached an agreement on the form of PPs and its objection remained. Welsh Water submitted that it believed the PPs afforded to United Utilities better align with their expectations and requirements and that consistency with water utility undertakers would be desirable. Welsh Water confirmed by letter on 19 February 2024 that it was awaiting a response from the Applicant regarding these PPs. Welsh Water confirmed by letter on 19 March 2024 that it and the Applicant had not yet reached an agreement on the form of PPs and its objection remained.
- 6.11. The Applicant confirmed on 14 February 2024 that it did not consider it appropriate or practical to restart PPs discussions entirely anew at this stage. The Applicant stated that, as far as it was aware, only two points of definition were outstanding in the PPs after the close of the Examination. The Applicant confirmed that it would continue working with Welsh Water to agree reasonable amendments to the PPs under paragraph 129 “The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Welsh Water” but did not consider it necessary to amend the DCO before the Secretary of State as these PPs are reasonable. The Applicant finally notes that the PPs align with the standard protections for water and sewerage undertakers.
- 6.12. The ExA noted that Welsh Water, aside from completing a SoCG with the Applicant [REP7-266] had not taken any other part in the Examination [ER 9.2.55]. The Secretary of State, noting the responses to her request for an update, considers that it is not appropriate at this stage post Examination to start considering a completely new set of PPs. The Secretary of State agrees with the ExA’s conclusion that the PPs were fit and appropriate for inclusion in the rDCO [ER 9.2.56] and is of the view that the PPs in the rDCO provide sufficient protection to Welsh Water.

Encirc Limited (“Encirc”)

- 6.13. Encirc confirmed by letter on 13 February 2024 that it and the Applicant had not yet agreed PPs within a side agreement and its objection remained. Encirc submitted that its preferred PPs were the same as those submitted at DL7 [REP7-321]. Encirc updated that it hoped to convene with the Applicant’s technical team to understand if there was a solution to allow for a single trenchless crossing under the existing rail line and proposed new Encirc rail sidings to reflect their preferred PPs.
- 6.14. The Applicant confirmed on 14 February 2024 that the parties had agreed a basis for engagement and were in the process of establishing further meetings to progress towards agreeing Heads of Terms and subsequent real estate agreements, necessary PPs and side agreements.
- 6.15. The ExA considered that the Applicant provided clear, reasoned and persuasive arguments justifying why the PPs, as set out in the dDCO, provided adequate and appropriate protection for Encirc [ER 9.2.68]. The ExA was not persuaded that the additions to the PPs, being promoted by Encirc at DL7, were either proportionate or reasonable additions [ER 9.2.68]. The ExA considered that the PPs were fit and appropriate for inclusion in the rDCO [ER 9.2.71]. The Secretary of State agrees with the ExA and is of the view that the PPs provide sufficient protection to Encirc.

Environment Agency (“EA”)

- 6.16. EA confirmed by letter on 12 February 2024 that it and the Applicant had not yet agreed an option agreement and lease for environmental mitigation land, its objection still remained but that it would continue to engage with the Applicant and seek resolution on this matter.
- 6.17. The Applicant confirmed on 14 February 2024 that the points of difference between the parties had narrowed since the close of Examination and the Applicant considered that the remaining points were resolvable. The Applicant stated that it was awaiting a response from the EA and considered its commercial offer to be a fair and reasonable one.
- 6.18. EA and the Applicant agreed PPs during the examination on 5 September 2023, as confirmed in their completed SoCG [REP9-004]. The Secretary of State concludes that the PPs as set out in the rDCO are agreed, the PPs provide sufficient protection to EA and notes the parties would continue to seek resolution on the outstanding matters.

Exolum Pipeline Systems Limited (“Exolum”)

- 6.19. In a post Examination submission received on 30 October 2023, Exolum confirmed that PPs had been agreed with the Applicant on 20 September 2023. Exolum enclosed the agreed PPs, noting that they had not been included in the Applicants DL9 submission as they did not have the time to include them in the submission. Exolum did not respond to the Secretary of State’s letter of 31 January 2024.
- 6.20. The Applicant confirmed on 14 February 2024 that the PPs were agreed and included the agreed drafting in Appendix A to its letter. The Secretary of State has made the agreed amendments to the DCO.

Network Rail (England and Wales) (“NR”)

- 6.21. NR confirmed by letter on 8 February 2024 that it and the Applicant had completed a framework agreement on 18 December 2023, including agreed appended PPs, which would be deemed to be incorporated into the Order. NR confirmed that a property agreement was still being negotiated and when this was complete, NR would withdraw its objection.
- 6.22. The Applicant confirmed the framework agreement, PPs and other agreements were agreed but submitted that other agreements may not be fully completed until there is a detailed design. The Applicant confirmed that the PPs in the framework agreement were those agreed on 20 September 2023 as submitted by the Applicant in the Applicant’s Response to Rule 17 request for further information [REP9-012]. The Applicant confirmed in REP9-012 that there had been no change to the PPs in respect of NR since DL8. The Secretary of State understands the parties have come to an agreement and, if the PPs within the framework agreement are different to those within the rDCO, that the PPs within the framework agreement will supersede those in the rDCO.
- 6.23. The ExA considered that the PPs provided in the dDCO at the close of Examination provided an appropriate level of protection in favour of NR’s land, apparatus and statutory undertaking [ER 8.7.358]. The ExA considered the PPs were agreed and they were fit and appropriate for inclusion in the rDCO [ER 9.2.45]. The Secretary of State agrees and is of the view that the PPs provide sufficient protection for NR.

National Grid Electricity Transmission PLC (“NGET”)

- 6.24. NGET confirmed by letter on 14 February 2024 that it and the Applicant had not yet reached an agreement on the form of PPs and its objection remained. NGET confirmed by letter on 21 February 2024 that an agreement still had not been reached and requested to provide a further update to the Secretary of State by 23:59 on 1 March 2024. On 6 March 2024, NGET provided a table to the Secretary of State outlining the differences in PPs. The Secretary of State has reviewed this table and amended paragraph 17 of the PPs as set out in paragraph 9.1 below.
- 6.25. The Applicant confirmed on 14 February 2024 that the PPs were not agreed and only one issue, technical in nature, remained.
- 6.26. The ExA considered that the PPs provided in the dDCO at the close of the Examination provided a suitable level of protection in favour of NGET and considered them fit and appropriate for inclusion in the rDCO [ER 9.2.32]. The Secretary of State remains in agreement with the ExA that the PPs provide sufficient protection for NGET.

National Gas Transmission PLC (“NGT”)

- 6.27. NGT confirmed by letter on 14 February 2024 that it and the Applicant had not yet reached an agreement on the form of PPs and its objection remained. NGT confirmed by letter on 21 February 2024 that an agreement still had not been reached and requested to provide a further update to the Secretary of State by 23:59 on 1 March 2024. On 6 March 2024, NGT provided a table to the Secretary of State outlining the difference in PPs. The Secretary of State has reviewed this table and made an amendment to the DCO to correct the name of NGT.
- 6.28. The Applicant confirmed on 14 February 2024 that the PPs were not agreed and only one issue, technical in nature, remained.
- 6.29. The ExA considered that the PPs provided in the dDCO at the close of the Examination provided a suitable level of protection in favour of NGT and considered them fit and appropriate for inclusion in the rDCO [ER 9.2.32]. The Secretary of State remains in agreement with the ExA that the PPs provide sufficient protection for NGT.

National Highways (“NH”)

- 6.30. NH confirmed by letter on 14 February 2024 that it had had no further dialogue with the Applicant regarding PPs since the close of the Examination and its objection remained. NH reiterated that its objection was the same as set out in REP7-316 and REP8-046 at the close of Examination. NH stated that the parties were in the process of negotiating an option agreement for a lease of easement and expected this to be concluded shortly, with respect to NH’s objection to CA powers. NH reiterated that CA was disproportionate and unnecessary and would cause serious detriment to NH’s undertaking.
- 6.31. The Applicant confirmed on 14 February 2024 that it could not agree to this commercial agreement as NH had adopted the position that this agreement would be conditional upon the Applicant no longer requiring powers of CA or TP and requesting the Secretary of State to remove these from the DCO. The Applicant considers that, without the voluntary agreement in place, this puts it in a ransom position. The Applicant further submitted that given NH’s inconsistent positions to date, it considered the degree of risk in not seeking

compulsory powers and being reliant on reaching agreement with NH to be unacceptable. The Applicant reiterated that it was still seeking compulsory powers in respect of NH and these powers remained necessary to ensure the delivery of the Proposed Development. The Applicant reiterated that its position on PPs remained as at the close of Examination and supported by the opinion of King's Counsel [REP8-038], that the NH drafting was unnecessary, disproportionate and unreasonable and the Applicant's drafting of the PPs should be preferred.

- 6.32. The ExA was satisfied that the CA/TP powers sought by the Applicant in relation to NH were required to facilitate and/or are incidental to the Proposed Development and was satisfied that they met the conditions set out in s122(2) of the 2008 Act [ER 8.7.437]. The ExA considered the Applicant's PPs would afford NH an appropriate level of protection in terms of its statutory undertaking, land and apparatus and ensure the Proposed Development would not result in serious detriment to the carrying on of its undertaking [ER 8.7.439]. These PPs were included in the rDCO. The Secretary of State agrees and is of the view that the PPs provide sufficient protection for NH.

Peel NRE Limited ("Peel")

- 6.33. Peel confirmed by letter on 2 February 2024 that it and the Applicant had reached an agreement on PPs and a framework agreement and it had withdrawn its objection. The PPs agreed are the same as included in the ExA's rDCO at the close of the Examination. This was confirmed by the Applicant on 14 February 2024.

United Kingdom Oil Pipelines Limited ("UKOP")

- 6.34. UKOP did not respond to the Secretary of State's letter of 31 January 2024. The Applicant confirmed on 14 February 2024 that it understood the PPs are agreed as included in the dDCO at the close of the Examination and that it understood the objection was resolved. The Secretary of State notes that no further response was received from UKOP but in any event notes that the ExA considered the PPs in favour of UKOP to be fit and appropriate for inclusion in the rDCO, providing a suitable level of protection for UKOP [ER 9.2.60]. The Secretary of State agrees with that conclusion.

Wales and West Utilities ("WWU")

- 6.35. WWU did not respond to the Secretary of State's letter of 31 January 2024. The Applicant confirmed on 14 February 2024 that it understood the PPs are agreed as included in the dDCO at the close of the Examination and that it understood the objection was resolved, as set out within the signed SoCG [REP8-023]. The Secretary of State considers that the PPs are agreed and notes that the ExA considered the PPs in favour of WWU to be fit and appropriate for inclusion in the rDCO, providing a suitable level of protection for WWU [ER 9.2.53].

The Secretary of State's Conclusion on Land Rights and Related Matters

- 6.36. The Secretary of State has considered all the information in the ExA's Report, all submissions and the further updates detailed above. The ExA considered objections set out in RRs and WRs, subsequent submissions and submissions made at the Compulsory Acquisition Hearings when considering planning issues and the grant of CA powers [ER 8.7.1].

- 6.37. The ExA considered generic objections from 24 parties [ER 8.7.2 – 8.7.119]. The ExA was satisfied that sufficient time for negotiations was allowed by the Applicant and no formal planning applications on land affected by the Proposed Development had been drawn to the attention of the ExA during Examination [ER 8.7.115]. The ExA considered that the CA/TP powers sought met the requirements set out in s122(2) of the 2008 Act as they are either required for the specific works identified on the Works Plans or are necessary to facilitate or are incidental to those works [ER 8.7.117]. The ExA found that there was a compelling case in the public interest for including the CA/TP powers sought in the rDCO and that the conditions set out in s122(3) of the 2008 Act are satisfied [ER 8.7.119]. The Secretary of State agrees.
- 6.38. The ExA considered non-generic objections from Essar Oil UK Ltd, Encirc Limited, Peel NRE Limited, Travelodge Hotels Limited, Brian Cook, Emma Clare Craven Smith-Milnes and Anthony David Wynne Griffith, Sarah Harley, Benjamin Jones (R B & J Jones and Son), Messrs H W Oultram & Co, Miss C Oultram & Messrs S & A Oultram, Gillian Stevenson, Phillip Warrington and Vera Elaine Warrington and Carl Woods [ER 8.7.120 – 8.7.279]. For all objectors, the ExA considered that the CA/TP powers sought met the requirements set out in s122(2) of the 2008 Act and that there was a compelling case in the public interest for including the CA/TP powers sought in the rDCO and the conditions set out in s122(3) of the 2008 Act are satisfied [ER 8.7.120 – 8.7.279]. The Secretary of State agrees.
- 6.39. The ExA found that all reasonable alternatives to CA had been explored and there was a clear need for the CA and TP of all the land plots detailed in the Book of Reference [REP7-025], noting there is a need to secure the land and rights needed to construct the Proposed Development within a reasonable commercial timeframe [ER 8.10.1]. The ExA noted that the private loss to those affected had been mitigated through the selection of the land and minimisation of the extent of the rights and interests proposed to be acquired [ER 8.10.1]. The ExA concluded that the powers sought satisfy the conditions set out in s122 and s123 of the 2008 Act and the CA powers sought in relation to Statutory Undertakers meet the conditions set out in s127 and s138 of the 2008 Act [ER 8.10.1]. The Secretary of State has considered all the information and agrees.
- 6.40. The ExA concluded that the powers sought in connection with Open Space Land accorded with s132(3) of the 2008 Act and powers sought in connection with Crown Land and/or Crown rights accorded with s135(1) and s135(2) of the 2008 Act [ER 8.10.1]. The Secretary of State agrees.
- 6.41. The ExA concluded that the interference with Human Rights would be lawful, necessary, proportionate and justified in the public interest and that there would be no breach of the Public Sector Equality Duty (“PSED”) [ER 8.10.1]. The Secretary of State agrees and has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

7. Secretary of State’s Consideration of the Planning Balance, Conclusion and Decision

- 7.1. Where NPSs have effect, s104 of the 2008 Act requires the Secretary of State to have regard to a range of policy considerations including the relevant NPSs and marine policy documents, LIRs, prescribed matters and any other matters that the Secretary of State thinks are important and relevant to the decision. Where s104 does not apply, s105 requires the Secretary of State to have regard to LIRs, prescribed matters and any other matters that the Secretary of State considers are important and relevant to the decision.

- 7.2. As set out above, the Secretary of State concludes, as the ExA did, that there is no NPS in effect in relation to the Proposed Development and the Application can therefore be determined under s105, however, she considers, as the ExA did, that NPS EN-1 and EN-4 are still important and relevant considerations. The ExA also had regard to dNPSs and the Secretary of State has had regard to the newly designated 2024 NPSs. The host local authorities, FCC and CWCC, support the Proposed Development, as confirmed by their LIRs, and there is no conflict with the relevant LDPs. No prescribed matters have been identified. Both the ExA and the Secretary of State have identified a range of important and relevant matters, namely energy and climate change legislation, and policy which postdate the publication of the energy NPSs in 2011, including the publication of the designated 2024 NPSs. The Secretary of State agrees that significant weight should be ascribed to these matters and that they represent important and relevant matters in the context of s105 of the 2008 Act.
- 7.3. The Secretary of State acknowledges the ExA's recommendation that the Secretary of State make the HyNet Carbon Dioxide Pipeline Order in the form attached at Appendix D to the ExA's Report [ER 10.2.2].
- 7.4. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- Climate Change Resilience (Neutral weight) [ER 5.4 et seq.];
 - Flood Risk, Water Resources, Land Contamination (Neutral weight) [ER 5.6 et seq.];
 - Landscape and Visual Amenity/ Design and Layout (Great negative weight) [ER 5.7 et seq.];
 - Air Quality and Emissions (which includes from dust, smoke and steam) (Neutral weight) [ER 5.10 et seq.];
 - Traffic, Transport and Waste Management Policy (Neutral weight) [ER 5.11 et seq.]; and
 - The Need Case for the Development (Very great positive weight) [ER 5.2 et seq., 5.3 et seq.].
- 7.5. The Secretary of State has considered the following issues in further detail above and has come to a conclusion in the paragraphs above:
- Assessment of Alternatives (The Secretary of State concludes that alternatives have been properly considered);
 - Biodiversity, Ecology and Nature Conservation (The Secretary of State has ascribed minor negative weight);
 - Cultural Heritage (The Secretary of State has ascribed moderate negative weight);
 - Noise and Vibration (The Secretary of State has ascribed moderate negative weight); and
 - Socio-Economic Effects (Including Human Health)/ Agricultural Land Use/ Mineral Working Implications/ And Overall Cumulative Effects (The Secretary of State has ascribed great positive weight to socio-economic effects and neutral weight to overall cumulative effects).
- 7.6. The Secretary of State acknowledges that all NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed as being in accordance with NPS EN-1 and NPS EN-4 and the newly designated 2024 NPSs, subject in some cases to suitable mitigation measures being put in place to

minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.

- 7.7. The ExA concluded that making the recommended rDCO would be in accordance with NPS EN-1 and EN-4, as well as the dNPSs [ER 10.1.5]. It would also accord with PPW, NPPF and relevant policies from the LDPs and LIRs [ER 10.1.5]. The ExA also concluded that, subject to amendments to the rDCO, any adverse effect on the integrity of European sites and their features from the Proposed Development when considered alone or in combination with other plans or projects can be excluded [ER 10.1.16].
- 7.8. Overall, the ExA concluded that there were no adverse impacts arising from the Proposed Development that would outweigh its benefits [ER 10.1.26]. The ExA concluded that the Proposed Development, in the form of the Applicant's alternative version of the dDCO (Embedded Pipe Bridge Version) met the tests in s105 of the 2008 Act, subject to the Secretary of State satisfying herself on outstanding matters [ER 10.2.2].
- 7.9. As detailed above, the Secretary of State accords very great positive weight to the need for the Proposed Development, in agreement with the ExA who note that it is consistent with, and supportive of, the Government achieving its decarbonisation objectives [ER 10.1.10]. The "*urgent need*" for CCS is set out in 2024 EN-1, which the Secretary of State considers an important and relevant consideration. The Secretary of State also accords great positive weight to the socio-economic effects of the Proposed Development, noting that these will occur at the local, regional and national scales.
- 7.10. As detailed above, the Secretary of State accords great negative weight to landscape and visual amenity/design and layout, minor negative weight to biodiversity, ecology and nature conservation, moderate negative weight to cultural heritage and moderate negative weight to noise and vibration.
- 7.11. The Secretary of State has considered and weighed the benefits and harms that have been identified. Although the Secretary of State has reached a different conclusion from the ExA in respect of some of the harms resulting from the Proposed Development, the Secretary of State also concludes that the Proposed Development is in accordance with relevant NPSs, and that the harms identified in this case are clearly outweighed by the very great weight that attaches to the provision of urgently needed CCS infrastructure, along with the other identified benefits.
- 7.12. Consequently, the Secretary of State concludes that development consent should be granted for the HyNet Carbon Dioxide Pipeline in line with s105 of the 2008 Act. The Secretary of State considers that the national need as set out in the relevant NPSs outweighs the Proposed Development's potential adverse impacts, as mitigated by the proposed terms of the Order.
- 7.13. The Secretary of State has therefore accepted the ExA's recommendation to consent. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by CWCC and FCC, the NPSs, draft NPSs, newly designated 2024 NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by s105 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

8. Other Matters

Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector “*general equality duty*” (“PSED”). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “*protected characteristics*”: age; gender; gender reassignment; disability; marriage and civil partnerships³; pregnancy and maternity; religion and belief; and race.
- 8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.
- 8.4. The Secretary of State is confident that, in taking the recommended decision, she has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

The Environment (Wales) Act 2016

- 8.5. The Secretary of State, in accordance with the duty in section 6(1) of the Environment (Wales) Act 2016, must seek to maintain and enhance biodiversity in, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions. In particular, in accordance with section 6(4)(a), regard should be had to the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State is of the view that the ExA’s Report considers biodiversity in accordance with this duty.
- 8.6. The Secretary of State is of the view that the ExA’s Report, together with the ES, considers biodiversity sufficiently to inform her in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

Natural Environment and Rural Communities Act 2006

- 8.7. The Secretary of State notes the “*general biodiversity objective*” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities

³ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Act 2006 and considers the Application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.

- 8.8. The Secretary of State is of the view that the ExA's Report, together with the ES considers biodiversity sufficiently to inform her in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

Environmental Principles Policy Statement

- 8.9. From 1 November 2023, Ministers are under a legal duty to give due regard to the Environmental Principles Policy Statement when making policy decisions. This requirement does not apply to planning case decisions, and consequently the Secretary of State has not taken it into consideration in reaching her decision on this application.

9. Modifications to the draft Order

- 9.1. Following consideration of the recommended Order provided by the ExA, the Secretary of State has made the following modifications to the recommended Order:

- Amendments to article 7 (Benefit of the Order) to confirm that the provisions of the Order have effect for the benefit of the transferee to whom the benefits of the Order are transferred, and that the transferred benefit resides solely with the transferee once conferred, unless a breach by the undertaker took place prior to the relevant transfer.
- Amendment to article 22 (Authority to survey and investigate land) to require the undertaker to remove any apparatus installed under this article and restore the land to the reasonable satisfaction of the landowners following completion of any activities carried out pursuant to this article.
- Deletion of (previously) article 24 (Removal of human remains) to reflect that this article is not considered necessary or appropriate due to separate statutory requirements. This is also consistent with the position taken in previous Development Consent Orders.
- Amendment to article 24 (Compulsory acquisition of land) to provide the compulsory acquisition of land subject to the time limits set out in article 25 (Time limit for exercise of authority to acquire land compulsorily).
- Amendments to article 30 (Application of the 1981 Act) to include references to the Planning Act 2008 and the recommended Order, and to ensure consistency with the position taken in other Development Consent Orders.
- Amendments to article 34 (Temporary use of land for carrying out the authorised development) to confirm that the article only allows for the temporary use of the land for such purposes that is defined in article 34(1)(a) and that the undertaker must not remain in possession of the land for longer than is reasonably necessary.
- Amendment to article 35 (Temporary use of land for maintaining the authorised development). This article relates to temporary possession of the Order land to "maintain" in the initial period after construction rather than permanent rights that will be acquired. Amendments have been made to define the maintenance period as 5 years from the time

the relevant part of the authorised development is brought into operational use except in relation to landscaping, where the period is defined as the same period in requirement 12(4).

- Deletion of article 47 (Requirements, appeals, etc.) to remove the ability of the undertaker to appeal a decision of the Secretary of State to a Secretary of State who would not be responsible for determining the Order.
- Amendment to requirement 12 (Landscape and ecological management plan) to mitigate the visual impact of the authorised development by increasing the planting aftercare period to 25 years (the lifetime of the Proposed Development).
- Amendment to requirement 14 (Biodiversity net gain) to change the definition of biodiversity metric to extend to any other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature consultation body.
- Amendment to part 3 of schedule 10 (For the protection of National Grid Electricity Transmission plc) to confirm that the paragraph of the PPs relating to indemnities applies to the exercise of all powers under the Order affecting the rights and apparatus of NGET notwithstanding the disapplication of other provisions within the PPs to apparatus in respect of which the relations between the undertaker and NGET are regulated by Part 3 of the New Roads and Street Works Act 1991 as this had appeared to have been omitted in error.
- Amendment to part 20 of schedule 10 (For the protection of Exolum Pipeline System Ltd) to reflect amendments agreed by the Applicant and Exolum Pipeline System Ltd (“Exolum”) to include a commitment from the Applicant to grant new rights to Exolum on substantially the same terms as existing rights in the event they are extinguished on the purchase of a freehold interest in which Exolum has an interest, and the removal of exclusion of liability for consequential or indirect losses.

9.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency.

10. Challenge to decision

10.1. The circumstances in which the Secretary of State’s decision may be challenged are set out in Annex A to this letter.

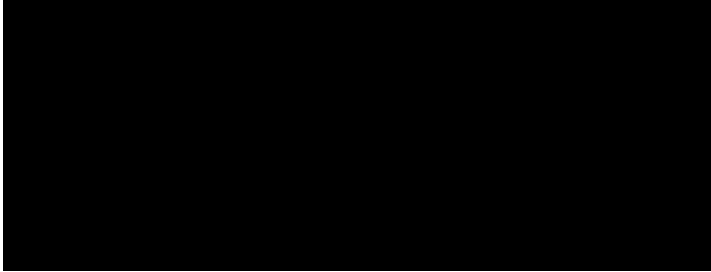
11. Publicity for decision

11.1. The Secretary of State’s decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the EIA Regulations.

11.2. Section 134(6A) of the 2008 Act provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure

Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Development

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/wales/hynet-carbon-dioxide-pipeline/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effect on Integrity
AGI	Above Ground Installation
BESS	British Energy Security Strategy
BMV	Best and Most Versatile
BNB	Biodiversity Net Benefit
BNG	Biodiversity Net Gain
BVS	Block Valve Station
CA	Compulsory Acquisition
CCS	Carbon Capture and Storage
CCUS	Carbon Capture, Utilisation and Storage
CEMP	Construction Environmental Mitigation Plan
CO ₂	Carbon dioxide
COMAH	Control of Major Accident Hazards
CPAT	Clwyd Powys Archaeological Trust
CRT	The Canal and River Trust
CWCC	Cheshire West and Chester Borough Council
DCO	Development Consent Order
EA	The Environment Agency
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
ES	Environmental Statement
ExA	The Examining Authority
FCC	Flintshire County Council
GHG	Greenhouse gases
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IP	Interested Party
IROPI	Imperative Reasons of Overriding Public Interest
km	Kilometre
LDP	Local Development Plan
LEMP	Landscape and Ecological Management Plan
LFoE	Liverpool Friends of the Earth
LIR	Local Impact Report
LSE	Likely Significant Effect
MSA	Mineral Safeguarding Area
MW	Megawatt
NE	Natural England
NGET	National Grid Electricity Transmission PLC
NGT	National Gas Transmission PLC
NH	National Highways

NPPF	National Planning Policy Framework
NPPG	National Planning Policy Guidance
NPS	National Policy Statement
NR	Network Rail (England and Wales)
NRW	Natural Resources Wales
NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
OCEMP	Outline Construction Environmental Mitigation Plan
PP	Protective Provisions
PPW	Planning Policy Wales
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SMP	Soil Management Plan
SNCB	Statutory Nature Conservation Body
SoCG	Statement of Common Ground
SPA	Special Protection Area
TAN	Technical Advice Note
The 2008 Act	The Planning Act 2008
The PLA	The Pipe-Lines Act 1982
The TCPA	The Town and Country Planning Act 1990
The WBFGA	The Well-Being of Future Generations (Wales) Act 2015
TP	Temporary Possession
UKOP	United Kingdom Oil Pipelines Limited
WR	Written Representations
WWU	Wales and West Utilities